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Environmental crime as a manifestation of economic crime according to Algerian law

الجريمة البيئية كمظهر من مظاهر الجريمة الاقتصادية وفق القانون الجزائري

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Abstract :

Environmental crime is one of the most recent newly emerging crimes, the scope of which has widened because of its rapid spread and its negative effects on both the environment and human life. Environmental crime has been adapted from economic crimes, because if we take the principle of the economy's association with money, and the philosophy of saying that every degradation in the balance of money is an economic crime, causing any disruption of the environment by polluting it must be matched by a balance of the money, so we can adapt the crime of environmental pollution. As an economic crime, having repercussions and negative effects on the national economy.

Keywords: Environmental crime -economic crime-physical element-mental Element -criminal sanct

ملخص:

تعتبر الجرائم البيئية من أهم الجرائم المستحدثة التي ظهرت مؤخراً، والتي اتسع مجالها نظراً لانتشارها السريع وأثارها السلبية والمؤثرة على البيئة وحياة الإنسان على السواء.

وكيفت الجريمة البيئية من الجرائم الاقتصادية، ذلك لأنه لو أخذنا بمبدأ ارتباط الاقتصاد بالمال، و فلسفة القائلين بأن كل تدهور في ميزان المال يعتبر جريمة اقتصادية فإن إحداث أي خلل في البيئة بتلويثها لا بد وأن يقابله خلل في ميزان المال وبالتالي نستطيع أن نكيف جريمة تلويث البيئة على أنها جريمة اقتصادية، لما لها من انعكاسات وآثار سلبية على الاقتصاد الوطني.

الكلمات المفتاحية:

الجريمة البيئية- الجريمة الاقتصادية – الركن المادي –الركن المعنوي- المسؤولية الجزائية-الجزاء الجنائي.

introduction:

There is a close relationship between pollution and the economy in terms of the impact of economic pollution, which made environmental crime part of the economic crimes, the

latter, which is defined as: "any act or omission punishable by law and violates the economic policy of the state, Due to the negative effects of environmental crime on the national economy, it is placed in the balance of

money crimes harmful to the national economy, and this is due to the amount of damage and loss incurred by society, which is not compensated especially in the light of technological innovations and industrial development, Making it the most important economic crime with devastating impact. This is what led the international⁽¹⁾ conferences to give them great attention and to include them in the new crimes, despite the fact that they were old because of their danger on the world and its economic, social and health changes⁽²⁾.

As a result, various legislations, including Algeria, have introduced a set of penalties for the commission of such crimes.

So what is meant by environmental crime as a manifestation of economic crime? What is its area of scope? What are the most important sanctions if they are committed?

On this basis we will address this crime and its elements (the first axis) and the scope of penal accountability for them (the second axis) and how to suppress them (the third axis)

The first axis: environmental crime and its elements

Environmental crime is a growing problem around the world. Criminal

groups that exploit the environment cause billions of losses by trading in environmental prohibitions, including banned chemicals, and certain types of waste that threaten the extinction of multiple species of flora and fauna⁽³⁾.

Environmental crimes can be defined as "any behavior in contravention of a commission protected by a criminal sanction that causes a change in the environment's properties that causes harm to living organisms and resources, which affects the exercise of the natural life of the person"⁽⁴⁾ "Pollution of air, water and land due to waste arising from increased industrial activity"⁽⁵⁾.

Referring to the Algerian legislator, he addressed the definition of the environment in Law 03/10⁽⁶⁾ in-depth protection of the environment through the identification of the environmental elements protected in the text of Article 40 which are: "Any direct or indirect change of the environment is caused by any act that occurs or may cause a situation detrimental to the health and safety of man, plant, animal, air, water, land, collective and individual property"⁽⁷⁾ As it is a crime, any act or omission that appears outside the form of an attack on the regime, security and tranquility, which is regulated by law for this reason.

As defined by the United Nations Economic and Social Council: "Every

change in composition or natural state of affairs takes place under the direct or indirect influence of humanitarian activities and violates certain uses or activities that could have been done in a normal situation"⁽⁸⁾.

Environmental crime, like other crimes, is based on three pillars: the first is legit, which means the text of criminalization, the second is physical, and the third is necessary to assign responsibility to a particular person, expressed in criminal intent or error resulting from negligence,

I. Forensic Corner:

The constitutional amendment 2016⁽⁹⁾ enshrines the principle of the citizen's right to live in a healthy environment. The preamble to the present Constitution states: "The Algerian people remain committed to their choices in order to reduce social inequalities and eliminate regional inequalities and to build a productive and competitive economy within the framework of development "Article 68 states:" The citizen has the right to a sound environment and the state works to preserve the environment. The law defines the duties of natural and moral persons to protect the environment. "The text of the article shows us that the constitutional founder linked the right to the environment Sound-emphasis development So that the legislator

would grant this right constitutional protection and legitimacy.

The criminal laws are one of the most important laws that simplify the effective protection of rights, which is considered in a clean environment, constitutionally guaranteed as mentioned above, and the principle of legality of crimes and penalties is a constitutional guarantee that protects this right, which is expressed by the legislator, No penalty or security measures other than law ", but the question arises as to whether this principle is adhered to before the specificity of this crime ?

The Algerian legislator has not complied with this principle in relation to acts of environmental pollution that have not been characterized by its distinctive and specific nature, which requires the technical expertise of the source of the criminalization. The process of preparation of criminalization is preceded by the study of the physical, chemical and biological properties of the protected area, the amount allowed to be released⁽¹⁰⁾ , This led the Algerian legislator to delegate the details of the criminalization to the administrative authority, which includes the scientific frames and the technical equipment to the extent necessary. This is in addition to the evolutionary character of environmental actions compared to

conventional crimes due to the development of industrial means and the expansion of their areas of use and the harmful substances they may produce in the environment. This also explains the granting of a large part of the jurisdiction to the executive authority for the possibility of keeping pace with this criminal development issued by decrees and decisions.

In light of this crime, the legislator adopted special methods of criminalization:

Method of blank text:

The legislator has only prepared some texts to determine the punishment, and referred other texts to identify the elements and conditions of the crime and the reference of that specificity and its association with technical and technical considerations that require expertise available at private bodies charged with protecting the environment⁽¹¹⁾ (eg Law 03/10 on the protection of the environment mentioned above) Article 25 of the text reads: "When the exploitation of an enterprise not included in the list of classified enterprises ..." it is clear from this article, where the legislator referred to the regulation that defines the list of establishments classified as environmental protection⁽¹²⁾. For example, In Law No. 01/19 of 12/12/2001, where the article⁶⁴ is penalized Dumping, burying, or

neglecting of special wastes in sites not designated for this purpose shall require research in other texts to identify the sites for disposal of the wastes mentioned above.

. Thus, the privacy of this crime is reflected in the transfer of the power of criminalization to the executive branch and so it is out of the principle of criminal legitimacy.

2-Extensive Flexible Text Format:

The legislator came out of the requirements of strict application of the principle of criminal justice. In the drafting of the texts, he used many general and technical terms, which require the determination of their content, and the ambiguity of many of them. If this type of criminalization allows for greater protection of the environmental interest by giving law enforcement agencies the freedom to determine criminal facts, it inevitably constitutes a flagrant violation of the principle of criminal legality and examples of flexible texts in Algerian environmental laws. Article 40 Of Law 03/10 reads: "Water pollution: the introduction of any substance in the water medium" and therefore the meaning of the text is broad

3-The ambiguity of some provisions of the criminalization:

As in the text of Article 152 of the Water Law, which violated the provisions of chapters 1 and 2 of Part 6 of the same law and decided to punish them in accordance with the provisions of articles 58.59.60.61.62 of the law on the protection of the environment. The first chapter of the Water Law, entitled "Combating Pollution", imposes certain duties on industrial establishments such as the duty to supply industrial units with polluted products with liquidation facilities, the duty of matching the equipment of the industrial units with the waste disposal criteria specified by regulation, Discharges that contain oxy-liquid substances or pathogenic agents that may affect public health, livestock and plant life, or harm the economic development of public properties. However⁽¹³⁾, considering the wording of Article 152 of the Water Law, we note that the punishment for committing such violations is in accordance with some provisions of Law No. 83-03 on the protection of the environment, which makes the wording of this article vague.

4 - Use of general terms and technical terms :

Article 51 of Law No. 12/05 on water states: "The disposal , or dumping of any substance shall not be

prohibited in the public property of water." The legislator did not specify the nature of the material whose discharge constitutes the crime of water pollution whether gas, liquid, solid, chemical ,or physical ... On the other hand, the legislator used many technical terms in the laws of the environment, Biological, non-pet animals ... Technical terms also appear in Law No. 01/19 on the management, control and disposal of wastes in which household waste,

II. Physical pillar: The physical component of environmental crime is "any act resulting in a material emission that causes serious harm to the environment or to the health of the person, animal or plant" or the criminal conduct actually or unintentionally caused by the offender resulting in damage to the environment or the likelihood of its occurrence⁽¹⁴⁾ .

Accordingly, the physical element of the crime of environmental pollution consists of the act, the result and the causal relationship. For the criminal act, the perpetrator's voluntary activity takes several forms: it may be positive, or negative.

1 - The crimes of positive pollution: manifested in the actions that are prohibited by law and appear especially in the area of pollution of the sea, water, air. For example,

Article 100 of Law No. 03/10 on the protection of the environment prohibits any act of discharging, throwing or emptying polluting substances that pollute the aquatic environment⁽¹⁵⁾, and articles (64/56 of Law No. 19/19⁽¹⁶⁾) prohibit throwing, leaving or burying waste What is determined by the law and. Thus achieve a positive crime is the pollution of water by the negative effect of abandonment.

2- Negative pollution offenses

(abstention): The crime of negative pollution is achieved if the actor refrains from performing one of the duties required by the punitive environmental provisions. In this context, for example, Article 56 of Law No. 19/19 penalizes every natural or legal person engaged in an industrial activity that refuses to use the waste collection system at its disposal before local authorities (municipal). Article 12 of Law No. 03/ 02 of 17/12/2003 setting the general rules for the use and exploitation of beaches prohibits the dumping of industrial and agricultural wastes on or near the coasts. The same is true in Article 10 of Decree No. 2001 on Port Exploitation and Security, Ships in the port only after ensuring that they are not polluted and Article 90 of Law 02/02 on the protection of the coast prevented the

establishment of any industrial activity on the coast. For example, in article 100 of Act No. 03/ 10 which punishes anyone who threw, emptied or left leakage in surface or underground waters, the avoidance of positive action may be an exception, for example, in the case of the legislator if the offender fails to take what is necessary To stop the leakage of water in accordance with the law determined by a positive crime is achieved is the pollution of water by the negative result of the abandonment.

Third: The moral pillar:

The moral pillar raises a large number of problems in environmental crimes. The legislator has provided for many crimes, but has not specified the moral element to be available. For example, Article 58 of Law 03/10, the legislator did not mention that the act was intentional or an act that is not deliberate, legislator treated in general and did not provide any condition concerning the moral state of the actor and the moral element , environmental crime has two images :criminal intent and unintentional error.

1 - Criminal intent in environmental

crime: environmental crime is a part of the intentional crimes that require general criminal intent and this is

what we seek from the majority of the experimental texts of the environment. In the offender's knowledge of the facts defined by the legal model, and that the perpetrator's will to cause the criminal behavior, such as the dumping of harmful substances into potable water. If the crime will is a result, the perpetrator's will to act must be directed against the will to achieve the result of harming the environment.

2 - the error in environmental crime: the second image in the moral corner, the departure of the will of the actor to dangerous behavior in itself without the will to achieve the result arising from it, and can be a mistake negative or positive, the legislator stipulated that the error arises from negligence or greed or Lack of caution or failure to observe laws and regulations.

Second: The scope of criminal accountability for environmental crime

The principle in criminal law is that the liability is personal, only the person who has already been charged is charged, but other forms of responsibility have recently emerged, namely, criminal responsibility for the act of others, and criminal liability of the moral person. This occurs in

economic crimes in general and in terms of environmental crime, If we act on personal criminal responsibility, we ask the worker who has already done it, or acts with criminal responsibility for the act of others, ask the path or the owner of the legal person, or act as the criminal responsibility of the legal person. We ask the latter in accordance with the provisions of article 51 of the Penal Code?⁽¹⁷⁾

To answer this question, we will address three points. Personal liability (first) then the responsibility of the path (second) and finally the responsibility of the moral person (third).

I. Personal criminal responsibility in the crime of the environment

The person who has already committed the act of environmental pollution shall not be questioned for the commission of the crime of environmental pollution. If it is proved that he or she has committed the criminal activity or negligence in taking the measures required by the laws and regulations, he or she shall bear the criminal responsibility.

In this case, the theory of criminal contribution is enforced. If the shareholders' agreement is established within the framework of the physical and moral unity, they have the

collective responsibility for one crime, but only distinguish between them between the original actor and the partner, but if several workers rotate within one industrial unit on the discharge of waste in the river without agreeing on it in advance or present, it does not contribute to them, each one of his responsibility.

The policy of the criminal legislator in the economic sphere in general and in the environmental field in particular tends to widen the scope of criminal responsibility to the maximum extent. This is the reality in national legislation as well as comparative legislation. Accordingly, judicial work conforms to this modern criminal policy in covering criminal responsibility. Research the role of each of them among the main or secondary work. |

II. The criminal responsibility for the path of environmental crime:

The environmental legal discourse is directed at the institution's path, like other people of law, and is often concerned with it as the most prominent person at the head of the industrial establishment. Therefore, it bears the burden of ensuring respect for the implementation of laws and regulations and bears the responsibility, and should be subject

to the penalties provided in case of violation.

If it is normal for the industrial enterprise to ask about the crimes committed personally or contributed to the commission, is it possible?

his responsibility for the actions of his subordinates?

Of the specificity of economic crimes in general and environmental crime, especially the scope of criminal liability, in the sense that if the path of the institution for crimes committed by itself is accountable, it is only an application of criminal liability for personal action but

If the act is committed by one of its subordinates and has been questioned, this is an application of criminal responsibility for the act of others.

The texts on this matter, which are relevant to the environment, obligate industrial establishments and their managers to respect the procedures and control of workers. If these organizations are violated by the worker, they are asked about the institution's path on the basis of a mistake committed by the subsidiary. In the case of water pollution, for example, the path does not personally contaminate the river, and if the negligence or deviousness of the subordinate is in fact the result of mismanagement or misorganization within the institution. Dr. Mustafa Al-Auji believes that this responsibility is

to be blamed on third parties or third parties instead of calling them responsible for the actions of others⁽¹⁸⁾.

For example, the text of article 61 of Law No. 30 10 mentioned in article 61 states the indirect and parallel responsibility of the process: "When the casting, discharge, throwing or direct or indirect deposition of the substances constituting the offense From an industrial, commercial, professional or agricultural establishment, its directors, managers or managers may be jointly liable for the payment of fines or judicial expenses incurred by the perpetrators of such offenses"

The idea of criminal responsibility for the actions of others is justified in the environmental pollution crimes for several reasons, the most important of which is the broadening of the concept of physical activity of environmental crime, including the direct and indirect actor that includes the worker, including the path. This is stated in Article 100 of Law 10/10 above on all those who leave the leakage in surface or groundwater or in sea water, directly or indirectly. It is also justified by the legislator's desire to avoid the effects of pollution, which are the victims of humanity as a whole⁽¹⁹⁾, and to seek to ensure the implementation of environmental laws.

III. The criminal liability of the legal person in an environmental crime:

The recognition of the criminal responsibility of the juridical person in general and in the environmental sphere in particular would activate greater protection of the environment, particularly where the individual's liability is impossible or difficult to prove, or in the case where the damage to the natural environment is the result of collective will, In this case and in other cases in the establishment of the relationship between the act and the moral person, the criminal responsibility may be directed to the latter, especially since the Algerian legislator adopted this principle in the text of article 51 of the Penal Code following the amendment By law.

(A) "Except for the State, local communities and persons subject to the general law, the legal person shall be criminally liable for crimes committed by his or her legal representatives when the law so provides.

The criminal responsibility of the legal person does not prevent the natural person being held accountable as an indigenous actor or partner in the same acts.

It is clear from the wording of the text that the liability of a legal person

is limited, but only in the cases provided for by law. However, in fact, it often leads especially to environmental laws to disrupt penal provisions and their impossibility to apply to moral persons. Or acts harmful to the environment - with the exception of some provisions explicitly stating the possibility of questioning the legal person - to use general terms of criminalization as stated in article 100 of Law No. 03/10 on the protection of the environment: "A penalty of two years' imprisonment and a fine of 500 thousand AED or emptied or ... in surface or groundwater waters or in seawater subject to the Algerian judiciary ". Or according to article 84 of the same law, which states: "A fine of 5000 to 15,000 AED shall be imposed on any person who contravenes the provisions of Article 47 of this law and causes air pollution.

And in the case of return is punishable by imprisonment from two months to six months and a fine of 50 thousand to 150 thousand dinars or one of the penalties only. "

In general, a person may be held criminally liable to refer to the general rules contained in the Penal Code in the text of Article 51, which restricts the accountability of the private legal person, and that the act is committed by the representative of the

legal person and his name and account, Penalties do not preclude the accountability of a natural person such a person.

Third axis: Suppression of environmental crime

In order to suppress this crime, the Algerian legislator categorized the environmental crimes contained in the law, including crimes and other misdemeanors and offenses, in view of the gravity of the criminal penalty signed by the perpetrators, for example:

First: Crimes:

That the environmental crimes that take the description of crimes in Algerian law are scattered on different legal branches, both in

The Penal Code or the Maritime Law No. (10-14)⁽²⁰⁾ or the Waste Management Act . (10-19) ⁽²¹⁾, the Penal Code, Article 87, criminalizes the introduction of any toxic substances or their diversion by air or in the ground or dumping them into the water, It is considered that every act of terrorism or sabotage is aimed at attacking the ocean, introducing toxic substances, leaking them in the air or dumping them in the territorial waters, causing danger to the environment, affecting human and animal health, This crime is the death penalty, the maximum penalty that can be imposed on all those who

polluted the In the maritime law, the Algerian legislator, in article 47, has made the death penalty the penalty for every captain of an Algerian or foreign ship who deliberately dumps radioactive waste in the waters under Algerian jurisdiction. Article 66 of Law No. 01-19 on the management, control and removal of wastes shall be punishable by a term of imprisonment of 50 to 80 years and a fine of between one million Algerian dinars and five million Algerian dinars or one of those two penalties only. Anyone who imports or exports hazardous wastes or works on in violation of the provisions of this Law.

Second : Misdemeanors and irregularities

Misdemeanors and irregularities are punishable by Law No. 10-91 on waste management for 2001 and Law No. 03-10 on the protection of the environment in the framework of sustainable development for the year 2003 (mentioned above), which penalized Algerian legislator with imprisonment from six months 06 to two years, (400.000DA) to 800,000 dinars (800,000 AED) or only one of the penalties for handing down or working on the delivery of hazardous special wastes for the purpose of dealing with a person who is the perpetrator of the crime. , Dump it,

land it, immerse it or neglect it in locations that are not designated for that purpose The penalty is imprisonment for one to three years and a fine ranging from six hundred thousand dinars (600,000AED) to nine hundred thousand dinars (900,000AED) or one of the two penalties only and double the penalty in the case of return⁽²²⁾. In case the employer does not comply with the waste treatment facility Which has terminated its exploitation or has been permanently closed by rehabilitating the site to its original state or to the situation limited by the Authority or failure to ensure the control of the site within the period specified in the notice of termination of exploitation in order to avoid any harm to public health or the environment, From 6 months to 18 months ,and in the case of the protection of the marine environment from pollution of hazardous substances⁽²³⁾, the legislator shall impose a sentence of imprisonment from six months to two years and a fine of one hundred and fifty thousand dinars or one of these two penalties. If the perpetrator commits the same acts referred to above, Between one hundred thousand dinars and one million dinars, or one of these penalties, a penalty for each captain of an Algerian ship or any person who oversees the operations of immersion

or incineration on board Algerian mechanisms or stationary floating or mobile bases if he violates the provisions stipulated in Articles 52 or 53 of this law If the purpose is damage and punishable by imprisonment from one year to five years and a fine ranging between one million dinars and ten million dinars each captain of a ship subject to the provisions of the International Convention for the Prevention of Marine Pollution of Marine⁽²⁴⁾ Water in London on 12/05/1954 and amendments, if the captain of the crime of pouring fuel or mix in And if the master is not subject to the above-mentioned Convention, the penalty shall be imprisonment from 6 months to two years and a fine of between one thousand and one million and doubled in case of return, if The captain of the vessel caused mismanagement Or in violation of the laws and regulations in the event of a navigational accident, which is not controlled or avoided, resulting in the flow of contaminated materials and in the same circumstances mentioned above. For classified enterprises, anyone who has taken advantage of a facility without obtaining the license provided for in Article 19 of Law 03 10. The Court may accordingly order the use of the enterprise until the license is obtained in accordance with the conditions set out in articles 19

and 20 of this Act. The court may also order the return of premises to the case the original ones were in order ,and if the judiciary spent the arrest of the operator of the institution for its conduct, or order to close it, and contrary to the exploits of these rulers, he will be sentenced to imprisonment for two years and a fine of one million dinars ⁽²⁵⁾.

Conclusion:

Economic crime in general and environmental crime in particular have led to the development of environmental awareness translated at the domestic level by the legislator's intervention through the development of an environmental criminal policy that allows the criminal liability of the environmental polluter to be established at the expense of strict legal integrity.

The study found that during the preparation of criminalization, the legislator limited the general rule of criminalization, leaving administrative bodies or regulatory texts to define the content of criminalization, and using the broad text method to give the law enforcement agencies greater freedom to identify criminal offenses For any act that would prejudice the environmental interest because it did

not limit the act of pollution in a particular picture.

In addition, the legislator has included moral persons in the list of persons who can be questioned in order to ensure the maximum effectiveness of the punitive system to protect the environment, as long as the difficulty of assigning crimes to natural persons allows them to go unpunished.

However, despite the legal protection that the legislator has decided in this area, the expansion of penal responsibility and the development of penal provisions to curb this dangerous type of criminality that destroys the economy in the first place and threatens all mankind, despite this special care I have given it, To promote its application to the required level, which invites us to propose the following:

- The establishment of a specialized court to consider economic crimes, which are manifestations of environmental crime.
- Compile texts related to environmental protection within a unified law covering all environmental circles and all possible means of protection.
- The tightening of penal sanctions to include both natural and moral persons.
- Raise awareness of citizens, management and all relevant bodies

about the risks of pollution and the need to protect the environment.

- Formation of the judiciary and judiciary in the field of environmental protection.
- Conduct national and international forums and study days on the environment and the threats that threaten them, and ways to address any aggression against them.

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