



*The authorities of the legal judge to activate
the rules of environmental protection*

Bendaas Siham

Faculty of Law and Political Sciences,
University of Mohamed Lamine Debaghine, Setif2
Algeria

s.bendaas@univ-setif2.dz

Abstract ;

The administrations charged with protecting the environment have broad authorities in the field of environmental control, the most important of which is issuing administrative decisions to protect it , which gives the administrative judiciary authorities to monitor the extent of its arbitrariness in issuing these decisions, and their conformity with legal texts related to environmental security, the most important of which is the power to cancel and balance the benefits and harms. And the authority to direct orders to the administration and the judiciary to impose a threatening fine, and this is to ensure its legitimacy and effectiveness in protecting the environment.

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1. Introduction :

In the field of environmental control, important legal authorities and mechanisms have been established for the public administration in the field of environmental control, in order to protect the various components of the environment and achieve the desired development. These mechanisms are divided into a priori environmental control mechanisms, mainly represented by licensing, obligating, prohibiting or banning, and a posteriori environmental control mechanisms such as notification and withdrawal of the license. And administrative penalties.

However, the misuse of these authorities and the failure of the competent departments to fulfill their obligations in the field of environmental preservation led to environmental deterioration and the spread of environmental damage affecting all elements of the environment, which affected the right of individuals to a healthy environment stipulated constitutionally, so resorting to the judiciary became an urgent necessity to rectify the situation. Or compensation for the damages incurred.

The environmental dispute is considered one of the most recent disputes presented to the French administrative judiciary, given that administration is considered a fundamental axis in such disputes, especially in the rules of environmental control, including the conditions for

administrative licensing, studying the impact on the environment, and monitoring the rules of administrative control in the field of imposing special legal procedures. By protecting the environment.¹

This is why we find that most cases in environmental matters are directed against the administration, which bears the bulk of the responsibility in this area. Therefore, the administrative judiciary plays a major role in activating the rules of environmental protection when considering its disputes in order to achieve sustainable development.

Accordingly, this article aims to study and analyze the role of the administrative judge and the powers delegated to him in confronting the administration's activity and its use of its tools and means granted to it by law and regulation in the field of environmental protection, and to investigate the extent to which it is employed in accordance with what is necessary to protect the environment and the requirements for its preservation within the framework of sustainable development, and this is one of By canceling administrative decisions that violate the legal rules established to protect the environment, and directing the administrative judge to order the administration and the judiciary to impose a threatening fine.

This led to the following problem:

¹Dr / Zarrouk Al-Arabi, Dr. Hamida Jamila, "The Specialization of the Administrative Judiciary in the Field of Environmental Disputes," *Journal of Scientific Research in Environmental Legislation*, Ibn Khaldun

University of Tiaret, Volume 8, Issue 2, June 2018, (pp. 180-196), p. 182.

How effective are the authorities of the legal judge in protecting and activating environmental conservation rules?

To address this problem, reliance was placed on the analytical approach that exposes the legal texts and judicial jurisprudence that are related to the environmental disputes under consideration by the legality judge by detailing the authorities delegated to him in this field, for the purpose of examining and analyzing them, and then assessing the extent of their contribution to activating the rules of environmental protection, and this is based on the following plan:

- **The first axis:** The authority of the legal judge to cancel administrative decisions that violate the rules of environmental protection,
- **The second axis:** The modern authorities of the legality judge in confronting administrative decisions that violate the rules of environmental protection.

2. The authority of the legal judge to cancel administrative decisions that violate the rules of environmental protection:

The cancellation lawsuit is the most important administrative lawsuit in which the authorities of the competent judge are limited to searching for the legality of administrative decisions that are contested

by their illegality, and ruling to cancel these decisions if their illegality is confirmed.²

The cancellation lawsuit is considered one of the most important guarantees of the principle of legality, and the most dangerous lawsuit that the administration can face before the administrative judiciary, especially in the field of the environment, where the administration issues many decisions in the field of environmental control and exercises its obligations in the field of environmental preservation, where decisions that are not accepted are disputed. This lawsuit is legitimate before the administrative judiciary to cancel it.

Accordingly, the importance of this lawsuit in activating the rules of environmental protection, will be studied through the following two elements:

2.1 The Domain of jurisdiction of the legality judge is to cancel administrative decisions that violate the rules of environmental protection:

Various administrative authorities issue many decisions in the field of environmental protection in order to preserve the general environmental system, protect its components from harm and ensure its continuity. Therefore, these legal

² For more details see : Dominique Turpin ,**contentieux administratif** , 5^e édition ,hachette supérieur , Paris ,2010, p 63.

mechanisms must be characterized by legitimacy.

In this field, the administrative judge undertakes to monitor the legality of administrative decisions taken, and examines the legality of their internal and external elements in application of the laws regulating the protection of the environment. Thus, through his rulings, he contributes to activating the rules of environmental protection, achieving environmental security, and reducing the arbitrariness of environmental control bodies that are harmful to the environment to ensure sustainable development.

The legality judge is responsible for monitoring the illegal decisions of the environmental control authorities that result in a violation of the rules related to environmental protection. However, the activation of his role depends, from a procedural standpoint, on the need for the concerned parties to notify the administrative judicial authorities of all violations committed against environmental security, by filing a cancellation lawsuit, Which confronts these illegal decisions.³

The administrative judiciary exercises its oversight over administrative decisions that are harmful to the environment by

examining the defects that plague these decisions, which affect the principle of legality and focus on the pillars of the administrative decision, which are represented by the defects of the external legitimacy of the environmental administrative decision, which are the defect of the jurisdiction pillar and the defect of the form and procedures pillar, and this examines the extent to which The environmental administrative decision is issued by the legally competent authorities. As well as the defects of the external legitimacy of the environmental administrative decision, which are related to the pillar of purpose and goal, the pillar of the reason and the pillar of the place, and this is done by examining the legitimacy of the purpose to be achieved by making this decision and the legal reason justifying it, and examining the extent of its conformity with the legal rules established to protect the environment and its various components.

In the field of environmental protection, the defect of violating environmental laws covers other defects in administrative decisions issued by various administrative authorities, or is often relied upon by those who challenge administrative decisions with the aim of protecting the environment

³ Alwa Hanan, Zaid Al-Khail Tawfiq, "The Algerian Administrative Judge's oversight of the decisions of the environmental control authorities is a guarantee of environmental protection," *Journal of Law and Human*

Sciences, Zian Ashour University of Djelfa, Volume 11, Issue 1, (pp. 694-718), p. 698.

and observing environmental legislation by administrations⁴.

2.2 Applications of the legality judge's consideration of canceling administrative decisions that violate the rules of environmental protection:

The cancellation lawsuit in environmental disputes is directed against administrative decisions that violate the rules of environmental protection. It can also be filed to object to administrative decisions through which the environmental control authorities aim to restrict the activities of individuals to protect the environment and its elements.

Considering that the French administrative judiciary is the first to consider cancellation lawsuits related to environmental decisions, we will address its most important applications first, and then we will discuss the applications of the Algerian administrative judiciary in this field, through the following two elements:

1- Applications of the French administrative judiciary in canceling administrative decisions that violate environmental protection rules:

The French administrative judiciary is responsible for monitoring the legality of the means of administrative control

practiced by the environmental administration with the aim of reconciling the importance of these means with the requirements of protecting the basic rights and freedoms of individuals.

Among the rulings decided by French judiciary, we mention the decision of the Council of State in which it upheld the ruling of the Court of First Instance of Versailles issued on 17/12/1975 in the "époux Jobuld" case, in which it annulled the decision of the mayor in which he refused to hand over a permit to erect a fence in a rural area on the grounds that the building was designated For agricultural exploitation, and therefore there is an attack on agricultural lands⁵.

One of the most recent decisions of the French Council of State in the field of canceling administrative decisions harmful to the environment is the decision issued on 25/10/2021 by the urgent administrative judge of the Council of State, which canceled new licenses for hunting, as the French Ministry of Environmental Transformation issued a number of licenses in the field of traditional hunting for species. Certain birds, the most recent of which were licenses issued on 12/10/2021. Following that, associations charged with protecting the environment filed an urgent lawsuit to cancel these decisions and

⁴ Dr. Ismail Najm al-Din Zanganeh, **Environmental Administrative Law**, Beirut, Al-Halabi Legal Publications, first edition, 2012, p. 418.

⁵ Abdel-Lawi Abdel Karim, "The Role of the Judiciary in Protecting the Environment," Business Disputes Journal, Fez, Morocco, issue January 20, 2017, (pp. 111- p. 147), p. 122.

licenses, given the blatant danger they pose to the environmental balance by encouraging this overfishing.⁶

2- Applications of the Algerian administrative judiciary in canceling administrative decisions that violate the rules of environmental protection:

One of the most important applications of the Algerian administrative judiciary in the field of lawsuits to cancel environmental decisions is the legality judge's oversight of the delivery of a building permit in the field of planning and reconstruction. We refer to the decision of the Supreme Court, formerly the Administrative Chamber, File No. 22236 issued on 11/7/1981 in the case of Mr. (A. -R) Against the head of the Bir district, Murad Rais, who ruled that it was necessary to examine and inspect the building that would pose a threat to public health or public security in order to refuse the building permit⁷.

It was also stated in another decision of the Algerian State Council issued on 23/05/2007 that establishing a public landfill in a residential area without respecting the conditions of the conditions book, and without taking appropriate

measures to avoid compromising the safety of the environment and people, is a violation of environmental law and will result in its closure.⁸

The presentation of its facts can be summarized in that the lawsuit aims to cancel the state decision dated May 5, 1988, which included the allocation of a plot of land with an area of 40 hectares for the benefit of the municipality of Ouled Fayet, designated for the construction of public garbage.

A preliminary decision was issued including the appointment of an expert to inspect this plot of land designated as vacant and determine whether it is causing environmental pollution. After the case was resumed after the expertise, the decision under appeal was issued, approving the expert report and invalidating the contested decision, issued by the governor of the willaya of Tipaza, which included the allocation of the plot of land as a public landfill⁹.

⁶ The decision is published on the following website of the French Council of State:
CE, 25 octobre 2021, Décision N°457535 ,
<http://www.conseil-etat.fr>

⁷ Abd al-Lawi Abd al-Karim, previous reference, p. 121.

⁸ State Council Resolution No. 32758 dated 23/05/2007 published in the State Council Magazine, Issue 9, pp. 94 et seq.

⁹ Dr /Ammar Boudiaf, **Reference on Administrative Disputes**, Section Two, Applied Aspects of Administrative Disputes, First Edition, Jusoor Publishing and Distribution, Algeria, 2013, pp. 388 et seq.

3. The modern authorities of the legality judge in confronting administrative decisions that violate the rules of environmental protection:

The rapid developments in the administrative activity of the modern state in various fields led the French Council of State to innovate solutions and develop new technical tools, with the aim of imposing deep control over the actions of administrative authorities in their activities, including environmental activity, and this crystallized the theory of balancing benefits and harms. Thus, the Council's oversight extended to the verge of appropriateness in administrative discretion, so that it could establish the precise balance between the effectiveness of administrative work and ensuring the rights and freedoms of individuals.¹⁰

In addition to the task of the administrative judiciary in the cancellation lawsuit, which was limited to the authority to annul the disputed administrative decision if it was proven that it did not comply with the legal rules established for the protection of the environment, it was decided that, on the occasion of its examination of this lawsuit, the authority to direct orders to the administration, and to issue a threatening fine if the circumstances of the case and the

protection of the environment necessitated that.

Accordingly, another role has emerged for the administrative judge in the field of activating the rules of environmental protection through these modern authorities assigned to him to achieve sustainable development. This study requires examining them in the following two elements:

3.1 Balance control by the legality judge in the field of environmental protection:

The issue of environmental protection has become one of the most important issues at the present time, after environmental conditions deteriorated as a result of the combination of several causes and factors, the most important of which is the industrial growth that the world has witnessed, which led to an environmental imbalance, and environmental problems emerged that now threaten human life.

For these reasons, international and domestic efforts continued to protect the environment, which opened the door for administrative judiciaries in many countries of the world to implement balance control between benefits and harms, most notably the French judiciary,

¹⁰ Nawal Mazouzi, "The right to a healthy environment and the role of the administrative judge in protecting it," Academic Journal of Legal Research, Abderrahmane

Mira University of Bejaia, Volume 12, Issue 3, 2021, (pp. 520-537), p. 529.

and this theory extended to many countries of the world.¹¹

The administrative judiciary has inherent jurisdiction to address administrative decisions issued by the administration within the framework of protecting public order, and it has broad discretionary authority, which opens the way for the judge to monitor the appropriateness of issuing these decisions and cancel them if the administration abuses the rights of individuals, especially in the practice of economic and industrial activities that cause environmental pollution.

In this field, the administrative judge is responsible for monitoring the importance of these means in protecting public order, and their danger to the rights of individuals, by monitoring the goal that the administration seeks in issuing environmental control decisions. Therefore, the action taken by the administration is only legitimate if it is necessary to preserve public order, and the implementation of environmental control decisions collides with the absolute prohibition of individuals from exercising basic freedoms.¹²

Accordingly, the administrative judge's jurisdiction to monitor environmental control procedures and rules is considered

a form of adequacy oversight, in which the judge's consideration of the dispute expands more than simply monitoring the extent to which administrative action conforms with legal provisions and texts. Rather, this oversight extends to the precise partial elements of the administrative decision, and the extent to which its suitability to the various circumstances of confronting the situation, which is considered the basic element of the requirements of protecting public order. However, this monitoring does not deviate from the scope of the principle of legality in its broad sense.¹³

One of the applications of this theory by the French judiciary is the red clay case, in which the administration decided to establish a channel to remove the chemical waste of one of the aluminum factories, by a company at sea in the Gulf of Cassis for the public benefit, which from the administration's point of view was certain, and here the Council of State was exposed to the project's defects and After a complete study of it, and the circumstances surrounding the process as a whole, he decided that the project, even if it would cause harm to the public health of plants, and animals or to tourism and economic development in the region, was not to the extent that would strip it of the

¹¹ Nawal Mazouzi, previous reference, p. 530.

¹² Dr. Maged Ragheb Al-Helou, **Environmental Protection Law in Light of Sharia**, New University Publishing House, Alexandria, 2004, pp. 128 et seq.

¹³ Dr. Zarrouk Al-Arabi, Dr. Hamida Jamila, previous reference, p. 190.

character of a public benefit, and he decided to pour these wastes at a distance 7 km from the shore, and at a depth of 1000 m, it does not cause harm to public health.¹⁴

The most prominent applications of balance control in the field of environmental protection in Algeria, In the framework of building licensing, we find that the administrative judge monitors all procedures related to the administrative file submitted by the concerned party, including the technical procedures necessary to carry out activities that pollute the environment, as the technical file includes everything related to the impact study, or study the risk of industrial facilities and units polluting the environment, including the type and quantity of liquid, solid, or gaseous materials, the extent of their harm to the environmental environment, the limits of gaseous emissions, and the conditions for treatment and filtration devices.

In this regard, we also refer to the decision of the State Council issued on 31/1/2013 regarding the cancellation of the administration's decision to demolish a chaotic building erected by a person, where the State Council justified its decision by saying that the person concerned did not violate the rules of building and reconstruction and that the administration's

action is actually considered an abuse of authority.¹⁵

3.2 The authority of the legal judge to direct orders to the administration and the judiciary to impose a threatening fine in the field of environmental protection:

The authorities of the administrative judge have been activated in accordance with the Civil and Administrative Procedures Law, by strengthening his powers, by granting him the authority to issue executive orders, and the authority to impose threatening fines, in which he requires environmental control departments to implement his provisions related to canceling their administrative decisions that violate the rules of environmental preservation, in order to ensure the effectiveness of this judiciary in protecting the system environmental in particular.

Accordingly, the study must address the two previous authorities granted to the administrative judge, due to their importance in activating the rules of protecting the environment, and achieving sustainable development, as follows:

1- The authority of the legal judge to issue orders to environmental control authorities:

An important principle prevailed in the French administrative judiciary, which

¹⁴ Nawal Mazouzi, previous reference, p. 530.

¹⁵Dr. Zarrouk Al-Arabi, Dr. Hamida Jamila, previous reference, p. 191.

states that the administrative judge rules and does not manage, and therefore the administrative judge may not direct orders to the administration for several considerations, the most important of which is the principle of separation of authorities. Administrative judiciary rulings have been repeated, especially the decisions of the French Council of State, which stipulate that the administrative judge may not exceed His authority to direct orders to the administration to issue a specific administrative decision.

However, Law No. 95-125 of February 8, 1995, came to strengthen the authorities granted to the French administrative judge in the field of annulment proceedings, and this is by recognizing to him the authority to direct orders to the administration, as this law truly reflects the will of the French legislator to grant the administrative judge, especially the annulment judge. Authority regarding the subject matter of the dispute so that the mere annulment judge does not remain.¹⁶

As for the applications of the French administrative judiciary in the field of environmental protection, the decision issued by the French Council of State on July 21, 2017 is a precedent in this regard, according to which the French Council of

State directed an order to the French government urging it to take all necessary measures to reduce the concentrations of nitrogen dioxide and fine particles PM10 below the values. specified. This is to reduce the risks of air pollution resulting from its activity¹⁷.

The most important facts of this case are that the Friends of the Land of France Association asked the French Council of State to cancel the implicit decisions of rejection resulting from the silence maintained by the President of the Republic, the Prime Minister, the Minister of Environment, Sustainable Development and Energy, the Minister of Social Affairs and Health, and Women's Rights expressed its request to take all necessary measures to reduce the concentration of fine particulate matter ,and nitrogen dioxide throughout the national territory, in accordance with the values specified in the Annex to Instruction No. 50/2008 issued by the European Parliament and of the Council of 21 May 2008 relating to clean air quality for Europe.

The French Council of State responded to the appellants' request to cancel the implicit rejection decisions mentioned above, and ordered the French state to send the plans required to be drawn up in this

¹⁶ Idou Abdelkader, **Guarantees for the Implementation of Administrative Judgments against the Public Administration**, second edition, Dar Houma, Algeria, 2017, p. 145.

¹⁷ CE, 12 juillet 2017, Décision N°394254, <http://www.conseil-etat.fr>.

regard to the European Commission, no later than the end of March 2018.¹⁸

In Algeria, the legislator intervened, in accordance with explicit texts, and decided that the administrative judge has the authority to issue executive orders, which can be taken in the same judicial ruling in which he ruled to cancel the administrative decision violating the rules of environmental protection, by which he clarifies the arrangements that the various environmental departments in dispute must adhere to in order to implement it and arrange its effects.¹⁹

preserve its components, and ensure the proper application of the rules of the environmental system, Article 979 of the Civil and Administrative Procedures Law allows the administrative judge, in the event that executive measures are not specified in the original ruling because they were not requested by the parties to the environmental dispute, to direct an order to the environmental control authorities and departments, to A deadline for issuing an administrative decision on the matter within a specific period, and if it refrains from implementing it, the administrative judicial body (the Administrative Court or the State Council, depending on the type of dispute), can issue executive orders to the

administration, specifying the necessary measures for the implementation process.

Therefore, this procedure is considered one of the most important modern mechanisms established for the administrative judiciary, and it is specifically considered one of the authorities assigned to the legality judge, in order to ensure the good implementation of his judicial decisions, and in return, in the field of environmental disputes, it is considered a subsequent and important guarantee for confronting illegal environmental administrative decisions, violating environmental conservation legislation.

2- The authority of the legal judge to impose a threatening fine on environmental control departments:

In order to ensure the implementation of judicial decisions issued by administrative judiciary bodies, and the administration's respect in particular for these decisions, and compliance with them, the Algerian legislator allowed the administrative judge to fill his judicial decisions with threatening fines, to force the administration to implement them.

Accordingly, the legality judge who decides on environmental disputes, especially those related to the claim of canceling illegal environmental

¹⁸ Nawal Mazouzi, previous reference, pp. 532 et seq.

¹⁹ In accordance with Article 978 of Law No. 08-09 of February 25, 2008, which includes the Civil and

Administrative Procedures Code, Official Gazette N.21, issued on April 23, 2008.

administrative decisions that do not comply with the rules of environmental preservation, can fill his judicial rulings issued in this area with threatening fines, in order to punish the various parties to the environmental dispute, especially public administrations in charge of preserving the environment, to respect judicial decisions and executive orders requiring the necessity of following certain measures that would preserve environmental security.²⁰

Thus, the ruling imposing a threatening fine on the environmental administrative authorities against whom a judicial decision was issued in their environmental disputes constitutes an important legal guarantee, in order to force them to implement this judicial decision, as stipulated in Article 980 of the Civil and Administrative Procedures Law, which stated that administrative judicial authorities may take this important guarantee.²¹

Also, Article 981 of the Civil and Administrative Procedures Law explicitly stipulates the possibility of ordering administrative judicial bodies, to impose a threatening fine, in the event that the administration refuses to implement its decisions and judicial orders. The measures imposed on environmental control

authorities by the administrative judge have not been specified in this regard.

It must be clarified in this regard that the relationship between the threatening fine and executive orders, expresses the element of complementarity between these two means of forcing the administration to implement it. Imposing the fine without directing orders to the administration makes the role of this fine in achieving its goal limited in effectiveness, and the fine targets Forcing the administration to implement judicial rulings, the orders explain in a productive manner how this implementation will take place in a way that leaves no room for the administration to circumvent and maneuver in implementing this ruling²².

4. CONCLUSION

It became clear from the previous study that the administrative judge not only exercises the task of defending rights and freedoms, but is also legally responsible for protecting the environment and preserving its components, and this is in the context of his consideration of environmental disputes presented to him, whether within the scope of legality or responsibility.

It has been shown that legality judge has an important role in the field of protecting the environment and its elements, and this

²⁰ Alwa Hanan, Zaid Al-Khail Tawfiq, previous reference, p. 706.

²¹ Article 980 of Law No. 08-09 containing the Civil and Administrative Procedures Code.

²² Iddo Abdel Qadir, previous reference, p. 175.

is by activating the rules of its protection by ensuring the legitimacy of issuing and implementing administrative decisions taken by the competent environmental administration in this field, and this is by canceling them if they are illegal and in violation of the legal rules established for preserving the environment, or by appreciating The appropriateness of taking it and the necessity of issuing it to preserve the public environmental system, with the possibility of directing orders to the environmental administration, and imposing threatening fines on it to ensure the implementation of judicial decisions, especially those related to environmental protection.

In order to further strengthen the role of the legality judge in the field of activating the rules of protecting the environment and preserving its components, to achieve sustainable development, **the following recommendations must be made:**

- Expediting the administrative judiciary's consideration of issues related to the environment, in order to avoid harm that may befall the environment as a result of the delay in deciding them, especially in cases cancellations of environmental administrative decisions.
- It is necessary to form a group of judges who specialize in the environment, its fields, and the laws

related to it, so that they have full knowledge of the details of the environmental disputes presented to them and how to address them, especially since they are disputes of a special nature.

- It is advisable to collect environmental legislation in one codification to make it easy to read, and use by judges and to respect it by others, individuals and institutions.

- The necessity of collecting the jurisprudence of the administrative judiciary, which includes general principles and provisions related to the environment, and organizing them in order to establish special rules for environmental administrative disputes and their treatment, to be used in considering various administrative lawsuits related to the environment, and thus ensuring an effective role for the administrative judiciary in protecting the environment and its elements.

- The keenness of various public administrations, regardless of their authority and level, central or local, to implement administrative judicial decisions issued in environmental disputes, even if they are against them, and to adhere to the orders directed to them as long as they are issued in the interest and for the purpose of protecting the environment.

- Activating participatory democracy in the field of environmental protection, by encouraging individuals and various civil society actors to participate, and support departments and bodies concerned with environmental affairs, in establishing arrangements for preserving it and preserving its elements, making appropriate decisions, and striking a balance between environmental protection guarantees and development necessities to achieve sustainable development. Hence, effectively enabling citizens to enjoy their right to a healthy environment.

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