

DISCUSSION

**THE LIBERAL JUDICIAL INTERPRETATION OF NUISANCE
FOR THE PROTECTION OF THE ENVIRONMENT:
AN ANALYTICAL STUDY IN THE FRENCH JURISPRUDENCE**

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Abstract: *Scientific reports have warned against the widespread of the environmental damages resulting from the use of utility poles, nuclear plants, and other industrial establishments. This poses a lot of legal issues with regard to the liberal interpretation of courts to the tort of nuisance as a basis on which the neighbors of those sources of pollution can establish their claims for compensation regardless of the degree of geographical proximity between the injured party and the source of pollution and regardless of the nature of this source. This article discusses the liberal interpretation of nuisance as a basis for environmental liability.*

Keywords: *Tort, nuisance, environment protection, Arab law, France*

I. INTRODUCTION

The French Civil Code of 1804 did not particularly address the tort of nuisance as it provided in Article 544 that owners have the right to enjoy their property to the extent that does not harm others. However, the French Court of Cassation first developed the tort of nuisance in its decision of 7 November 1844, in which it held that the neighbors to a factory that was a source of loud noises were entitled to a remedy given the excessive nature of the damages resulting from the factory operation although the factory had obtained all the licenses required by law.¹ Since the tort of nuisance in France was judicial rather than statutory in nature, scholars have had different views on its legality basis. Some scholars have argued that it is based on the tort of negligence provided for in Article 1382 of the French Civil Code because the defendant is considered to have breached its duty of care.² On the other hand, other scholars have argued that nuisance can be based on the notion of strict liability given the difficulty associated with proving the breach of duty of care.³

The idea of protecting neighbors from nuisance is not new, as it has always existed in most national legal systems. However, in recent decades, the importance of this tort has increased considerably due to the widespread of industrial establishments, such as nuclear plants, emitting polluting materials into the environment and, thus, causing serious

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¹ Cass. Civ. 27/11/1844. D. 1845. I. P. 13.

² CARBONNIER, J. *Les Bien et Les Obligations, Droit Civil*. T.2. Paris: Presse Universitaire de France, 5th ed., 1967, p. 196.

³ VINEY, G., JOURDAIN, P. *Traite de Droit Civil, Les Conditions De La Responsabilite*. Paris: LGDJ Librairie juridique, 1998. p. 1066.

environment damages such as the problem of global warming.⁴ Environmental pollution, which has many aspects and sources, is one of the main serious contemporary problems because of its serious impact on human and animals.

Noticeably, industrially developed countries were the first to notice the negative effect of some new technologies on the environment. As a result, since 1844, French courts have interpreted the liability resulting from industrial pollution using the rules of the tort of nuisance, originally developed to protect individuals' enjoyment of property against any unreasonable interference by their neighbors.⁵ Similarly, in the Arab world, influenced by the rules of Shariah, national civil codes adopted rules protecting property owners against the unreasonable interference with the enjoyment of the property by their neighbors.⁶

However, in recent years, courts, especially in France, have liberally applied the rules of nuisance, including the notion of neighbor, to oblige the owners of utility poles to have them removed where they can pose imminent and future damage, including environmental damage, to the safety of the neighbors. Accordingly, due to the liberal judicial interpretation of nuisance, environmental damages can now be compensated, a fact that serves human rights given the correlation between the human right to life and the right to have clean and safe environment.

Research Problem

Scientific reports have warned against the widespread of the environmental damages resulting from the use of utility poles, nuclear plants, and other industrial establishments. This poses a lot of legal issues with regard to the liberal interpretation of courts to the tort of nuisance as a basis on which the neighbors of those sources of pollution can establish their claims from compensation regardless of the degree of geographical proximity between the injured party and the source of pollution and regardless of the nature of this source.

Research Methodology

The research applies descriptive, inductive, and analytical methods to discuss the liberal interpretation of nuisance as a basis for environmental liability. This method aims to explain how the French courts have developed the traditional rules of civil responsibility to accommodate environmental nuisance, which can have many sources, and this is normally difficult to prove.

Research Plan

This paper is divided into five sections. After this introduction, Section 2 will discuss the liberal judicial interpretation of the notion of “neighbor”. In this section, the

⁴ The environment can be defined as the surroundings in which a person lives, and includes water, air, space, soil, living organisms, and structures that the person has set up to satisfy his needs. For further details see HILO, M. R. *Environmental Law in Shariah*. Alexandria: Aldar Aljamia Aljazeera, 2004, p. 49.

⁵ See e.g. Cass.civ 27/11/1844. I.P.211. Dallos. 1845. I.P.13.

⁶ Prophet Muhammad (peace be upon him) said: “Gabriel continued to recommend me about treating the neighbors kindly and politely so much so that I thought he would order me to make them as my heirs.” (Narrated by Bukhari and Muslim).

paper will also discuss the notion of nuisance as well as the notion of environmental damages and their characteristics. Section 3 will discuss the courts' liberal interpretation of the elements of damages and causation in the tort of nuisance as applied in the context of environmental nuisance. Section 4 will discuss the remedies available for environmental nuisance. Finally, Section 5 will be a conclusion and recommendations.

II. THE LIBERAL INTERPRETATION OF “NEIGHBORHOOD NUISANCE”

Pursuant to Article 382 of the French Civil Code, legal thinking has started to focus on objective liability that makes causing damage to others the basis of liability regardless of the presence or absence of fault. This is meant to provide more protection to the injured party, who is usually in the environmental damages context a neighbor to the establishments producing environmental pollutants.⁷ Applying the general legal rules of tort in Article 1382 or Article 1384/1 of the French Civil Code that require an element of fault in order to establish liability would leave some injured parties without compensation, because of the difficulty of establishing fault of the side of the industrial establishments.⁸ Industrial establishment's economic interests are legitimate interests. They usually take measures that mitigate the environmental damages. And, they usually abide by the legal rules required to protect the environment. As a result, it was necessary for courts to start focusing on how to compensate the injured parties even the absence of a fault on the side of the industrial establishment causing the damage, according to Article 651 of the French Civil Code which provides that property owners owe each other legal duties independent of any contractual obligations.

Before discussing courts' liberal interpretation of the notion of “damage” and “causation” in the context of environmental damages, the following subsections will focus on the legal regime of nuisance, the notion of environmental damage, and finally the notion of “neighbor” as liberally interpreted by courts.

II.1. The Tort of Nuisance

Neighborhood assumes the physical proximity between neighbors. It is not considered a neighbor who lives within miles of his neighbor. Therefore, the expansion of the concept of neighborhood contributes to the extension of responsibility for the damage to the neighbor to include people who are geographically remote from the source of the damage.

The doctrine of nuisance distinguishes between two types of harm to neighbors: The first is the familiar annoyances that are necessitated by neighborliness, which people are accustomed to enduring, such as the noise of a crying child. These annoyances generally cannot be a source of legal responsibility, because living in a society requires tolerating

⁷ VINEY, G., JOURDAIN, P. *Traite de Droit Civil, Les Conditions*. Paris: Edition delta, 1998, pp. 1066–1068.

⁸ HAWAS, A. S. *Civil Liability in Environmental Pollution: A Comparative Study*. Alexandria: Aldar Aljamia Aljadedda, 2011, p. 288.

these unavoidable annoyances.⁹ French courts have traditionally emphasized, pursuant to Article 544 and Article 651 of the French Civil Code, the right of the owner to fully enjoy his or her property to the extent that does not cause any harm to others. On the other hand, the second type of nuisance is substantial in that it causes considerable damages to the neighbor to an extent making it intolerable and hence it requires compensation.¹⁰ Examples of this kind of nuisance includes blocking the sun or air or doing anything that causes serious environmental pollution.¹¹

Since causing damages to the neighbor by means of nuisance can be seen as a form of objective liability, which does not require the element of fault to exist. The injured party will only need to prove that he or she has suffered damages because of an action or inaction on the side of the defendant, irrespective of whether the action or inaction was intentional or intentional or whether or not it overlooked the precautionary measures necessary to prevent the damage. Given the flexibility in establishing the objective liability, it is very suitable to apply in the context of environmental liability. This is consistent with the general rules of tort in the Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates, which provides in Article 282 that “The author of any tort, even if not discerning, shall be bound to repair the prejudice.”¹² This is also compliant with the unique character of nuisance, which requires to be objective, and therefore most Arab laws have established this doctrine on the basis of the theory of the abuse of rights.¹³ The French courts have already established this. For instance, in 1855 the court of Colmar held that “the owner who built a chimney on the top of his house in order to cause damages to his neighbor had abused his property rights.”¹⁴ Also, the Court of Cassation in France adopted a similar principle in its decision in the case “Clement-Bayard” issued on 3/8/1915 which held that “the owner that placed barbed wire in his land to force airlines whose planes are landing in a neighboring piece of land to purchase his land for a high price abused his property rights.”¹⁵

Accordingly, for the nuisance liability to arise the following conditions must be met:

⁹ Article 1144 of the UAE Code of Civil Transactions provides:

1. The owner must not exercise his right in an excessive manner to the extent detrimental to his neighbor's property.
2. The neighbor has no right of action against his neighbor for the usual unavoidable inconvenience, but he may claim the suppression of these inconveniences if they exceed the usual limits, taking into consideration in this respect custom, the nature of the immovable properties, their respective locations and the use for which they are intended. The license issued by the competent authorities is not a bar to the exercise of such a right of action.

3. Restricting the Rights of the Person in Favor of whom the Act of Disposition has been taken.

This Article is like Article 1027 of the Jordanian Civil Code.

¹⁰ See Article 1137 of the UAE Code of Civil Transactions defining “excessive detriment” as that “may cause weakness of construction, its demolition or deprivation of the essential necessities, that is the utilities intended from construction.” This Article is similar to Article 1024 of the Jordanian Civil Code.

¹¹ SAAD, N. I. *Property Rights, Its Rules and Its Sources*. Alexandria: Dar Aljamia Aljazeera, 2006, p. 50.

¹² This is similar to Article 256 of the Jordanian Civil Code.

¹³ See Article 807 of the Egyptian Civil Code; Article 776 of the Kuwaiti Civil Code; Article 691 of the Algerian Civil Code.

¹⁴ Cass.civ. 2 mai 1866. Dalloz.1856. p. 123.

¹⁵ Cass.civ. 3/8/1915. D.1917. p. 79.

1. There is an abuse of the property right. This happens when the owner exceeds in his or her use of the property the use of the reasonable person.
2. The abuse of the property right results in damages to a third-party. It is worth emphasizing that the degree of the damage must exceed the limits of the annoyances that are normally tolerated in the society. In addition, administrative and legal licenses of a specific use of the property does not preclude the injured party from requesting a legal remedy.
3. There must be a causal relation between the abuse of the property right and the damages. As it will be discussed later, French courts have liberally interpreted the condition of causation in that they accepted its existence when there is a likelihood or probability the damages have resulted from the pollution act.

II.2. Environmental Damage and its Characteristics

Civil liability revolves around the element of damage, which refers to the harm to a right or a legitimate interest.¹⁶ If there is no damage, there is no compensation.

Only recently has the environmental damage received the attention it deserves, because of the widespread of the environmental risks that threaten humans' present and future. It is difficult to give a comprehensive definition to the notion of environmental damage given its several domains and sources, such as the biological pollution, the chemical pollution, and the nuclear pollution. Yet, scholarship has defined it as "every harm impacting the surrounding nature regardless of its effect on persons or property."¹⁷ Another scholarly opinion has also defined it as "the damages sustained by persons and property through the surrounding in which they live."¹⁸ And, scholars have distinguished between the direct harm that affects the environment and the indirect harm that affects individuals.¹⁹

There are several reasons for the aggravation of the pollution problem in recent years:

1. The widespread of new technologies and industries whose operations emit pollutants.²⁰
2. The rapidly developing mining and transformative industries, which usually emit pollutants and are generally a major source of nuisance.
3. The excessive use of fuel in heating, electricity and water generation, and transportation.²¹
4. The problem of noise in big cities, which causes a lot of health issues.

Generally, environmental damage can be said to have the following characteristics:

¹⁶ MURCUS, S. *Civil Liability in the Arab World Technologies: Tort*. Cairo: Aljeblawi Press, p. 1971, p. 127; PRIEUR, M. *Droit de l'environnement. 4eme edition*. Paris: Dollaz. France, 2001, p. 729.

¹⁷ CABALLERO, F. "Essai sur la notion juridique de nuisance." *These, librairie juridique de droit et de jurisprudence*. 1981, p. 293; ALTAWHEEL, A. Monetary compensation for environmental damage: a comparative study. *The Journal of Rights*. 2012, Vol. 51, p. 6.

¹⁸ PRIEUR, M. *Droit de l'environnement. 4th edition*. Paris: Dalloz. France. 2001. p. 730.

¹⁹ *Ibid.*, p. 729.

²⁰ FERREY, S. *Environmental law- Examples and Explanations. 7th edition*. New York: Wolters Kluwer, 2016, p. 587.

²¹ ALNAWAYS, B. The impact of technology on the rules of unfamiliar neighborhood damages: comparative study. *Jordanian Journal of Law and Political Science*. 2011. Vol. 3, p. 217.

First, Environmental damage is impersonal. This means it does not affect something owned by a specific person. Instead, it affects both biological and non-biological substances in the environment. Consider for example the impact of the oil spill from a tanker in the ocean on the marine life. Therefore, national laws give organizations that are active in protecting the environment the right to file cases before courts for any damages to the environment. At the same time, individuals may sustain damages because of environmental pollution. In this regard, relying on the environment nuisance, the high court in France has obliged the company Sallant laverent Beauport to pay the neighbors of its factories 15 million dollars as a compensation for the damages resulting from the factories' poisonous dust.²²

Second, the wide scope of the environmental damage. It is established that damage that justifies compensation must be personal and specific. In contrast, environmental damage impacts all the elements of the environment. It has a wide scope regarding the time and location. Also, given the possibility of the existence of several sources of environmental pollution, especial in the industrial areas, it is usually difficult to determine the tortfeasor(s), whether a natural or legal person.

Third, the progressive nature of environmental damage. One of the characteristics of environmental damage is that it may take some time before it appears. For instance, the negative impact of nuclear contamination or electromagnetic waves on the human body may take years to appear, and it may be passed from one generation to another.²³ As a result, it is difficult to prove the causation element in the case of environmental-based torts: that is the relation between the pollution and its damage.

Fourth, environmental damage is indirect. The special nature of environmental damage has made it difficult to satisfy the requirement that damages be direct to have compensation established according to the general rules of civil liability. However, at the outset, because environmental damage may result from several sources related to the technological and industrial development, had rejected to award damages for the indirect damage, such as the increase in goods prices or other economic damage, which can result from the tort, given the absence of the causation element. Yet, courts later found that justice requires awarding compensation for environmental damage. Accordingly, courts in France liberally interpreted the element of causation in environmental damage cases to award a remedy in those cases. At the same time, some national legislations, such as the Lebanese law of obligations in Article 134, established the possibility to award damages for indirect damage as long as the damage was clearly connected with the tort. In the same vein, the in French law allowed environment protection organizations to claim damages for the direct and indirect damage affecting the collective interests that those organizations defend, such as pure environmental damage.²⁴

²² HASOUNAH, M. A. *State Responsibility for Environmental Pollution*. Alexandria: Dar Alfikr, 2014, pp. 53–54.

²³ ABDULSALAM, S. S. *The Problem of Compensating the Damage of the Technological Environment*. Cairo: Dar Alnahda, 2003, p. 23.

²⁴ JAMAL, A. *The Legal Protection of Land from Pollution: A Comparative Study*. Ph.D. thesis, Faculty of Law, Tilmisan University, Algeria, 2009–2010, p. 248.

II.3. The Liberal Interpretation of the “Neighbor”

Being a neighbor for the purpose of tort law no longer depends on being the nearest to the source of damage, but this notion includes every affected person by the source of the damage within a reasonable geographical proximity that does not negate the causation relation between the source of the pollution and the damage resulting therefrom.²⁵ French courts were the first to establish this principle taking into regard the importance of protecting everyone’s right to be free from any interference with the enjoyment of his home and right to enjoy clean environment. In this respect, the French court of Cassation found that a factory producing castor oil was liable for compensating its neighbors for the damage they suffered from the smoke it released during the production process.²⁶ In another decision, the same court obliged an aluminum factory to compensate a beekeeper, although living 1600 meters away, for the damages that his farm suffered because of the factory’s smoke.²⁷ Also, the court found that a sand and stone factory was liable in nuisance for changing the landscape in a manner that deteriorated the scenery around the plaintiff’s house, which was away from the factory hundreds of meters.²⁸

Notably, the liberal interpretation of the notion of “neighbor” to cover those who are located in geographical proximity, though not necessarily the nearest to the injured party, is necessary to award damages in cases of environmental pollution, whose effect may go beyond the immediate neighbor to its source. This approach is helpful also to find liable establishments, such as factories, which increase the heights of their chimneys to dispense their smokes in a manner that alleviates the damage to their immediate neighbors but in prejudice to those living far away. In this regard, a French judge once said, describing the development of the tort of nuisance, “have not we become neighbors to Ukraine since the moment the radioactive material from Chernobyl disaster reached to Western Europe!”²⁹ This shows that radioactive materials can indeed reach areas that are thousands of miles from the exact location of this kind of environmental disasters.

The liberal interpretation not only does cover the geographical proximity between neighbors but also extends to cover the notion of “neighbor”. Although the application of the doctrine of nuisance was limited to damage resulting from owners of property,³⁰ the notion of “owner” is no longer central to establishing liability. Accordingly, neighbors can request injunctions against sources of nuisance regardless of whether the person responsible for this is an owner or merely an occupant. For instance, courts in France held that construction companies are liable in nuisance for the damage they cause persons residing near the construction site. In this situation, courts consider those companies “temporary

²⁵ GILLES, M. *De la responsabilite civile pour faits de pollution au droit de l’environnement*. Nice: Université de Nice, 1976, p. 102

²⁶ Cass.civ. 2^{eme} ch.22-10-1964. No.298, p. 175.

²⁷ Cass.civ. 2^{eme} ch. 30/1/1985.

²⁸ Cass.civ. no. 93-18036. 1995. D.1995.11. no 298. p. 175.

²⁹ See the Annual Reports of the French Cassation Court, p. 269.

³⁰ VINEY, G., JOURDAIN, P. *Traite de droit civil, les conditions de la responsabilite*. 2nd edition. Paris: LGDJ Librairie juridique, 1998, no. 940.

neighbors”³¹ and, accordingly, there duty not to cause nuisance is a duty to achieve a specific result.³² The liberal interpretation of the notion of “neighbor” allowed courts in France to compensate damages caused by nuisance even when the injured party was distant from the source of nuisance several kilometers. For example, Air France was held liable for the noises coming from plane engines in the airspace although planes are moveable property. In other words, geographical proximity is not a condition for nuisance liability under the liberal interpretation of the notion of “neighbor or neighborhood” adopted by the French courts.

III. THE LIBERAL JUDICIAL INTERPRETATION OF THE “DAMAGE” AND “CAUSATION” ELEMENTS

Traditionally, nuisance was limited to the damage resulting from smokes, odors, and noises, and anything else that negatively impact human senses. However, the doctrine has developed especially with respect to the elements of damage and causation of the nuisance tort. Therefore, currently, nuisance covers the damage resulting from technological developments such as electromagnet waves resulting from utility poles or the radioactive materials resulting from nuclear plants. Courts have addressed this situation by adopting a liberal meaning of elements of “damage” and “causation” in the tort of nuisance without limiting themselves to the general rules of tort.

III.1. The Liberal Interpretation of the “Damage” Element

The notion of unreasonable damage that most civil law jurisdictions have adopted in tort law is flexible,³³ because it does not require courts to find a specific amount of damage to establish liability. However, legislators have given courts a number of objective factors to take into regard when evaluating unreasonable damage including custom, the nature of property, and the location of the properties from each other.³⁴ Accordingly, any damage that exceeds what people customarily accept as reasonable or tolerable damage, in light of the above factors, is unreasonable damage and therefore requires compensation. As a result of the above objective factors, courts will not consider the personal circumstances of the injured party when evaluating damages, such as his or her health condition or the nature of his or her job. Instead, courts will evaluate damages according to the objective standard of the reasonable person.³⁵

Notably, this standard, which the law has provided for, can be applied in the situation when the two properties are close in geographical proximity. However, it does not neces-

³¹ SAID, A. J. *Construction Nuisance*. Cairo: Dar Alnahda, 2010, p. 181 ff.

³² Cass. civ. 3. No. 16-18.158; Cass.civ. 3 No. 18-18.521.

³³ ABU ORABI, G. K. *Property Rights in the UAE Law of Civil Transactions*. Abu Dhabi: Alain, 2016, p. 47.

³⁴ See Arret no. 97, 2020, no. R.G. 19-02814 (holding that building a high-rise building in a houses area was nuisance).

³⁵ See Article 1144/4 of the UAE Law of Civil Transactions and Article 1027/2 of the Jordanian Civil Code. To achieve justice French courts held that those who chose to live near airports had impliedly tolerated planes noise and thus were not entitled to compensation. See NEURAY, J. F. *Droit del l'environement*. Paris: Dalloz, 2001. p. 689.

sarily capture the situation when the neighbor is far from the source of the damage. This made the courts in France to interpret the element of damage in nuisance liberally to address what contemporary societies encounter because of environmental pollution. Accordingly, the court of cassation in France upheld the right of a neighbor to a golf club to require the owner of the club to change the game paths in order to protect the plaintiff from the possibility of being hit by one of the flying balls. The Cassation court also confirmed this approach in another case when it considered a farmer's collection of hays near his neighbors a form of nuisance because of the possibility of it catching fire.³⁶

Scientifically, several reports have found that electromagnetic waves emitted by utility poles are a source of a possible damage. In this regard, in one of its reports, the World Health Organization reported that such waves can be a cause of cancer.³⁷ To address those kinds of risks French courts did not merely apply the general principles for civil liability, which require the damage to be established to award compensation, but applied the precautionary principle approach to award compensation for the possibility of damage.³⁸

Accordingly, it is no longer required that the damage resulting from nuisance is intolerable or unreasonable for courts to establish liability. This was also confirmed by a French court that required a telecommunication company to remove its utility pole that was causing neighbors psychological distress. This judicial approach, which many other courts also adopted,³⁹ resembles a flexible interpretation of the law of nuisance to cover damage that is not necessarily tangible. In this respect, applying the precautionary principle, the European Court of Justice had held that civil liability can result even when the damage is probable as long as it is imminent and, accordingly, an operator of a waste management establishment was ordered to stop some of the operations that emitted into the environment harmful gases.⁴⁰

III.2. The Liberal Interpretation of the Element of Causation

Under the general principles of civil liability causation is an important element in any tort. This logically applies even in the context of environmental pollution nuisance. Therefore, the injured party must prove not only the damage but also its source. However, proving causation in environmental pollution nuisance is difficult because of the multiple sources of environmental pollution and the nature of damages it causes, which make it difficult to identify the responsible party for the resulting damages.⁴¹ This shows that the general rules of civil liability are incapable to address the challenges associated with environmental pollution. This therefore denies injured party the possibility to recover dam-

³⁶ Cass.civ. 2eme ch.civ 24/2/2005. No.4. 610362. JCP.

³⁷ See Centre international de recherche sur le cancer.

³⁸ RADE, C. *Le Principe De Precaution Une Nouvelle Ethique De La Responsabilite*. R.J.E. 2000, p. 84; VINEY, G., JOURDAIN, P. *Traite De Droit Civil, Les Condition De La Responsabilite*. Paris: LGDJ Librairie juridique, 1998, p. 798.

³⁹ FELDMAN, J.-P. *Le Trouble Voisinage Du Principe De Precaution*, sur l'arret de la cour de Versailles du 4 fevrier 2009, p. 1369.

⁴⁰ ALEMANON, A. *Le Principe De Precautionen Droit Communautaire*. 2001/2009, p. 242.

⁴¹ ALHADITHI, H. S. *Civil Liability for Environmental Pollution: An Analytical Study*. Amman: Dar Juhaina, 2011, p. 14.

ages for their losses.⁴² As a result, courts started to presume the existence of the causation element to facilitate its proof. In France, courts adopted the notion of probable causation between the pollution and the resulting damage under which causation is presumed. Thus, courts will establish liability if the plaintiff proves that an activity is risky to an extent that it can be a probable cause of damage. Under this principle, an activity is risky if it involves the usage of dangerous methods or tools or if it is inherently risky, such as in the nuclear energy usage. The French court of Cassation adopted this principle when it held that there had been causation between the damage and the military jets breaking of the sonic barrier as there was no other justification for the resulting damage.⁴³ It has also held that chemical company was liable for the damages resulting for an underground leak of chemical gases as long as the leak contributed to the damages.⁴⁴ In the same vein, the high court in Sweden held that there was causation between dumping polluted water in a river and the vanishing of fish because it was more probable that not that causation existed between the pollution and the damage.⁴⁵

In short, the difficulty of proving causation in nuisance cases has made courts to adopt a liberal interpretation approach towards this element.

IV. ENVIRONMENTAL NUISANCE REMEDIES

If all the civil liability elements are established, the injured party can be entitled to two types of remedy:

First, specific performance: this means the putting the plaintiff in the position in which he or she was before the occurrence of the tort. Courts have the discretion to provide this remedy when it is possible and upon a request from the injured party. Specific performance is an effective remedy in the context of environmental pollution, such as when it takes the form of cleaning the affected area from the pollutants, ordering the closure of the polluting entity, or ordering the defendant to take measures that prevent the nuisance. In this regard, French courts have, for instance, issued decisions that involved the closure of a barn established in a residential area,⁴⁶ ordering the owner of a night club to build isolating walls to decrease the amount of noise,⁴⁷ and the closure of a factory for ready-mix concrete because it was close to a hotel.⁴⁸ It is worth noting that the specific performance remedy may involve permanent or temporary measures to stop the nuisance or mitigate its impact.

Second, when specific performance is impossible or it causes the defendant undue prejudice, courts have the discretion order the payment of damages that compensates the

⁴² TAPINOS, D. *Prevention precaution et responsabilite civile. L'Harmatan*. Paris: LGDJ Librairie juridique, 2008, p. 247.

⁴³ ALHADITHI, H. S. *Civil Liability for Environmental Pollution: An Analytical Study*. p. 148.

⁴⁴ Cass. civ. 17/12/1969. B. civ. 69.1.1 No. 353. p. 261.

⁴⁵ BAHJAT, A. *Civil Liability for Environmental Damage: A Comparative Study*. Cairo: Dar Alnahda Alarabia, 2008, p. 68.

⁴⁶ Cass. Crim. 12 Juin 2019. No. 18-81. 874; Cass. Civ. 2e. 20 mars 1976. No. 75. 11.636.

⁴⁷ Cass. Civ.3e. 28 Juin 2018. No. 17-18-755. See also Cass. Civ. 3e. 3 Mars 2016. No. 14-14. 534.

⁴⁸ Cass. Civ.2e. 14 Juin 2018. No. 17-19.301.

plaintiff for the sustained losses and missed opportunities of profit. Notably, compensating for the environmental damage is problematic because of its special nature as it does not impact the environment, rather than a person, and is difficult to estimate.⁴⁹ This has motivated some jurisdictions to adopt tables including the amount of compensation that ought to be paid for environmental pollution calculated according to a formula taking into consideration the value of the impacted natural resources and the costs necessary to remove the pollution. Accordingly, a French court has held, on 12/5/1990, that a meat processing entity was obliged to pay 1 French franc for each kilo gram of fat released in the environment in violation of the applicable regulation.⁵⁰

V. CONCLUSION

Courts have realized that environmental pollution today is prevalent and more dangerous. As a result, courts have interpreted liberally interpreted the elements of nuisance to address this issue. Examining this judicial approach, this study has reached several results:

Courts have liberally interpreted the notion of “neighbor” to include those who are geographically distant from the source of the pollution causing the damage.

Courts have also liberally interpreted the element of “damage” to cover all the damages resulting from harmful waves regardless of its types or sources. They also required the removal of telecommunication poles when they could possibly cause damages to the neighbors.

In addition, courts have presumed the existence of causation between an action and a damage, where there was not another known source of the damage.

Accordingly, it is necessary to establish a specific environmental liability system like the system established under the new French biodiversity law, enacted on 8/8/2016, which aims to protect the environment. Furthermore, to address environmental pollution damages, corporations whose activities carry environmental risks should be required to have liability insurance.

⁴⁹ HAWAS, A. S. *The Legal Basis of Liability Resulting from Environmental Pollution*. Alexandria.

⁵⁰ ALSARHAN, A. Environmental Civil Liability in the Jordanian and French Civil Laws. *Almanara Journal*. 2000, Vol. 5, No. 2, p. 126.