

THE LIMITS OF PROTECTION ESTABLISHED FOR THE RIGHT TO THE ENVIRONMENT IN ALGERIAN LEGISLATION

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Abstract:

Due to the severe environmental assaults witnessed in the first half of the 20th century, numerous conferences and international agreements were held to mitigate these issues, particularly those resulting from the increasing industrial activity that disregarded environmental considerations. Consequently, interest in environmental protection and the recognition of the right to a healthy environment began at the international level. The first environmental conference, held in 1972, advocated for the necessity of environmental protection and marked the actual birth of the human right to a healthy environment. The Algerian legislator has kept pace with this international interest. Algeria has ratified numerous international agreements related to environmental protection, ensuring their incorporation into national law. This commitment is reflected in various protective mechanisms, including constitutional protection, albeit delayed, as well as administrative, preventive, and deterrent measures.

Keywords: *Right to a healthy environment, constitutional recognition, administrative protection, preventive mechanisms, deterrent mechanisms.*

INTRODUCTION:

We find that the Algerian legislator has been keen to establish and implement legal rules aimed at combating environmental pollutants at both the local and national levels. This began with the constitution, which is the supreme law of the state, and the first explicit enshrinement of the right to the environment was in the Algerian Constitution of 1996.

Moreover, the Algerian legislator has employed other means to ensure environmental protection by establishing administrative environmental rules that regulate activities in various fields. It is necessary to consider the environmental dimension in any developmental activity. These administrative rules protect the environment from the past and future harms and risks associated with conducting activities. The administration plays a very important role in this by granting or denying licenses to carry out such activities based on their environmental impact. The administration also has the right to conduct regular and periodic monitoring during and after the activity. The administration enjoys the powers of public authority and the authority to regulate the activities practiced by individuals, institutions, and both private and public companies to ensure environmental protection.

These mechanisms granted to the administration to realize actual environmental protection on the ground are highly effective and practical. These mechanisms are either proactive or preventive, which the administration exercises before the activity is carried out, or reactive or remedial, which the administration exercises afterward.

Accordingly, we can pose the following question: To what extent do the limits of protection established for the right to the environment extend in Algerian legislation?

We will attempt to answer this question through the following plan: In the first section, we will discuss the expansion of constitutional protection and the stages of recognizing the right to a healthy environment in Algeria's constitutions, as well as the causes and consequences of constitutionalizing the right to the environment. In the second section, we will address the



administrative protection established for the environment, represented by preventive and remedial mechanisms.

First Section: Expansion of Constitutional Protection

International efforts in the environmental field since 1972 have had internal reflections on countries, including Algeria, which has sought to establish national laws aimed at protecting the right to the environment and taking all necessary measures and procedures. Based on this, Algeria has gradually incorporated many environmental agreements, treaties, and principles into its internal laws, in line with the development of environmental law at the international level. It has enshrined the right to a healthy environment in its constitutions, although this constitutionalization was delayed and did not keep pace with international efforts in the environmental field.

Constitutional protection, or constitutionalization, is the highest form of protection that can be granted to any right. The Algerian constitution has granted protection to the environment by recognizing the human right to a clean environment. The first enshrinement of the right to the environment was legislative rather than constitutional. The constitutionalization of the right to the environment is recent compared to its enshrinement in internal laws, such as in Egyptian and French law, as well as in Algerian law. However, legislative enshrinement is not sufficient, and it was necessary to resort to constitutionalizing this right, like other rights and freedoms.¹

Constitutionalizing the right to the environment means enshrining and incorporating the right to the environment in the Algerian constitution. This endows this right with several characteristics that can be referred to in affirming its strength. Any right that is constitutionalized gains constitutional strength and becomes at the top of the hierarchical pyramid of laws within the legal system to which this legislation belongs, thus making it more binding.²

Constitutionalization is considered the most guaranteed mechanism for rights in general and the right to the environment in particular. Constitutionalization is a mechanism for:

- Incorporating the right to the environment into the core of the constitution.
- Guaranteeing the right to the environment by giving it legitimacy and binding force.
- Implementing international law at the national level, as constitutionalizing the right to the environment is a mechanism for compliance with international law³.

We will attempt to address the main reasons that led to the constitutionalization of the right to a healthy environment and the key stages and results of its constitutionalization.

First Demand: Stages of Recognizing the Right to a Healthy Environment in Algeria's Constitutions

By examining the various Algerian constitutions since independence up to the latest constitutional amendment in 2020, we can say that the recognition of the right to a healthy environment in the Algerian constitution, or the constitutionalization of the right to the environment, has gone through four main stages, which we will discuss in the following subsections:

First Branch: Absence and Neglect of Constitutional Recognition of the Right to a Healthy Environment in the Algerian Constitution

This situation experienced two phases: the first phase was the absence of constitutional enshrinement of the right to the environment in the 1963 and 1976 constitutions. The second phase was the neglect of constitutional enshrinement of the right to the environment in the 1989 and 1996 constitutions.

¹ Marzouk Mohammed, Constitutional Protection of the Environment under the Algerian Constitutional Amendment of 2016, *Al-Ijtihad Journal of Legal and Economic Studies*, Volume 9, Issue 3, 2020, p57

² Dayikha Farouk, Kossa Ammar, Affirmation of the Right to Environment and Sustainable Development in the 2016 Constitutional Amendment, *Journal of Legal and Political Research*, Volume 2, Issue 2, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Setif 2, Algeria, 2020, p203

³ *Ibid*, p203, 205



First Phase: Absence of Constitutional Enshrinement of the Right to the Environment in the 1963 and 1976 Constitutions

In the first constitution adopted by Algeria after independence, the 1963 constitution, we find some provisions related to environmental protection, despite Algeria being newly independent and in dire need of development in various fields. These included establishing heavy industrial foundations for economic growth, improving the living standards of citizens to combat unemployment and poverty, supporting various cultural dimensions and institutions, and establishing an educational system at all levels. All of this took precedence over environmental concerns and the establishment of the right to a healthy environment.

Despite these conditions, some articles in the 1963 constitution implicitly provided environmental protection. For instance, Article 16 recognizes "the right of every individual to a decent life¹." It can be understood from this article that a person cannot enjoy a decent life without the availability of essential rights and necessities, including a suitable living environment, a clean and healthy environment free from various pollutants.

The same applies to the 1976 constitution, which was adopted during a period marked by the Algerian regime's efforts to resolve the crisis of representation and constitutional legitimacy absent since June 19, 1965². In terms of content, it was more of a political constitution than one recognizing rights and freedoms. The constitutional legislator aimed to achieve development in various fields to advance Algerian society and keep pace with international development.

The 1976 Constitution did not directly mention environmental protection despite the beginning of international attention to the environment. Although it included a wide range of human rights, such as the right to work and the right to life³. Article 11 states: "to expedite the promotion of individuals to a level of living compatible with modern living conditions⁴," and Article 12, ⁵in its third paragraph, states: "to promote individuals and provide the means for their personal development and prosperity," these provisions imply that a balanced environmental context, a clean and healthy environment free from various pollutants, is necessary to achieve such a standard of living.

Additionally, Article 151 affirmed that: "The National People's Assembly legislates in the following fields: the general outlines of regional planning and the environment, the protection of animals and plants, the protection of cultural heritage, and the general system of forests." Thus, Article 151 enshrines the protection of environmental elements as essential components for the citizens' decent living and the maintenance of public order in the state.

Hence, we can say that while neither the 1963 nor the 1976 constitutions explicitly mentioned environmental protection, they implicitly provided it through a broad interpretation of certain articles that included basic human rights. The right to a healthy environment can be inferred as an essential societal component established by the constitution and its relationship with other human rights⁶.

¹ Constitution of 1963, Official Gazette No. 64, dated September 10, 1963

² Idris Boukar, Constitutional Development and Crisis Situations, Parliamentary Thought Magazine, Issue 7, 2004, p137-138

³ Constitution of 1976 issued by Presidential Decree No. 76-69, dated November 22, 1976, Official Gazette No. 94, dated November 24, 1976

⁴ Article 11 of the 1976 Constitution

⁵ Article 12 of the 1976 Constitution

⁶ Shayeb Nasrin, Right to the Environment - Master's Thesis in Law, Environmental Law specialization, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Setif 2, 2016, p89.



Second Phase: Neglect of Constitutional Enshrinement of the Right to the Environment in the 1989 and 1996 Constitutions

The 1989 Constitution was characterized by different circumstances from its predecessors, notably introducing multi-party systems. Unlike the previous phases, this constitution of 1989¹ enshrined many rights², distinguishing it as a constitution of freedoms, although most rights and freedoms were of a political nature.

Regarding the human right to a healthy environment, the 1989 Constitution granted the Parliament, in Article³ 115, the authority to legislate in various fields, including living conditions, forests, health, the protection of animal and plant resources, water, mining, hydrocarbons, and cultural heritage⁴. By providing protection to these areas, the right to a healthy environment is implicitly protected.

Similarly, the 1996 Constitution overlooked the explicit right to a healthy environment and did not provide direct environmental protection. Instead, it provided implicit protection by safeguarding essential areas that ensure and allow for a decent standard of living, welfare, and health. For example, Article 54 states: "The state ensures the prevention and control of endemic and contagious diseases."⁵

Similarly, Article 122 of the 1996 Constitution, which did not differ from Article 115 of the 1989 Constitution in terms of including the environment within the legislative jurisdiction of the Parliament, granted Parliament the authority to legislate on issues related to the environment, such as living conditions, urban planning, health, and other rights and fields directly related to environmental protection and the enjoyment of the right to a clean and healthy environment⁶.

Therefore, the Algerian constitutional legislator in both the 1989 Constitution and the 1996 constitutional amendment neglected to enshrine the right to the environment in the Algerian Constitution despite international interest and the international recognition of the right to the environment in many international conferences, the most important of which were the 1972 Stockholm Conference, the first conference to enshrine the right to the environment, followed by the 1982 Nairobi Conference, and the 1992 Rio de Janeiro Conference. Here, we notice that the Algerian legislator failed to keep pace with international legislation in enshrining the right to a healthy environment.

The Algerian constitution did not contain any explicit provision recognizing the right to the environment. However, Algerian legal scholars do not deny the existence of constitutional recognition of this right. They linked several constitutional provisions related to the promotion of human rights with the right to the environment, such as the phrase "promotion of the individual in

1 Presidential Decree No. 89-18 dated November 28, 1989, containing the constitutional amendment text approved by referendum on February 23, 1989, Official Gazette No. 9 dated March 10, 1989.

2 Marzouk Mohammed, *op. cit.*, 57

3 Article 115 of the 1989 Constitutional Amendment

4 Kahloula, M. Mohamed, *Environment and Human Rights in Algeria*. SADIC Proceedings of the annual congress from April 2 to 5, 1991, p29.

⁵ Constitutional Amendment 1996, Presidential Decree No. 96-438 dated December 7, 1996, related to the constitutional amendment text approved by referendum on November 28, 1996, Official Gazette No. 76, dated December 8, 1996.

6 Article 122 of the 1996 Constitutional Amendment



all dimensions" found in the 1976 Constitution, repeated in the 1989 and 1996 Constitutions, these dimensions include a suitable environment¹.

From the previous stages, we conclude that the constitutions and constitutional amendments that Algeria underwent until 1996 did not directly address the terms "environment" and "sustainable development." The protection these constitutions provided to the environment was implicit and indirect by protecting some elements and requirements of the environment through provisions ensuring a suitable living framework for citizens and the necessity of preserving various environmental elements, such as the protection of water, forests, animal and plant resources, and cultural heritage.

Second Branch: The Birth and Actual Enshrinement of the Right to a Healthy Environment in the Algerian Constitution

This situation also saw two phases: the first phase was the birth of the constitutional enshrinement of the right to the environment in the 2016 constitutional amendment, and the second phase was the actual enshrinement of the right to a healthy environment in the 2020 constitutional amendment.

First Phase: The Birth of Constitutional Enshrinement of the Right to the Environment in the 2016 Constitutional Amendment

Unlike the previous constitutions, the 2016 constitutional amendment was the first to explicitly enshrine the right to the environment and sustainable development in several provisions:

- The preamble, in its fourteenth paragraph, included the adoption of a general state policy requiring work within the framework of achieving sustainable development and environmental preservation.
- Title I, containing general principles governing society, specifically Chapter III, Article 19, which stated the duty of the state to sustainably manage natural, water, and agricultural resources, meaning the state must ensure their preservation and continuity for current and future generations.
- Title I, Chapter IV, on rights and freedoms, explicitly recognized the human right to a healthy environment in Article 68, stating:
 - "Citizens have the right to a healthy environment.
 - The state works to preserve the environment.
 - The law defines the duties of individuals and legal entities to protect the environment²."
- Title III, Chapter III, Article 207, included a provision to work within the framework of sustainable development.

Second Phase: The Actual Enshrinement of the Right to a Healthy Environment in the 2020 Constitutional Amendment

The 2020 constitutional amendment³ marked a significant step forward as the constitutional legislator organized rights and duties in a separate chapter titled "Fundamental Rights, Public Freedoms, and Duties," from Article 34 to Article 77. This amendment aligns with international charters in the field of environmental protection within the framework of sustainable development

¹ Wanas Yahya, Right to Environment in Algerian Legislation from Declaration to Affirmation, *Journal of Jurisprudence and Judicial Studies*, Volume 1, Issue 2, Institute of Islamic Sciences, University of Ouargla, Algeria, 2015, p42.

² Constitutional Amendment 2016, Law No. 16-01 dated March 6, 2016, Official Gazette No. 14, dated March 7, 2016.

³ Presidential Decree No. 20-442 dated 15 Jumada al-Awwal 1442 corresponding to December 30, 2020, regarding the constitutional amendment approved by referendum on November 1, 2020, Official Gazette No. 82 dated 15 Jumada al-Awwal 1442 corresponding to December 30, 2020.



and human rights. The constitutional legislator included all human rights stated in international human rights charters, emphasizing the necessity to ensure the fundamental rights of everyone authorities, public bodies, and individuals. These rights are obligations for all before being rights¹.

In this 2020 constitutional amendment, the right to a healthy environment was explicitly stated with extensive details in several provisions, including:

- The Preamble, in its eighteenth paragraph, affirmed the state's general policy on the need to address environmental degradation and preserve environmental resources for future generations.
- Article 21 highlighted the state's duty to protect various environmental elements, punish polluters, and combat environmental hazards to achieve a healthy environment².
- Article 64, corresponding to Article 68 in the previous constitution, stated the right of citizens to a healthy environment, adding the phrase "within the framework of sustainable development."³
- One of the most notable additions in the 2020 constitutional amendment was the explicit inclusion of the environment in advisory bodies, such as the National Economic, Social, and Environmental Council. This body, previously named the National Economic and Social Council in the 2016 constitution, was renamed to include the environment within its title and duties, as stated in Article 210 of the 2020 constitution.
- Civil society was also involved in environmental matters, given a consultative role regarding environmental policies and ensuring cooperation and consultation at national and local levels⁴.

Another important aspect of the 2020 constitutional amendment is the distinction between fundamental rights and public freedoms. While most constitutions globally discuss rights and public freedoms in general, the Algerian constitution in its 2020 amendment provides a precise description of rights by naming them in the second chapter as fundamental rights and freedoms. From this terminology, we can deduce two types of rights: fundamental rights, which are those explicitly mentioned in the constitution, including the right to a healthy environment. This categorizes it as a fundamental right due to its inclusion in the chapter of fundamental rights.

Second Demand: Reasons and Consequences of Constitutionalizing the Right to a Healthy Environment.

Here, we attempt to address the most important reasons that prompted Algerian legislators and their counterparts to constitutionalize the right to a healthy environment. Subsequently, we will discuss the key consequences resulting from recognizing this right.

First Branch: Reasons for Constitutionalizing the Right to a Healthy Environment

The right to a healthy environment has been enshrined in numerous international treaties. Like other legal systems, Algerian legislation has aimed to provide constitutional protection for this right for several reasons, including:

1. Ineffectiveness of international environmental law:

International environmental law, in general, is not binding through conferences, agreements, declarations, and principles resulting from them, such as the Rio Declaration on

1 Belmektar Hassina, Guarantees of Human Rights and Fundamental Freedoms under the 2020 Constitutional Amendment - Constitutional Court, Volume 5, Issue 2, 2021, p236.

2 Article 21 of the 2020 Constitutional Amendment.

3 Article 64 of the 2020 Constitutional Amendment.

⁴ Executive Decree No. 21-37 dated 22 Jumada al-Awwal 1442 corresponding to January 6, 2021, concerning the formation of the National Economic, Social, and Environmental Council, Official Gazette No. 3 dated 26 Jumada al-Awwal 1442 corresponding to January 16, 2021.



Environment and Development in 1992, recommendations, action plans like Agenda 21, memoranda of understanding... etc¹.

This makes the protection stipulated in these international treaties merely theoretical, failing to achieve the intended goal of enjoying the right to a healthy environment.

It should be noted, however, that there are exceptions with some decisions in international environmental law that are binding:

- Decisions of the Security Council regarding environmental issues, though very rare.
- Decisions of the Organization for Economic Co-operation and Development.
- Decisions of the European Union.

2. Response to the call of conferences and international agreements:

Many international treaties urge and incentivize all countries to enact domestic laws that protect the environment. National laws are mandatory unlike international agreements, which lack binding force. Additionally, local and national authorities are closer and more capable of protecting various elements of the environment from different threats through legal mechanisms granted to public authorities.

3. Conflict of interests among states

The right to a healthy environment is affected by various reasons, including conflicts of interest among states, which negatively impact environmental protection at the international level and consequently affect the enjoyment of the right to a healthy environment. Among examples of conflicting interests, we find that most countries refuse to join international environmental agreements that harm their interests. For instance, the United States declines to sign various climate-related agreements, treaties, and summits because it cannot commit to their provisions as the largest environmental polluter, due to its massive industries that disregard environmental concerns in their activities. Joining such agreements would harm its economic development interests.

Additionally, the Kyoto Protocol, which mandates all countries to reduce their emissions harmful to the environment causing global warming and ozone depletion, demonstrates conflicts between developed and developing nations. The latter argue that major industrialized countries are responsible for these environmental issues and should be obligated to reduce greenhouse gas emissions².

Therefore, embedding the right to a healthy environment in national constitutions and domestic laws proves more effective in ensuring the protection of this right than at the international level.

Second Branch: Consequences of Constitutionalizing the Right to a Healthy Environment

Providing constitutional protection for the right to a healthy environment results in several consequences, including:


1. The right to a healthy environment becomes a commitment for the state and all individuals:

Through constitutionalizing the right to a healthy environment, as per Article 68 of the 2016³ constitutional amendment, environmental protection becomes a duty and commitment of the state, and a right for individuals. The state is obliged to ensure its protection and realization

¹ Wafi Hajja, *International Protection of the Environment within the Framework of Sustainable Development*, Dissertation submitted for the degree of Doctor of Science, Law, Faculty of Law and Political Science, Abdelhamid Ibn Badis University, Mostaganem, 2018-2019, p66-69.

² Wafi Hajja, *op. cit.*, 57

³ The citizen has the right to a healthy environment. The state works to preserve the environment. The law determines the duties of natural and legal persons to protect the environment.



through various legal and institutional mechanisms. Individuals, whether natural or legal persons, are also bound to adopt environmentally friendly behavior or at least behavior that is not harmful to the environment¹.

2. Providing Stronger Protection for the Right to a Healthy Environment:

Legislative protection is generally less binding compared to constitutional protection², which is the approach taken by Algerian legislators to enhance the level of protection for the right to a healthy environment in response to international movements calling for necessary environmental protection. The acknowledgment of the right to a healthy environment in Article 68 of the constitution is comprehensive, explicit, and categorizes this right as a fundamental human right. The state is committed to guaranteeing and protecting it³.

Therefore, the constitutional recognition of the right to a healthy environment in the Algerian constitution has a declarative nature.

Second Section: Effectiveness of Administrative Protection of the Right to a Healthy Environment

Due to significant assaults on the right to a healthy environment, both internationally and nationally, the international community has moved to establish effective mechanisms to protect this right. This is the same approach followed by Algerian legislators, who have worked to imbue legal protection for the right to a healthy environment by issuing numerous laws related to environmental protection. These laws seek to affirm the international policy declared in environmental treaties, emphasizing that every developmental policy must consider the environmental dimension in its trajectory. The primary law in this regard is Law 83-03 on environmental protection issued in 1983, which was later amended by Law 03-10 in 2003 to encompass sustainable development, along with other laws directly related to the right to a healthy environment⁴.

Setting up administrative mechanisms to protect the environment before any harm occurs, the legislator has mandated specific legal and administrative measures to regulate the activities of individuals, whether natural or legal persons, and to control their behavior to ensure they do not violate the right to a healthy environment. In cases where these administrative mechanisms are not respected, Algerian legislation has implemented deterrent measures to ensure penalties are imposed on anyone infringing upon the right to a healthy environment, known as judicial protection or judicial control.

Administrative protection of the right to a healthy environment is embodied in environmental administrative regulation, which consists of a set of measures and restrictions imposed by the administration on the activities and behaviors of natural, legal, and public persons to achieve environmental protection and ensure the right to a healthy environment is not compromised.

The concept or term "environmental administrative regulation" is a modern concept associated with the emergence of environmental administrative law as a branch of administrative law, considering that the administration has inherent jurisdiction in the field of protecting the right

1 Aliwi Fares, Principle of Joint and Several Responsibility in International Environmental Law, Dissertation submitted for the degree of Doctor of Science, Environmental Law, 2019-2020, p592.

2 Marzouk Mohammed, op. cit., 58

³ Ibid, p 58-60

⁴ Kahloula Mohamed, Legal Aspects of Environmental Consideration in Development Strategy, Algerian Journal of Legal and Political Sciences, Volume 34, No. 4, 2001, P 60.



to a healthy environment. Its aim is to provide preventive protection before any harm occurs to the right to a healthy environment¹.

The essence of all legislation is to guarantee individuals' freedoms to engage in their activities and enjoy their rights. However, if left unrestricted, their behaviors could lead to chaos and violations. Therefore, it was necessary to impose restrictions on these freedoms to regulate individuals' enjoyment of their freedoms and rights, ensuring the stability of public order with its three traditional elements² (public security, public tranquility, and public health) in society³.

Administrative authorities use means or tools of administrative control in the field of protecting the right to a clean environment, both legal and material. Legal means include regulatory regulations, decisions, and individual orders, while material means include coercive force, which administrations resort to when peaceful or voluntary compliance with legal means is refused⁴.

First Demand: Tribal mechanisms for protecting the right to the environment.

By tribal mechanisms of pre-control to protect the right to the environment, we mean those legal mechanisms that prevent behaviors contrary to the legislator's will and which harm the environment in its elements, ensuring the prevention of assaults on the right to the environment. The most important of these mechanisms are:

First branch: Licensing, prohibition, and obligation systems.

Firstly: Licensing System

1. Definition of Licensing:

Licensing system is considered the most effective method in providing protection for the environment, by establishing preemptive protection for the environment before engaging in any activity that may harm it. The Algerian legislator has imposed this system on all activities that may have hazardous effects on the environment, such as industrial projects, urban activities, which mostly lead to depletion of natural resources, biodiversity erosion⁵, or damage to various environmental elements, such as transport and disposal of industrial and hazardous waste, various economic and industrial activities, construction works, and even hobbies or fishing activities, all of which directly affect the enjoyment of the right to a healthy environment.

2. Types of Licenses:

Examples of licenses granted in the environmental field include:

- Licenses related to industrial activity: such as licenses for operating classified facilities.

1 Mohammed Mohammed Abdo Imam, *Administrative Law and Public Health Protection*, Dar Al-Fikr Al-Jami'i, Egypt, 2007, p288.

2 Public security or public safety means protection from accidents and risks that threaten people or property, whether these accidents and risks are human-induced or natural. See the reference of Dr. Ragheb Al-Helu in his book *Administrative Law*, University Press House, Alexandria, 1994, p. 334.

3 Kamal Maifi, *Administrative Control and Environmental Protection - Analytical Study in Light of Algerian Legislation*, Dar Al-Jadeed University, Alexandria, Egypt, 2016, p59-60

4 Imad Mohammed Abdel Mohammadi, *Legal Protection of the Environment - Comparative Study between Iraq and Egypt*, Dar Al-Jadeed University, Alexandria, Egypt, 2017, p97-115

5 Kamal Mohammed Al-Maghribi, *Administration, Environment, and Public Policy*, 1st edition, Dar Al-Thaqafa Publishing and Distribution, Oman, 2001, p11.



- Licenses related to waste management: including licenses for transporting hazardous waste, licenses for exporting and transiting special waste, and licenses for disposing of industrial liquid waste.
- Licenses related to urban activities: such as building permits, subdivision permits, and compliance permits.
- Licenses related to the exploitation of natural resources: including licenses for the use and exploitation of forests, and licenses for water exploitation.

Secondly: Prohibition and Obligation System

1. Definition of Prohibition:

Through this mechanism, the administration aims to prevent any action or activity that is harmful to the environment, whether absolutely or relatively, in a specific time or place, thereby allowing individuals to exercise their freedoms only within the permitted scope¹. The prohibitions legislated by the lawmaker vary between absolute prohibition and relative prohibition.

a. Absolute prohibition of actions with harmful effects on the environment: There are no exceptions or licenses granted for these actions.

b. Relative prohibition: Requires obtaining prior permission, thereby prohibiting any activities that may harm the environment unless approved by the competent administrative authorities and according to conditions specified by the law. Relative prohibition aligns with the concept of licensing in that it necessitates obtaining a license to engage in certain activities². Relative prohibition may be based on time or place, such as prohibiting fishing activities during snowfall periods or closed fishing seasons.

2. Definition of Obligation:

It is a form of individual orders issued by environmental regulatory bodies³. The purpose of this mechanism is to compel both natural and legal persons to engage in specific behaviors or actions in a manner that ensures environmental safety across all its elements. For instance, factories may be compelled to implement all necessary measures to reduce⁴ toxic emissions into the air, such as installing filters to mitigate harmful emissions from the factory or facility. In the realm of waste management, legislators oblige waste holders and producers to take all necessary precautions to prevent waste leakage during packaging, storage, and transportation by placing them in designated containers and labeling them with hazard content⁵.

It should be noted that obligation is the opposite of prohibition. Obligation involves the necessity of performing a specific action, making it a positive commitment, whereas prohibition involves refraining from engaging in a certain activity, constituting a negative commitment.

Second branch: Technological Mechanisms and Financial Incentives.

In this branch, we discuss first, the Environmental Impact Assessment (EIA) system; second, the Reporting System; and third, the Financial Incentives System.

¹ Kamal Maifi, *op. cit.*, p114-116

² Ben Diab Massinas, *Administrative Control as a Mechanism for Environmental Protection in Algeria*, Contribution to the International Conference on Mechanisms of Environmental Protection, Tripoli, Lebanon, Center for Scientific Research Generation, Conference Proceedings Book Series, 2017, p 133-134.

³ Sharati Khaira, *Effectiveness of Environmental Administrative Mechanisms in Environmental Protection*, Al-Ijtihad Journal of Legal and Economic Studies, Volume 9, Issue 2, Tamanghast University, Algeria, 2020, p35.

⁴ Article 46 of Law 03-10.

⁵ Articles 19 to 21 of the law of Part Two relating to special waste of Law 01-19 relating to waste management, control and removal, dated 12/12/2001, Official Gazette No. 77 issued on December 15, 2001.



1. Environmental Impact Assessment (EIA):

The Algerian legislator emphasized this mechanism in Law 83/03 concerning the environment, and subsequently issued Executive Decree No. 90-78 regarding the Environmental Impact Assessment, which regulates the procedures of this technical mechanism. Following this, Law 03-10 concerning environmental protection within sustainable development further underscores the importance of this mechanism. Law 83-03 defines Environmental Impact Assessment as: “A fundamental tool for advancing environmental protection aimed at understanding and assessing the direct and indirect impacts of projects on environmental balance and the quality of life of populations¹.” It is among the key preemptive mechanisms to protect the right to the environment, serving as an administrative step required before granting licenses for many developmental activities. This technique enables us to determine the best methods to address environmental issues and achieve harmony between development on one hand and environmental protection on the other.

2. Reporting System:

This system represents a newly established method aimed at imposing concurrent and continuous monitoring on activities and facilities that may negatively impact the environment across its various elements. Examples include mandatory reports to be submitted regularly by waste holders or producers, detailing information on the quantity and nature of hazardous waste, along with procedures for their storage, transportation, and disposal².

This method facilitates governmental or administrative oversight of all activities that could affect the right to the environment, enabling them to take necessary measures to ensure its protection.

3. Financial Incentives System:

Financial incentives refer to any fiscal policy designed to achieve environmental objectives by directing investments towards projects with lower environmental pollution or by incorporating environmental considerations throughout various stages of their activities, thus reducing environmental pollution. This encourages individuals, institutions, and classified facilities to improve their environmental behaviors. Practically, many incentives can be granted to encourage environmental investments or to incentivize reducing pollutants³.

The Algerian legislator has adopted two incentivizing policies:

1. Tax Exemption System: This involves the state waiving its right to fees and taxes on investments contributing to economic development in exchange for reducing environmental pollutants. The state encourages investors to alter their activity policies to adopt environmentally sound practices and produce clean products, even when reducing and disposing of their waste. The state benefits from the tax on the activities and production of these institutions.

Example from Article 76 of Law 03-10 on Environmental Protection within the Framework of Sustainable Development:

Article 76 of Law 03-10 concerning environmental protection within the framework of sustainable development provides financial and customs incentives determined by financial laws. These incentives are granted to industrial establishments importing equipment that allows for the removal or reduction of greenhouse gas emissions and pollution in all its forms in the context of their industrial processes or products⁴.

2. System of Financial Aid and Assistance:

This system serves as a means to achieve effective environmental protection and consists of financial assistance provided through dedicated funds established by financial laws. Examples

¹ Articles 130 and 131 of Law No. 83-03 on Environmental Protection, dated February 5, 1983, Official Gazette No. 06 of January 28, 1983.

² Sharati Khaira, *op. cit.*, p39

³ Ben Diab Massinas, *op. cit.*, p39

⁴ Article 76 of Law 03-10 containing the Environmental Protection Law within the framework of sustainable development.



include the National Fund for the Environment and Pollution Control, the National Fund for Cultural Heritage, and the National Fund for Coastal and Beach Area Protection¹.

To benefit from these funds, natural or legal persons must transition away from environmentally harmful activities, making them less damaging to the environment. This transition enables them to access grants, concessional loans, especially if they demonstrate intent to change their production methods by using environmentally friendly technologies.

Second Demand: Mechanisms for Environmental Rights Protection:

If preventive mechanisms fail to achieve the overall system's objectives, which include protecting the environment across its various elements, administrative authorities resort to secondary or deterrent mechanisms, also known as administrative penalties. These are considered more effective than their predecessors (preventive mechanisms). The legislator has thus granted administrative authorities the power to impose penalties after environmental violations, which may be financial or non-financial in nature².

Consequently, the legal tools or mechanisms employed by the administration as penalties for violating environmental protection measures vary according to the severity of the violation committed by individuals or institutions. These penalties are diverse, depending on the punishable act, ranging from warnings, notices, suspensions, partial or complete cessation of activities, to even license revocations. Financial penalties, such as environmental pollution taxes³, can also be imposed.

Therefore, we can categorize them into non-financial administrative penalties and others that are financial, aiming to discuss them in more detail as follows:

First Branch: Non-Financial Administrative Penalties:

These are penalties that restrict or limit rights and freedoms, affecting significant interests of individuals who, through their activities, violate environmental laws indirectly impacting their financial obligations.

Among the most notable non-financial administrative penalties are:

1. Warning:

Also known as notice or advisory, it is the simplest administrative penalty that can be imposed by the authorities on anyone violating environmental protection laws⁴. It requires every natural or legal person intending to engage in any environmentally impactful activity to notify the relevant authorities before commencing such activity. The purpose of informing the relevant administration is to enable it to take necessary legal actions to ensure adequate environmental protection⁵.

In case of violating environmental protection laws, the relevant administration issues a written warning indicating the severity of the committed violation and the potential penalties that

1 Hassouna Abdel-Ghani, *Legal Protection of the Environment within the Framework of Sustainable Development*, doctoral thesis in science, specializing in business law, Department of Law, Faculty of Law and Political Science, Mohamed Kheidar University of Biskra, 2013, p. 92.

2 Sajja Mohammed Abbas Al-Fadhli, *The Role of Environmental Administrative Control in Protecting Urban Beauty - Comparative Study*, Arab Center for Publishing and Distribution, Cairo, Egypt, 1st edition, 2017, p305-307.

³ Kamal Maifi, *op. cit*, p 139-140. Ismail Najmuddin Zankneh, *Environmental Administrative Law - Comparative Analytical Study*, Halabi Legal Publications, 1st edition, 2012, Beirut, Lebanon, p339.

⁴ Majid Ragheb Al-Halaw, *Environmental Protection Law in Light of Sharia*, Manshurat Al-Ma'arif, Egypt, 2002, p 149.

⁵ Ismail Najmuddin Zankneh, *op. cit*, p333



may be imposed if the violation continues and there is no compliance. If there is no compliance, the administration may impose stricter penalties such as closure, cessation of activities, or license revocation¹.

2. Temporary Suspension or Closure:

If the violator fails to comply with the warning or notice, the relevant administration resorts to a more severe action than the first (warning), which is the temporary suspension of the environmentally harmful activity. This is done by temporarily closing the facility from which the non-compliant behavior, violating environmental legislation, emanates, until the cessation of illegal activity².

We find that this mechanism is more effective because it negatively impacts the financial standing of project owners by halting their activities and thus stopping production, which is unacceptable to the project owners. Therefore, they rush to take the necessary measures to stop the environmentally harmful conduct in order to resume their activities.

An application of this mechanism can be found in the Waste Management, Monitoring, and Removal Law, specifically in Article 48, where the Algerian legislator required waste treatment facilities to immediately take legal measures to stop their activities if their operation poses a threat to public health or the environment³.

Thirdly: Revocation or Withdrawal of License:

The withdrawal of a license to operate a certain activity occurs when the licensee fails to comply with the legal regulations governing that activity. This action is one of the harshest administrative environmental measures that establishments violating environmental standards may face⁴.

The licensing system is among the most important pre-control measures over activities that may adversely affect the environment. The legislator requires anyone engaging in such activities to obtain prior authorization. Therefore, withdrawing or canceling the license represents one of the most severe administrative measures granted by the legislator to the administration, as it affects acquired rights and freedoms of individuals in carrying out their activities⁵.

While the legislator acknowledges the rights of both natural and legal persons to establish projects and exercise their freedom in various activities, it also aims to protect public order, including maintaining public health and environmental rights. Hence, it sets regulations that everyone must adhere to. Failure to comply allows the administration to deny individuals their right to engage in environmentally harmful activities by revoking or canceling licenses if deemed necessary⁶.

Second Branch: Financial Administrative Penalties:

These penalties directly affect the financial liability of environmental polluters without infringing upon their freedom. They come in various forms, of which the most significant are:

1. Environmental Tax:

An administrative fine or environmental tax is a monetary amount imposed by the competent administrative authority under the law and by administrative decision on anyone committing an environmentally harmful act punishable by law. One of the key advantages of this

¹ Imad Mohammed Abdel Mohammadi, *Legal Protection of the Environment - Comparative Study between Iraq and Egypt*, Dar Al-Jadeed University, Alexandria, Egypt, 2017, p321.

² *Ibid*, p143.

³ Article 48 of Law 01-19 relating to waste management, control and removal.

⁴ Ismail Najmuddin Zankneh, *op. cit*, p350

⁵ Kamal Maifi, *op. cit*, p147

⁶ Hamida Jameela, *Legal Means for Environmental Protection - Study in Light of Algerian Legislation*, Thesis submitted for the degree of Master, University of Blida, 2001, p150.



mechanism is its ease of imposition and collection, as it has proven to be swiftly deterrent to offenders or violators of environmental regulations. Therefore, it is one of the most commonly used administrative penalties, as most environmental legislation emphasizes addressing environmental violations¹.

This mechanism, which serves as both a preventive and deterrent measure, holds the owners of environmentally harmful activities accountable and requires them to contribute to the expenses or costs of restoring and protecting the environment. Algerian legislation has incorporated environmental taxes or charges since the 1990s under Law 03/10 on environmental protection within the framework of sustainable development in Article 3, paragraph 6. According to this law, anyone whose activities cause or may cause environmental damage is responsible for the costs of pollution prevention, reduction, and restoration of affected areas and their environment to its original state².

The legislator aims to impose part of the costs of environmental restoration on polluters. However, in practice, owners of classified facilities often evade payment by increasing the price of their products based on the imposed tax principle, "the more pollution, the higher the payment," thus transferring the burden and cost of environmental restoration to ordinary consumers while evading financial responsibility as the true cause of environmental pollution.

Environmental taxes are composed of several fees defined by the joint ministerial decree in 2002 as environmental charges, the most important of which include³:

1. Fee on polluting or hazardous activities, established in 1992 and revised by Algerian legislation in 2000 to link the fee rate to the category of classified facilities⁴.
2. Fuel fee, a recent fee charged at one Algerian Dinar per liter of gasoline of various types⁵.
3. Supplementary fee on air pollution.
4. Supplementary fee on polluted water.
5. Incentive fee to discourage the storage of private or hazardous industrial waste, established under the 2002 Finance Act at a rate of 10.50 DZD per ton of stored waste⁶.

CONCLUSION:

In conclusion, despite the expansion of environmental protection provided by constitutional and administrative measures, whether preventive or punitive, we are still far from achieving the required protection of the right to a healthy environment and the environment in general. Algeria has yet to reach the level of leading nations in effectively safeguarding the right to a clean environment nationally.

We can draw several conclusions, including:

1. Through the 2020 constitutional amendment, Algerian legislation has formally recognized and protected the human right to the environment by including it among fundamental rights and dedicating a separate chapter to it.

¹ Sajja Mohammed Abbas Al-Fadhli, *op. cit.*, p315-316. Ismail Najmuddin Zankneh, *op. cit.*, p340.

² Article 3/6 of Law 03/10 relating to environmental protection within the framework of sustainable development.

³ Kamal Maifi, *op. cit.*, p 155-158

⁴ Articles 4,5,6 and 7 of Executive Decree 09/336 of October 20, 2009 relating to the tax on activities that pollute or are dangerous to the environment.

⁵ Article 38 of Law 01/02 of December 28, 2001 containing the Finance Law of 2002.

⁶ Article 203 of Law 01/02 containing the Finance Law of 2002.



2. Algerian legislation has issued numerous laws aimed at environmental protection; however, compliance with these environmental laws remains lacking, keeping Algeria distant from international standards in achieving effective protection of the right to a clean environment.
3. Most environmental offenses are misdemeanors and violations, which trivializes environmental offenses and fails to deter environmental violators effectively.
4. There is a lack of environmental awareness among citizens in general and among decision-makers and authorities responsible for environmental decisions in particular. Public and private institutions often violate environmental legislation during their activities, leading to negative impacts on the right to a clean and healthy environment.

RECOMMENDATIONS AND SUGGESTIONS:

Based on these findings, some recommendations and suggestions include:

1. Developing and implementing a comprehensive concept of human rights, including the human right to the environment, encompassing the concept of environmental security.
2. Ensuring strict enforcement of environmental legislation, especially since many offenses are administrative crimes. Therefore, stringent application of the law against all violators and anyone harming the environment is necessary, as deterrent laws are crucial in limiting offenses.
3. Legislators should review and strengthen penalties for environmental crimes, making most offenses categorized as felonies or misdemeanors to deter anyone considering harming the environment or its elements.
4. Compliance with environmental regulations and avoiding violations relies on environmental awareness and education among citizens. Therefore, improving environmental awareness at all levels and implementing environmental education from an early age is essential to nurture a generation naturally inclined to protect the environment and avoid activities with harmful environmental impacts.

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