

Administrative means of protecting the environment from pollution caused by the exploitation of industrial real estate in Algerian Law

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Abstract---In the early 1970s, the world witnessed an increase in environmental awareness, which led to a commitment to the implementation of environmental policies. However, the exploitation of industrial drugs led to serious environmental problems, despite efforts to protect the ecosystem. Industrial pollution was circumvented as a result of the misuse of industrial drugs, making life on the planet almost impossible.

Keywords---Environment, Industrial Pollution, Industrial Drug Exploitation.

Introduction

In the early 1970s, the world began to realize the importance of the environment even more, leading to decisions aimed at protecting natural resources and combating pollution. Despite these efforts to protect the environment, the ecosystem has been subjected to many tremors, creating serious environmental problems and making life difficult for humans on the planet.

The exploitation of industrial real estate through various forms of investment has resulted in many environmental challenges. Despite all legal and administrative measures and the implementation of some preventive measures, these attempts were not sufficient to counter the serious damage resulting from this exploitation. Some of these actions are addressed in Chapter One, where industrial pollution has risen significantly due to the increasing conflicts between countries and groups to achieve sustainable economic development.

This crisis has been exacerbated by the poor way in which industrial real estate is exploited and large factories and facilities spread indiscriminately, both in the absence of proper environmental planning

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and in cases of shallow and ineffective planning. The problem of industrial pollution continues to worsen, leaving everyone unable to cope with its effects. This is evident from the emergence of new phenomena that spread from time to time, and which are difficult to control, which call into question the efforts of human beings, which are still weak and moving slowly towards creating an environment conducive to living in peace.

Moreover, in light of international and domestic efforts to protect the environment, so-called remedial measures have been reached, due to the inadequacy of preventive measures or the ineffectiveness of some of them due to the challenges faced in their implementation. These legal measures were developed as a means of addressing the damage caused by industrial pollution and its impact on the environment and the health of individuals, raising questions about the effectiveness of these mechanisms in achieving their objectives.

The first theme : preventive and technical administrative means of environmental protection

Preventive administrative means of environmental protection refer to the prior control measures aimed at protecting the environment and preventing the occurrence of any behavior that contravenes laws and legislation, and which may cause damage to an element of the environment. Among these measures, there are effective preventive measures that contribute to achieving this goal.

First: Preventive Administrative Means

1- Licensing System

Licensing is a key tool, as it is the most effective way to ensure that the environment is protected before any damage occurs. This is related to projects that represent importance and speed in impacting the environment, especially those related to industries and construction work, as well as the transportation and disposal of harmful waste and environmental materials.¹

A license is defined as the permission granted by the competent department to practice a certain activity, as it cannot be done without such permission. The Department grants this license when the conditions specified by law are met.²

Dr. Ammar Boudiaf defines licensing as "a condition imposed by government entities, in accordance with certain laws or regulations, on people who wish to carry out a certain activity. For example, if individuals intend to organize a rally or rally, government agencies can require them to obtain prior permission before starting the activity, otherwise their actions will be illegal. In addition, government agencies can require gun owners to obtain a license, or place a condition on those who want to enter a certain area to obtain permission from a particular entity, often in exceptional circumstances. "

Algerian law includes several applications related to administrative licenses aimed at protecting the environment. In this context, we will focus on specific examples, such as licenses for building permits and licenses for the operation of classified facilities.

- Building Permit and its Relationship to Environmental Protection

Returning to Law 90-29 on Planning and Construction, its articles show that there is a close link between environmental protection and building permits. These permits are important documents that reflect prior control of the natural environment. Law 29/90 stressed the need to obtain a building permit from the competent authority before starting the construction of a new building or making any modifications or renovations to an existing building. A building permit is defined as "an administrative decision issued by a legally competent authority, granting the right to a person (whether an individual or

¹ Rayah Al-Khader, Municipality's Competence in the Field of Environmental Protection, Master's Thesis in Political Science and International Relations, University of Algiers, 2012, p. 106.

² Majed Ragheb Al-Helou, The Law of Environmental Protection in the Light of Sharia, without Alexandria Edition, The Genesis of Knowledge, 2002, p. 137.

an institution) to construct a new building or modify an existing building, before the commencement of construction works that must be in line with the rules of the Construction Law."³

Regarding development in areas that attract tourists, Law 03/03 requires a permit, in addition to the Minister of Tourism must be consulted beforehand. A license must also be obtained from the relevant administrative authority, as specified in the Law on Land Regulation and Planning⁴.

– License for the Exploitation of Classified Establishments

In article 18 of Law No. 10/03, the Algerian legislature defines classified establishments, which includes "factories, workshops, workshops, quarries, and mines, as well as any other facility exploited or owned by any natural or legal person, whether public or private. Such facilities may pose a risk to public health, hygiene, security, agriculture, ecosystems, natural resources, as well as sites and attractions, or may adversely affect the comfort of the neighbourhood.

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Article 19 of Law 10/03 on the Protection of the Environment specifies the competent authority to issue a license for the exploitation of classified facilities, in view of their seriousness or the damage caused by their exploitation, into three categories:

- Establishments classified as Class I shall be subject to a license from the Minister in charge of the Environment.
- Establishments of the second class shall be subject to a license from the competent governor of the region.
- Establishments of the third class shall be subject to a license from the President of the competent Municipal People's Assembly.

With regard to the procedures for obtaining an exploitation license, the Algerian legislature has classified enterprises into two categories: establishments that require a license and those that require a permit. Article 19 of Law 03-10 stipulates the entity responsible for issuing a license for the exploitation of classified facilities that require a license. The time of the permit application must be assessed when submitting the building permit application. As for the procedures, they include the following:

- Submit the license application to the granting authorities.
- Provide information specific to the facility such as the nature of the work, location, and manufacturing methods.
- Submit an impact study.
- Opinions of a public inquiry and a study related to the risks and implications of the project.

Installations that require a permit are those that do not represent any kind of risk and do not directly affect the environment. They also do not pose threats to people's health, hygiene, natural resources, or tourist areas. Therefore, it is necessary to conduct an impact assessment study. This permit shall be

³ Zein Azri, Procedures for Issuing Building Decisions in Algerian Legislation, Al-Mufikr Magazine, Department of Law, University of Biskra, Third Edition, Algiers, 2008, p. 11.

⁴ Article 29 of Law No. 03/03 of 17/02/2003 on Expansion Areas and Tourist Areas, Official Gazette No. 11, 19/02/2003,

⁵ Article 18 of Law 10/03 of 19/07/2010 on the protection of the environment in the framework of development, c.R, No. 43, and Articles 01 and 02 of Executive Decree No. 06-198 of 31/05/2006, regulating the regulation applicable to institutions classified for environmental protection, R. No. 37 of 04/06/2006.

issued by the President of the Municipal People's Assembly, after the owner of the establishment has provided all the required information, whether he is an individual or a legal institution.

If the Speaker of the Municipal People's Assembly believes that a facility needs a license, he shall inform the owner of the facility within a maximum of eight days, so that he can take the necessary steps.⁶

2- Prohibition regime

In order to preserve the environment, the Algerian legislature relies on the mandatory prohibition system, which is one of the preventive legal methods.

A ban is a precautionary legal measure used by administrative authorities to enforce order. This is an administrative decision aimed at preventing certain activities as a result of the risks associated with them. The ban is seen as one aspect of binding rules that impose restrictions on management and people who carry out work that may harm the environment.

The administration enforces the ban by issuing administrative decisions, which are individual decisions that the administration issues under its public authority.

For a ban to be legally valid, it must be final and without exception, otherwise it may be considered arbitrary by the administration, affecting the fundamental rights and freedoms of individuals. In this case, the ban is an illegal act, and is considered an assault or unlawful act as defined by administrative law experts.⁷ The ban takes two forms: absolute prohibition and relative prohibition.

- Absolute Urbanism:

The ⁸ Algerian Environmental Code 10/03 guarantees this type of urban activity in many areas, for example what is stated in article 51: "Any pouring or discharge of wastewater shall be prohibited from attracting water, i.e. in the nature of water intended for the resupply of aquifers, wells, pits and dungeons."

or Article 66, which states: "Any declaration on properties classified as natural monuments, classified sites, protected areas or on trees shall be prohibited."⁹

- Relative Prohibition

It is embodied in the prohibition of carrying out certain acts that may cause damage to the environment or any of the elements, such acts are not allowed except after obtaining permission or permission from the competent administrative authorities in accordance with the conditions and controls determined by the laws, regulations and instructions.¹⁰

Examples of relative urbanization are the text of Article 69 of Law 90-29 on Rehabilitation and Construction, as amended and supplemented, which reads as follows: "No construction or demolition that may affect the natural, historical and cultural heritage or pose a danger shall be permitted without consultation and approval of the competent authorities in this field and in accordance with the laws and regulations in force

Effect."¹¹

3- Mandatory System

This control measure in the field of environmental protection means obliging individuals and establishments to take certain positive action to prevent or protect the pollution of various

⁶ Karoumi Noureddine, *Legal Means of Environmental Protection in Algeria*, op. cit., p. 27.

⁷ Sofiane Ben Gari, *Graduation Memorandum for the Diploma of the Higher School of the Judiciary*, Higher School of the Judiciary, Algeria, 2005, p. 43.

⁸ Maged Ragheb Lahlou, *Environmental Protection Law*, University Publications House, Alexandria, First Edition, 1994, p. 73.

⁹ Articles 51 and 66 of Law No. 10/03 of 19 July 2003 on the protection of the environment within the framework of sustainable development, *Official Gazette* No. 43 of 20 June 2003.

¹⁰ Ismail Najm al-Din Zanka, *Environmental Law*, First Edition, Al-Halabi Human Rights Publications, Beirut, 2012, p. 299.

¹¹ Article 69 of Law No. 29/90 of 01/12/1990, as amended and supplemented by Law No. 05/04 of August 2004 on Development and Reconstruction, *Gazette*, December 1990.

environmental elements, or obliging those who caused the pollution of the environment to remove the effects of pollution if possible.¹²

Obligation is the opposite of prohibition, where a prohibition is a legal and administrative measure aimed at preventing a certain activity, making it a passive measure. In contrast, the obligation requires a specific action, which makes it a positive action. The Department uses this method to oblige individuals to carry out certain actions in order to enhance the protection and preservation of the environment. For example, article 45 of Law 10/03 stipulates that the construction and operation of industrial, commercial, artisanal and agricultural facilities, as well as vehicles, must be subject to the requirements of environmental protection and to avoid causing damage to them.¹³

Second: Administrative Means of a Technical Nature:

These methods are characterized by the fact that they are implemented by specialized study offices in their various fields, which obliges the administration to include them in the applications for licenses at their own expense. In this section, we will first review the impact study system, then we will discuss the risk study system, and finally we will discuss the reporting system.

1- Impact Study and Summary System

The impact study aims to promote the principle of prudence, which is considered one of the basic principles of environmental protection. This principle means that effective and coherent measures must be taken to prevent risks that may cause significant damage to the environment, before starting any project or activity. Environmental impact assessment of projects is one of the most advanced mechanisms and modern strategies in the field of environmental concepts.¹⁴

- Definition of the legislator

The Algerian legislator defined the study of impact through the mining law as a document that must be prepared in accordance with the criteria set by the laws related to the protection of the environment within the concept of sustainable development.

Law 03-10 merely updated the scope of application of the Project Impact Study and added a new evaluation system called the Impact Summary. This procedure is a precedent and aims to examine the impacts of projects and facilities on the environment. This system is similar to the study of impact, as it is considered a legal means given by the legislature to the administration to exercise its authority to protect the environment.¹⁵

The difference between studying the duration of the impact and studying the impact summary can be in the nature of the expected works, their degree of risk and their impact on the environment in less dangerous projects that are subject to a license from the President of the Municipal People's Assembly and are subject to the impact brief, which is a less rigorous study than the study of the extent of impact.¹⁶

- Scope of application of the impact study and summary

Article 15 of Law 03-10 on Environmental Protection and Sustainable Development stipulates that any project requiring an impact study must include development projects, as well as fixed installations, factories, and other works of art, and all activities, construction and development programs.¹⁷

It can be said that Algerian law has set two criteria for projects that need to be studied for impact. The first standard deals with activities that may affect the natural environment or one of its elements, or the

¹² Saida Khalfaoui, Environmental Administrative Control Mechanisms in Algerian Legislation, Memorandum for Obtaining a Master's Degree in Law, Administrative Law, Mohamed Khidir University of Biskra, 2015, p. 39.

¹³ Kamal Jalab and Houda Bega, Administrative Protection of the Environment in Algerian Legislation, Journal of Legal and Social Sciences, Ziane Ashour University, Djelfa, Second Issue, Page 27.

¹⁴ Ben Safia Siham, Administrative Bodies in Charge of Environmental Protection, Master's Thesis, Faculty of Law, Ben Aknoun University, Algeria, 2010-2011, p. 76.

¹⁵ Abdelhak Khentach, The Field of Intervention of Decentralized Bodies in Environmental Protection in Algeria, Master's Thesis, University of Kasdi Merbah, Ouargla, 2011, p. 95.

¹⁶ Ounass Yahya, Legal Mechanisms for Environmental Protection in Algeria, Ph.D. Thesis in Public Law, Aboubakar Belkaid University of Tlemcen, 2007, p. 104.

¹⁷ Article 15 of Law 03-10 on the Protection of the Environment.

human environment. The second criterion indicates that the impact study is related to the size and importance of large projects, such as construction and development programs.

– **Content of the Impact Study:**

In accordance with Article 03 of Executive Decree 07-145 on the Environmental Impact Brief Study, the content of the Impact Study includes the following elements:

- A presentation of the activity to be carried out.
- A description of the original condition and structure of the site that is affected by the activity to be carried out.
- Describe the potential impact on the environment and human health from the activity to be carried out and the proposed alternative solutions.
- A presentation on the effects of the planned activity on cultural heritage as well as its effects on social and economic conditions.

2- Hazard Study System

In fact, this approach is seen as a warning or reminder from management rather than an actual punishment. It indicates that if the necessary steps are not taken to ensure that the activity complies with the laws, it may be subject to legal sanctions. Therefore, the warning is considered the first stage towards the implementation of the legal penalty.¹⁸

Article 21 of the Environmental Protection Law No. 03-10 stipulates that a project impact study and a summary of the project, as well as a general investigation, must be submitted before an operating license is granted. These studies should include an assessment of the risks and potential impacts of the project on public health, hygiene, safety, agriculture, ecosystems, natural resources, places and attractions, as well as any impact that may cause discomfort to the neighborhood.¹⁹

Executive Decision No. 198-06 considers the risk study to be a study aimed at identifying direct and indirect hazards that may affect people, property, and the environment. This includes the development of technical strategies to reduce the likelihood and impact of accidents, as well as measures for accident prevention and management.²⁰

In accordance with Articles 22 and 27 of Law No. 10-03, the burden of carrying out a hazard study is on the operator by study offices, expert offices or consulting offices in this field approved by the Ministry of Environment.

3- Reporting System

Executive Decision No. 198-06 considers the risk study to be a study aimed at identifying direct and indirect hazards that may affect people, property, and the environment. This includes the development of technical strategies to reduce the likelihood and impact of accidents, as well as measures for accident prevention and management.²¹

The Algerian legislature introduced this system through a set of new texts related to the protection of the environment. The aim of this system is to impose continuous and subsequent monitoring on activities and establishments, where the entrepreneur is required to provide periodic information about his activity. This allows the administrative authorities to follow up and monitor developments in activities and installations that may be hazardous to the environment, thus facilitating management in the control process.²²

¹⁸ Hamida Jamila, *Legal Means of Environmental Protection: A Study in the Light of Algerian Legislation*, Graduation Memorandum for Obtaining a Master's Degree, University of Blida, p. 144.

¹⁹ Article 21 of the aforementioned Law 10/03.

²⁰ Article 12 of Executive Decree No. 198/06 on the regulation applicable to institutions classified for environmental protection, Decree No. 37 of 2006.

²¹ Orabi Nasira, *op. cit.*, p. 82.

²² Moussa Noura, *Administrative Responsibility and Legal Means for Environmental Protection*, *Journal of Humanities*, University of Mohamed Khidir Biskra, Algeria, No. 34, 35, p. 387.

The reporting system works as a means of requiring individuals, companies and establishments that carry out activities that have an impact on the environment to notify the administrative authority in advance before starting those activities. It should be understood that a notification is not a request or a solicitation for approval to carry out the activity, but rather a simple notification that enables regulators to know about the planned activity. This allows them to object to activities that may pose a risk and requires taking the necessary measures to prevent environmental pollution, ensuring that the activities are conducted transparently and safeguarding the interests of both the state and individuals.²³

Second Theme : Deterrent Means (Non-Financial Means)

Although preventive measures form part of the department's efforts to protect the environment, they often fail to prevent individuals from taking actions that harm the environment. This calls for the intervention of the administration by using other deterrent means to counter these harmful actions.²⁴ This may be in the form of a notification as a first stage of the administrative penalty, and it may come in the form of a temporary suspension of the activity, and the penalty may be more severe when the administration resorts to withdrawing the license permanently.

First: Notification or Excuse

This method is considered one of the lightest sanctions that the administration may take against the exploiter, and this is by alerting him to take appropriate measures to avoid damage to the environment.

1- Definition of Notification

An excuse or warning as a method of administrative control shall mean that it alerts the concerned party of the violation emanating from his activity in order to take the necessary measures in accordance with the applicable legal conditions²⁵. The penalty for continuing to violate the law despite the warning is often the imposition of other more severe administrative sanctions, such as closure and license revocation.²⁶

2- Notification Apps

Among the applications of excuses, we find that the Algerian legislator has addressed it in several laws, including:

Law No. 10/03 relates to the protection of the environment in the field of sustainable development, and it is stated in article 25 that the governor must warn the operator of an establishment that does not fall within the list of establishments stipulated and which may cause dangers or damages affecting the environment. He must be given a time limit to take the necessary measures to eliminate such dangers or damages.²⁷

Article 56 of Law 09-03 on Consumer Protection and Anti-Fraud also stipulates that violators will be warned in the event that the product does not conform to the standards, and must take appropriate measures to address the reason for non-conformity or meet the rules and customs followed in the process of offering it to the consumer.²⁸

In addition, Law No. 19/01 on Waste Management, Control and Disposal stipulates in article 48 that if the operation of a waste treatment facility poses risks or has negative consequences affecting public

²³ Nawaf Kanaan, *The Role of Administrative Control in Protecting the Environment, An Applied Study in the United Arab Emirates*, University Journal of Sharia and Legal Sciences, First Issue, Issued by the College of Law, University of Sharjah, UAE, 2006, p. 94.

²⁴ Bounaas Nadia, *op. cit.*, p. 238.

²⁵ Eid Muhammad and Manami Al-Azmin, *Administrative Protection of the Environment*, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 588.

²⁶ Belkacem Dayem, *Positive and Sharia Public Order and Environmental Protection*, Ph.D. Thesis in Public Law, Faculty of Law, University of Abou Bakr Belkaid, Tlemcen, 2004, p. 203.

²⁷ Article 25 of Law 10/03, above.

²⁸ Article 56 of Law 03/09 of 25/02/2009 on Consumer Protection and Suppression of Fraud, GR No. 15.

health or the environment, the competent administrative body shall require the operator to take the necessary measures without delay to address such problems.²⁹

Article 87 of the Water Law 12/05 also stipulates that the license or concession in the use of water resources can be withdrawn after warning the licensee or concessionaire, in case he does not comply with the specified legal conditions and requirements.³⁰

Second: Suspension of Activity

The Department sometimes suspends a certain activity if that activity causes damage or danger to the environment, due to the failure of the owner of the activity to take the necessary preventive measures, even after receiving a warning from the Department.

1- Definition of Activity Suspension:

The term "suspension of activities" refers to the suspension of work or harmful activities that may result in an entity performing acts that are contrary to laws and regulations. This measure is an effective punishment that helps reduce pollution quickly and protect the environment, as it allows the relevant authorities the right to decide to suspend activities without having to wait for the results of legal proceedings to appear if the court is resorted to.³¹

Management resorts to the decision to suspend activities when the actions of a particular institution result in pollution of the environment or a threat to public health. In such a case, the administration shall notify the exploiter of the need to take preventive measures. If this is not complied with within the specified period, the management will take the step of suspending the activity of the institution until these measures are implemented.³²

2- Apps to stop activity

Article 25 of Law 10/03 stipulates that if risks or damages occur due to the operation of a facility that is not included in the list of approved establishments, which affect the interests mentioned in Article 18, the governor may, on the basis of a report from the environmental authorities, give the operator an opportunity to rectify the situation and set a time period for doing so. If the exploiter does not comply within this period, the activity of the facility will be suspended until the specified requirements are met, with temporary precautions taken to ensure that all employees' dues are paid.³³

Law No. 12/05 on water provides that the water resources authority is obliged to close any facility that leads to water pollution until this pollution is eliminated. The law also gives the Mines Department the authority to suspend exploration or exploration operations if they lead to environmental pollution, after submitting a request to the specialized administrative judicial body.³⁴

Finally, we say that the suspension of activity is a temporary administrative penalty used by the administration as a means of obliging the concerned party to take the necessary measures to prevent the occurrence of dangers that affect the environment.

Third: Cancellation or Withdrawal of License:

The license or its revocation is one of the most serious sanctions that the administration may take against the exploiter, due to the consequences it entails.

1- Definition of license withdrawal

The withdrawal or revocation of a license is considered a penalty imposed by the competent administrative body on individuals who violate the conditions related to the license to practice a

²⁹ Article 48, Law No. 19/01 of 12/12/2001 on the Management, Disposal and Disposal of Wastes, Decree No. 77 of 15/12/2001.

³⁰ Article 87 of Law No. 12/05 as amended and supplemented, Decree No. 4 dated 27/01/2008.

³¹ Maaifi Kamal, Administrative Control Mechanisms for Environmental Protection in Algerian Legislation, Research Submitted for a Master's Degree in Administrative Law, Specialization in Administrative Law and Business Administration, Hajj Lakhdar University of Batna 2010/2011, p. 47.

³² Kharoubi Mohammed, op. cit., p. 29.

³³ Article 25 of the aforementioned Law 03-10.

³⁴ Article 212 of Law 01-01, op. cit.

particular activity. According to the rule of parallelism, the entity granting the license is the same entity that withdraws or revokes it through an administrative decision.³⁵

Revocation of a license is one of the most severe administrative penalties applied by the Department to individuals who do not adhere to the standards required to practice the activity. Legislators therefore seek to strike a balance between the right of individuals to set up projects or engage in activities and the need to protect the public interests of the State.

Some jurists have pointed out that the administration can revoke the license in certain circumstances, especially when the continuation of the project becomes a threat to public order, whether in terms of health, public safety, or public tranquility. The project must also comply with the legal conditions set by the legislator.

- If the project is suspended for a certain period determined by law.
- If the court decides to close the project and remove it.³⁶

2- License Withdrawal Applications

Applications for revocation of licenses in Algerian legislation include those contained in Executive Decree No. 04-188, which specifies how stallions, larvae, balait and daamis are hunted, as well as procedures for transporting, marketing and introducing them into aquatic environments. The decree also deals with the hunting, transport, deposit, import and marketing of fishing and aquaculture products that have not reached the minimum legal sizes, and which are intended for breeding, agriculture or scientific research.³⁷

This Decree is subject to the issuance of a licence by the Department of Fisheries under Article 03 thereof. Article 05 of the same decree also stipulates that this license is personal and can be revoked in case of non-compliance with the specified conditions.³⁸

Article 23 of Executive Decree 198/06 stipulates that if the exploiter does not conform to his enterprise within a period of 6 months from the date of notification of the suspension, the exploitation license of the classified enterprise will be withdrawn. Article 83 of the Mining Law 05/14 also allows the competent administrative authorities to withdraw the mining license, in addition to the security and environmental protection conditions³⁹.

Third Theme: Non-Deterrent Means (Financial Means)

In addition to the administrative measures mentioned above, the state resorted to a measure represented in the violation of the financial liability of the exploiter, whether positively or negatively, through what has become known as environmental collection.

First: Environmental Levy

Environmental fees are one of the main tools that the government relies on to reduce the impact of pollution. These fees play an important role in regulating environmental affairs. Also known as green or ecological taxes, these fees are a strategy that has been adopted nationally and internationally in recent years with the aim of addressing environmental problems by imposing environmental fees or pricing.

³⁵ Ilham Fadel, Administrative Penalties to Face the Danger of Classified Establishments on the Environment in Legislation C, Journal of Law Policy Books, Issue 9, Kasdi Merbah University of Ouargla, 2013, p. 313.

³⁶ Majed Al-Helou, Ragheb Al-Helou, op. cit., p. 160.

³⁷ Bou Nadia, op. cit., p. 239.

³⁸ Articles 03 and 05 of Executive Decree No. 188/04 specifying the methods of hunting, transporting, marketing and introducing stallions, larvae, balait and daamis into aquatic environments, as well as the methods of hunting, transporting, depositing, importing and marketing of fisheries and aquaculture products that have not reached the minimum legal limits and are intended for breeding, cultivation or scientific research, Decree No. 44 of 11 July 2004.

³⁹ Article 23 of Executive Decree No. 06-198 of 31/05/2006 regulating the regulation applicable to institutions classified for environmental protection, GR No. 37.

The revenues generated from these taxes are used to support efforts to combat pollution through the establishment of specialized environmental protection bodies.

1- Definition of Environmental Collection

The OECD's definition of environmental levy means that it includes a set of environmental measures that include products, services, equipment and emissions that affect the environment in negative ways. By imposing this levy, the legislature seeks to improve the state of the environment, and these measures must be enshrined in legal texts. These types of measures help create economic incentives aimed at improving the environment and reducing or eliminating pollution.⁴⁰

It is defined as one of the national policies aimed at correcting deficiencies by setting a tariff, fee or tax for pollution.⁴¹

2- Principles of Environmental Collection

Environmental collection is based on two important principles: the polluter payer principle and the filter principle:

- Pollutant Motive Principle:

The principle of motive, or the principle of liability of the polluter, is the principle that determines the liability of the polluter for the so-called compensation for the damages caused by his activity.

Jurist Pryor considers that the polluter-motivating principle aims to make individuals who pollute the environment bear the social costs of pollution. In doing so, environmental damage liability is created that covers all effects of pollution. The evolution of this principle may also lead to the application of substantive responsibility in environmental protection.⁴²

The text of the Environment Law 03-10 incorporates the principle of the polluter as one of the fundamental foundations for the protection of the environment, as it is defined in Article 3 as the principle that obliges every person whose activity causes, or is likely to cause, harm to the environment to bear the costs of all measures required to prevent or reduce pollution, as well as to restore the environment to its original state.⁴³

Although the application of the polluter motive principle is crucial to strengthening environmental policy, there is a clear delay in its implementation in Algeria compared to its history when it was implemented in many French countries. By introducing this principle, the legislator wants to place responsibility for the social costs of pollution on those who cause it. This puts economic pressure on polluters, which pushes them to reduce environmental pollution. In doing so, it contributes to reducing the effects of polluting activities and prompts them to look for less harmful technologies in their industrial processes⁴⁴.

- The Filter Principle as an Exception to the Pollutant Motivating Principle

Based on this principle, everything that is in line with environmental standards receives benefits that include subsidies or exemptions. The OECD has stated that polluters bear responsibility for the cost of avoiding pollution as a general rule. However, in its recommendations between 1972 and 1974, it noted that no kind of government support should be provided to polluters to help them control pollution, such as direct subsidies, tax exemptions or reductions associated with pollution control rates, and other forms of support.⁴⁵

This order was adopted by the legislature in Law No. 20/01 of December 2001, which relates to the development and development of the Territory. Article 57 states: "Stimulating measures shall be

⁴⁰ Siddiqui Massoud, Masoudi Mohamed, Environmental Collection as a Tool to Achieve Sustainable Development of Available Resources, Faculty of Economics and Management Sciences, Farhat Abbas University, Setif, April 2008, p. 03.

⁴¹ Kamal Raziq, The Role of the Environment in Environmental Protection, Al-Bahath Magazine, Issue 715, 2007, p. 99.

⁴² Ben Gari Sofiane, Legal Systems for the Protection of the Environment under Algerian Legislation, Graduation Memorandum for the Bachelor's Degree from the Higher School of the Judiciary, Higher School of the Judiciary, 2005, p. 70.

⁴³ Wanas Yahya, The Guide of the Local Team to the Story of the Environment, Dar Al-Gharb for Publishing and Distribution, Oran, 2003, p. 178.

⁴⁴ Sayeh Turkiya, Environmental Protection under Algerian Legislation, 1st Edition, Al-Wafa Legal Library, Alexandria, Egypt, 2014, p. 161.

⁴⁵ Stade Mariam, Legal Mechanisms for Environmental Protection in Algerian Legislation, Journal of Social Sciences, Issue 24, June 2017, Mohamed Lamine Dabbagine University, Setif, pp. 38-8.

established within the finance laws aimed at improving sustainable spaces and areas in need of development, in accordance with the tools adopted in the preparation of the territory."⁴⁶

In addition, subsidies and financial assistance may be granted under the legal provisions in force for the investigation:

- Encouraging sustainable development programmes.
- Working to promote public and private initiatives in the field of development.
- Create, expand, and transform activities and receive activities transferred from their locations.
- Development Engineering Development⁴⁷.

Second: Types of Environmental Collection

Environmental collection is an embodiment of the "polluter pays" principle, as it is a type of royalty or environmental fees that the polluter bears. These fees can be deterrent or incentive, and have been adopted by the Algerian legislature since 1992 with the aim of reducing or at least reducing pollution. The Algerian legislature has tended to use a punitive nature by imposing taxes on violators, in addition to adopting an incentive system that takes advantage of taxes as a preventive means to stimulate the use of advanced and clean technology, which contributes to the protection of the environment and the health of workers.

1- Deterrent Tax System

It takes two basic forms and is paid either in the form of taxes or in the form of fees:

- **Tax:** It is a sum of money imposed by the State in accordance with specific laws and legislations, and this is mandatory and final. This deduction is imposed on individuals who are charged based on their financial capabilities, with the aim of covering the public expenses of the State, which aims to serve and develop the society in various economic, social, environmental, cultural and other fields, for the benefit of all members of society.⁴⁸
- **Fees:** The second form of environmental collection is considered to be either in the form of a tax as mentioned above or in the form of fees, which is the most widely used in the environmental field.⁴⁹

A fee is a monetary deduction that an individual makes into the State or elsewhere in exchange for the benefit of a particular service performed by him, which entails a special benefit.⁵⁰

Tax and fee are similar in that they are a mandatory amount of money, and the proceeds are used to finance public expenditures. However, a fee differs from a tax in that it is levied for the provision of a specific service, while a tax is a mandatory contribution that is not offset by direct benefits to the payer.

2- Stimulus Tax System

In addition to the tax system aimed at preventing environmental damage, which includes the imposition of fees, another system that is considered more effective is tax incentives. These incentives positively promote industries and activities that protect the environment. Although taxes can lead to tax evasion and fraud, as the consumer typically pays for these fees through the final prices of products or services, offering incentives and exemptions encourages investors to use environmentally friendly technologies, making practices more effective and interactive.⁵¹

⁴⁶ Law No. 01-20 of 12/12/2001 on the Preparation and Sustainable Development of the Territory, GR No. 78.

⁴⁷ Karomi Noureddine, *op. cit.*, p. 52.

⁴⁸ Salah Zein El-Din, *Tax Reform*, Dar Al-Nahda Al-Arabiya, 2000, Cairo, p. 45.

⁴⁹ Ouchen Leila, *Environmental Tax as a Mechanism for Achieving Sustainable Development in Algeria "Between Deterrence and Stimulation"*, Critical Journal, Faculty of Law and Political Science, Mouloud Maamri University, Tizi Ouzou, p. 11-3.

⁵⁰ Nassim Belho, *The Documentation Profession as a Procedural Mechanism for Tax Collection*, Intervention at the Second National Forum on Tax Procedures, University of Guelma, 2007.

⁵¹ Fares Mesdour, *The Importance of Government Intervention in Environmental Protection through Environmental Collection*, Al-Baheth Magazine, No. 7, 2010.

This is why a number of countries have adopted this system because of the good environmental benefits it offers. It also grants investors tax exemptions to encourage them to reduce the pollution they cause, and this comes within the general tax policy that contains tax facilities that take different forms.⁵² Tax incentives refer to measures and procedures adopted by the competent tax authority with the aim of achieving specific goals, by encouraging individuals to adopt certain behaviors by offering financial benefits.⁵³

Third: Applications of Environmental Collection

Algeria has made remarkable progress in the field of environmental taxation, in response to environmental protection needs, by reducing the effects of pollution and promoting sustainable development. Tax policies with environmental objectives adopted in Algeria mainly focus on two types: deterrent and incentive taxes.⁵⁴

1- Deterrent Fees

Drawing on polluting or hazardous activities:

The base of this fee is the sum total of industrial, commercial and service activities practiced by institutions of different classifications, and this fee was established under the Finance Law of 1992.⁵⁵

The annual fee for polluting or hazardous activities is calculated as follows:

Establishments that employ more than two workers and are subject to the permit application shall pay the amount of 9000 DZD.

If the application for a license is submitted to the mayor, 20,000 DZD will be paid.

If the application for a license is submitted to the governor of the state, a fee of 9000 DZD will be paid, while if the application is submitted

The Minister of Environment pays 120,000 DZD, but if it is a matter of establishments that employ less than two reduction workers,

The above-mentioned licence amounts are in order of the following values: 2000 DZD, 3000 DZD, 18000 DZD, 24000 DZD.

- Supplementary Fee on Contaminated Water of Industrial Origin:

This fee was established on wastewater of industrial origin and was established by the Finance Law of 2003, which was made by Executive Decree 07-300.⁵⁶

The fee is the amount of wastewater from an industrial source whose pollution exceeds the maximum values specified in the provisions of Executive Decree 06-141 in order to oblige factories to raise the level of environmental attention in their work.

- Supplementary Fee on Air Pollution of Industrial Origin:

This fee was established by the Finance Act of 2002, supplemented by Executive Decree 07-299⁵⁷ This provision specifies how the pool of fees is calculated based on the quantities of gases, fumes, vapors and particles. It also aims to measure the quantities of pollution emitted to determine the multiplier coefficient which is applied based on the analysis of air emissions from industrial sources conducted by the National Observatory for Environment and Sustainable Development. The environmental authorities send the approved multiplier coefficient for each classified institution to the tax authority in the respective state. This is regulated Fee by Executive Decree No. 07-299.⁵⁸

⁵² Ocean Lily, *op. cit.*, p. 119.

⁵³ Shaimaa Fares Mohammed Al-Haber, *Tax Means for Environmental Protection, A Comparative Legal Study*, Dar Al-Hamid for Publishing and Distribution, Amman, Jordan, 2015.

⁵⁴ Karomi Nur al-Din, *op. cit.*, p. 54.

⁵⁵ Article 177 of Law 91-25 of 18-12-1991, including the Finance Law of 1992, as amended and supplemented, Article 54 of Law 11/99, including the Finance Law of 2000, G.R., No. 9.

⁵⁶ Executive Decree 07-300 of 27 September 2007, specifying the modalities for the application of the supplementary fee to contaminated water, GR No. 63, 2007.

⁵⁷ Khaled Ben Saadi, *The Law of the Classified Establishment for Environmental Protection in Algeria*, Master's Thesis, Faculty of Law and Political Science, Abdelrahman Mira University, Bejaia, 2012, pp. 17-8.

⁵⁸ Executive Decree 07-299 of 27-09-2007, which specifies the modalities of the application of the supplementary fee to air pollution of industrial origin, GR, No. 63, 2007.

- **Fuel Charge:**

This fee was introduced under the Finance Law of 2002 under Article 38 thereof.

2- **Incentive Fees**

- **Incentive Fee for Not Storing Special or Hazardous Industrial Wastes:**

This fee was established in accordance with the Finance Law of 2002 and is set at 10,500 DZD per ton of stored waste. The importance of this fee is significant in reducing hazardous wastes, especially since the production of industrial hazardous waste is estimated at about 180,000 tons per year, distributed as follows: 9,500 tons of biodegradable waste, 6,500 tons of organic waste, and 48,000 tons of low-toxic waste.⁵⁹

- **Incentive fee for zero waste associated with treatment activities in hospitals:**

This fee has been prepared in accordance with Article 204 of the Finance Law of 2002 and depends on the volume of waste stored. A fee of 24,000 Algerian dinars is levied for each ton of this waste, and the proceeds are distributed so that 10% of it goes to the municipalities, 15% to the public treasury, and 75% to the National Fund for Environment and Pollution Removal.⁶⁰

Conclusion

At the end of this research, and after studying the most prominent legal means of protecting the environment, in addition to the administrative, judicial, preventive, deterrent and incentive methods adopted in Algeria, it is clear to us that the state is interested in protecting the environment and its determination to promote environmental culture in all fields and levels.

- The Algerian legislature has worked to activate the role of the environment and increase its capacity to preserve it, by providing us with legal and legislative texts, in particular Law No. 10/03 on the protection of the environment in the context of sustainable development.
- These legislations include preventive mechanisms aimed at addressing the danger before it occurs, as well as effective remedial mechanisms after the occurrence of the danger to reduce pollution and environmental damage.
- From what was covered in this study, we can conclude the following:
- The lack of a comprehensive definition of the law on the protection of the environment in Algerian legislation, as Law 10/03 limited itself to mentioning environmental resources and the methods of protecting them. The Algerian legislature also granted broad powers to the competent authorities in the field of environmental protection through the establishment of preventive administrative mechanisms aimed at protecting the ecosystem from the threat of pollution.
- The legal means of protecting the environment in Algeria are similar to those of other countries, which have achieved a balance between development and environmental protection, highlighting their effectiveness.

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