Precautionary principle in common law and civil law

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The precautionary principle is a strategy of risk management when there is no scientific certainty about the potential negative effects of a specific activity.

Risk concept changes: near the real risk there is now the perceptible risk, when the scientific research is not able to give a clear explanation of the reality and the gravity of some dangers.

The main consequence of this evolution is the development of a strong aspiration to a better ability to anticipate protection in the field of public health through minimising exposure and precautionary approach.

The precautionary principle exists in international law, community law and national law, but it is sometimes difficult to identify clearly the way it has been received in each system, whether for scientific uncertainty or for the differences in the statute law from a system to another.

The concept of the precautionary principle is different in civil law and common law, which have different approaches to the relationship between science and law.

In the USA the regulation is "science-based" meanwhile in Europe the rule of science is determined through a "policy – related" way.

The main characteristic of American tort law is the dissuasive function through "punitive or exemplary damages".

In the law of the European community the precautionary approach has been codified in the XIX title of the Treaty as one of the principal aims of European environmental politics (art. 174, co 2).

Although the ways followed by civil law and common law to make the precautionary principle concrete and effective are different, it seems now that the results achieved are nearly the same.