The Role of the Administration in Enforcing Environmental Law: A Study of Administrative Sanctions in the Algerian Legal System

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Abstract:
In light of escalating environmental challenges, the protection of the environment is no longer a matter of choice but a constitutional and legal obligation, subject to administrative sanctions and criminal penalties. The Algerian legislator enacted a specific Environmental Law, dedicating an entire chapter to administrative sanctions. Moreover, the 2020 constitutional amendment explicitly recognized the environment and sustainable development as priorities of the State, thereby conferring upon environmental legislation a mandatory rather than discretionary character. Building on this constitutional framework, environmental administrative sanctions constitute both deterrent and preventive instruments exercised directly by the administration without recourse to the judiciary. These sanctions take various forms, including warnings, temporary closures, license withdrawals, compelling offenders to fulfill environmental obligations, and the imposition of administrative fines.
Keywords*: Environment; Sustainable Development; Administrative Sanctions; Institutional Mechanisms for Environmental Protection.*

1. INTRODUCTION:

Algeria has recognized the necessity of protecting the environment and preserving biodiversity, as have other countries around the world, in order to confront imminent dangers. It has begun to take practical measures to safeguard its environment, issuing numerous laws and executive decrees, most notably the Environmental Protection Law and the Law on the Protection and Valorization of the Coastline.

At the international level, Algeria has also concluded several agreements regulating various aspects of environmental protection, including marine, atmospheric, and terrestrial environments.

Accordingly, the legislator has established a wide range of diverse and dispersed laws within different legal texts concerned with environmental protection, all of which aim to preserve elements of the environment. This has been pursued through legal means that are sometimes deterrent and at other times preventive, applied by various state bodies and institutions, whether central or local, extending to the suppression of all violations considered criminal acts against the environment, which necessitate the imposition of the most severe penalties.

It is therefore necessary to employ the various available legal mechanisms to protect the environment, which constitutes a reservoir of natural wealth and both renewable and non-renewable resources. This requires intervention in an integrated and effective manner at different stages of pollution, through preventive as well as deterrent measures. This leads us to pose the following question:

– Are administrative environmental sanctions sufficient to deter violations and ensure environmental protection?

To address the research problem previously raised and to achieve the intended objectives of this study, the analytical method has been adopted. This is evident in the analysis of certain legal texts forming part of the legislative arsenal related to environmental protection, in order to extract the mechanisms established by the Algerian legislator and assess their adequacy in establishing rules for the legal protection of the environment. The descriptive method has also been used to clarify certain concepts relevant to the topic, with the aim of providing a comprehensive and precise understanding of the different dimensions of the issue under consideration.

Section One: Institutional Mechanisms Responsible for Environmental Protection

In Algeria, there are numerous administrative bodies concerned with environmental protection: some central, dealing with environmental issues of national scope, and others local, focusing on environmental protection at the

local level. Accordingly, we will examine the central bodies in (Subsection One) and the local bodies in (Subsection Two).

- **Subsection One : Central Bodies**

The central environmental administrative bodies in Algeria, foremost among them the Ministry of Environment and Renewable Energies, are entrusted with implementing the national environmental policy in accordance with the constitutional and legislative framework of the Environmental Law. These bodies are responsible for regulation, supervision, and guidance in the field of environmental protection. They exercise regulatory and oversight authority, supervise the activation of administrative environmental measures, and coordinate with various central entities for environmental protection.

- **Subdivision One: The Ministry of Environment and Renewable Energies**

The Ministry of Environment and Renewable Energies is the central authority and supervisory body of the environmental sector. It comprises several main directorates with subordinate directorates under them. The central administration of the Ministry operates under the authority of the Minister of Environment and Renewable Energies, whose functions are defined by Executive Decree No. 17-364. (Executive Decree No. 17-364, 2017, Arts. 1, 2)

The Minister of Environment and Renewable Energies is responsible for planning instruments related to environmental activities, ensuring their implementation, and proposing tools that guarantee sustainable development. The Minister conducts continuous assessments of the environmental situation, initiates actions to combat climate change, contributes to reducing greenhouse gas emissions, prepares studies on environmental decontamination, particularly in urban and industrial areas, and prepares and implements plans to combat all forms of pollution, especially accidental pollution. (Law No. 03-10, 2003, Arts. 13, 55)

The Ministry responsible for the environment also prepares a National Plan for Environmental Activity and Sustainable Development, which outlines the totality of activities the state intends to undertake in the field of environmental protection. Pursuant to Article 55 of the same law, and within the framework of sustainable development, the Minister in charge of the

environment issues authorizations for the shipment or loading of all materials and waste destined for dumping at sea. (Law No. 03-10, 2003, Arts. 13, 55)

- **Subdivision Two: Other Ministries Responsible for Environmental Protection**

With the establishment of the Ministry of Environment and Renewable Energies, it has become the primary authority responsible for environmental protection, which necessitates its coordination with other ministries connected to environmental matters in a specialized and integrated manner.

The legislator has required health institutions to bear the costs of treating medical activity waste they produce and to remove waste and residues from rehabilitation facilities in accordance with the provisions of Law (Law No. 01-19, 2001) No. 01-19 concerning the management, monitoring, and disposal of waste.

Coordination between the Ministry of Environment and the Ministry of Water Resources is carried out through joint efforts, particularly in environmental impact assessments of all water projects under the supervision of both ministries. It is also necessary for the Ministry of Environment, along with the competent minister, to contribute to preventing any licenses for the exploitation of surface or underground water sources, whether ordinary or mineral. We find it essential to allow the Ministry of Environment to intervene and even replace the Ministry of Irrigation in exercising control and deterrence over any harm to the aquatic environment in general, and to work on amending the Water Law to meet these requirements.

As for the Ministry of Agriculture and Rural Development, it undertakes traditional tasks related to the management and administration of forest properties, animal and plant resources, the protection of steppes, and the prevention of erosion and desertification, in addition to intensive reforestation activities. Through these tasks, it becomes clear that the intervention of the Ministry of Agriculture and Rural Development in the environmental field is linked to nature protection. (Siham, 2010, p. 17)

- **Subdivision Three: Other Central Administrative Bodies Related to the Environment**

Algeria has established public structures and bodies under the Ministry of

Urban Planning with various designations (Observatory, Center, Agency, Authority, Park, Institute, National Authority) to manage and organize specific environmental areas. These bodies serve as executive instruments tasked with advancement and implementation in line with decisions issued by state authorities. They carry out effective and impactful actions and measures through practical applications and scientific practices within programs and projects promoted by the environmental policy overseen by the supervising ministry. These intermediary bodies constitute a scientific and technical extension of the central administration, with the mission of implementing general environmental policies. (rapport sur l'Etat et l'avenir de l'environnement, 2003, p. 309)

A. Bodies and Institutions in the Form of Centers:

A/1- center for the Development of Biological Resources: Established by Executive Decree *(Executive Decree No. 02-371, 2002)* No. 02/371, it is a public institution of an administrative nature endowed with legal personality and financial autonomy. The center is placed under the supervision of the Minister in charge of the environment. (Executive Decree No. 02-371, 2002*)* Its tasks include identifying and monitoring biodiversity, inventorying biological resources, compiling complete lists of animal and plant species, ecosystems, and the components of the sustainable use of biodiversity. It also makes proposals, in consultation with the relevant sectors, for the preservation of national biological resources in accordance with the procedures established by the applicable regulations.

A/2- National Center for Cleaner Production Technologies: According to Article 02 of Executive Decree No. 02/262, it is defined as "a public institution of an industrial and commercial nature, endowed with legal personality and financial autonomy. The center is subject to the rules applicable to the administration in its relationship with the State, and is considered a trader in its relations with third parties. The center is placed under the supervision of the Minister in charge of the environment." (Executive Decree No. 02-262, 2002, Art. 2)

B. Bodies and Institutions in the Form of Agencies:

B/1 - The National Waste Agency: Established under Executive Decree No.

02/175 (Executive Decree No. 02-175, 2002, Art. 1), it provides assistance to local authorities in the field of waste management, processes waste-related data and information, and develops a national waste information database and monitoring system. It also works to disseminate scientific and technical information, initiates awareness and information programs, and participates in their implementation.

B/2 - The National Agency for Nature Conservation: Established by Executive Decree No. 91/33, the agency is a public institution of an administrative and technical nature, placed under the authority of the Minister of Agriculture and headquartered in Algiers. (Executive Decree No. 91-33, 1991)

B/3 - The National Agency for Climate Change: Established under Executive Decree No. 05/375, it is a public institution of an administrative nature based in Algiers. The agency's mission is to promote the integration of climate change concerns into all development plans and to contribute to environmental protection (Executive Decree No. 05-375, 2005). Within the framework of the national climate change strategy, it is tasked with awareness-raising, information, research, and reporting activities in areas related to greenhouse gas emissions.

C. Bodies and Institutions in the Form of Observatories:

C/1- The National Observatory for the Promotion of Renewable Energies: According to Article 17 of Law No. 04/09 (Law No. 04-09, 2004), it is a national body responsible for promoting and developing the use of renewable energies under the National Observatory for the Promotion of Renewable Energies.

C/2- The National Observatory for the Environment and Sustainable Development: It is a public institution of an industrial and commercial nature, endowed with legal personality and financial autonomy. Its tasks include establishing monitoring networks, measuring pollution, safeguarding natural environments, collecting environmental information on the scientific, technical, and statistical levels, processing, preparing, and disseminating such information, as well as gathering data related to the environment and sustainable development from national institutions and specialized bodies,

and publishing and distributing environmental information. (Executive Decree No. 02-115, 2002, Art. 2, as amended by Executive Decree No. 04-198, 2004)

- **Subsection Two: Local and Regional Bodies for Environmental Protection**

Local communities play a significant role in the field of environmental protection in its various aspects. Accordingly, they take the appropriate measures to achieve this, and thus we highlight the scope of their intervention in environmental protection.

- **Subdivision One : Local Communities**

In this subsection, we will address the role of the Wilaya (province) and then the role of the Municipality in environmental protection.

A. The Role of the Wilaya in Environmental Protection:

The Wilaya consists of two bodies: the Wali (Governor) and the Provincial People's Assembly. The Wali represents the state at the level of the Wilaya, and his role is to enforce laws within its territory. The second body is the Provincial People's Assembly, which represents a form of democracy by involving citizens in managing the affairs of the Wilaya.

A/1 - Powers of the Wali in the Field of Environmental Protection: The Wali (Governor) is responsible for maintaining order, security, safety, and tranquility. (Law No. 12-07, 2012, Art. 14) As the representative of the central authority at the regional level, he is legally competent to take all necessary preventive and administrative measures to reduce the risks of natural disasters. He is also required to establish and regulate an intervention plan for emergency services in every industrial area within the geographical scope of his Wilaya, in accordance with the provisions of the legislation on civil protection and regional planning.

The Wali (Governor) is also consulted regionally by the central administration in charge of the environment when granting prior licenses to institutions that keep non-domestic animals. In the case of foot-and-mouth disease outbreaks, and after veterinary confirmation by the Wilaya's veterinary inspector, the Wali (Governor) issues binding administrative decisions ordering the slaughter of sick and exposed animals, in application

of the principle of public veterinary health and protection of the public interest.

Within his powers in the field of urban planning, the Wali (Governor) is responsible for granting building permits for constructions and facilities built on behalf of the state, the Wilaya, or its public institutions, in accordance with the conditions and procedures set out in the Urban Planning and Development Law, particularly Articles 44, 45, and 46, which precisely define the projects under his exclusive jurisdiction in this field. (Law No. 90-29, 1990/2004)

A/2 - **The Role of the Provincial People's Assembly in Environmental Protection:** The tasks of the Provincial People's Assembly are summarized in the provisions of Law No. 12/07. (Law No. 12-07, 2012, Arts. 77, 78, 84 & 86)

B- The Role of the Municipality in Environmental Protection:

The municipality plays an important role in the field of environmental protection, given the powers granted to it in this area. This is due to its strategic position between the administration and the citizen, as it represents the base of the administrative pyramid and embodies decentralization.

The President of the Municipal People's Assembly has been granted many powers in the field of environmental preservation. (Law No. 11-10, 2011, Art. 88)

Most of the powers assigned to him are directly related to the environment, as he is responsible for addressing all violations that harm it. (Law No. 11-10, 2011, Art. 94)

To combat pollution caused by the disposal of household waste, the municipality is responsible for managing and treating household and industrial waste in order to prevent its spread and accumulation, which pose a threat to the environment and the natural surroundings. This is achieved by developing a municipal plan for managing urban waste, in accordance with its comprehensive plans, the Wilaya's plan, and the municipal plan approved by the Wali (Governor) (Saïdan, 2008, p. 246)

Subdivision Two: The Role of Provincial and Regional Directorates in Environmental Protection

- **First: The Role of Provincial Directorates in Environmental Protection**

It is well known that the Provincial Directorates for the Environment are local administrative bodies affiliated with the Ministry, distributed throughout the national territory. Their purpose is to coordinate between the national and local levels under the supervision of a General Director, assisted by their staff.

A. The Environmental Directorate at the Provincial Level:

responsible for the environment at the provincial level. It is assigned various tasks, including preserving biodiversity and ecosystems, inventorying and valorizing interventions, and managing the coastline. The Urban Environment Department is responsible for monitoring and evaluating studies, overseeing treatment facilities, eliminating pollution in urban areas, and promoting household waste recovery activities and similar solid waste management and valorization. The Industrial Environment Department is tasked with implementing and monitoring measures aimed at preventing pollution and industrial harm, enforcing regulatory provisions related to classified facilities, supervising treatment facilities, eliminating pollution in the industrial sector, and promoting the recovery of special waste. The Awareness, Communication, and Environmental Education Department implements programs related to awareness, communication, information, and environmental education

B- The Forestry Directorate at the Provincial Level:

The Forestry Authority represents the Ministry responsible for Agriculture and Rural Development at the provincial level and was established under Executive Decree No. 95-333 (Executive Decree No. 95-333, 1995, Art. 2). It is tasked with implementing programs and measures for the development, protection, and expansion of forest and rangeland resources. It also preserves lands prone to erosion and desertification, organizes and monitors forest and rangeland products as well as other uses in the forestry sector within the framework of planning and management schemes. Moreover, the Forestry Authority is responsible for organizing, supervising, and monitoring, in

coordination with other relevant services, preventive measures against forest fires, parasitic diseases, their outbreaks, and combating them.

C- The Directorate of Public Works:

The Directorate of Public Works represents the Ministry responsible for Public Works at the provincial level and was established under Executive Decree No. 05-436. The Directorate is entrusted with certain tasks related to environmental protection, such as organizing and implementing technical assistance for municipalities for the maintenance of urban and municipal roads. (Executive Decree No. 05-436, 2005, Art. 2)

- **Second: The Role of Regional Inspectorates in Environmental Protection:**

The Regional Inspectorate is an external department affiliated with the ministries, operating under the authority of the respective minister. It is responsible for environmental protection at the local level, ensuring the implementation of legislative and regulatory texts related to the environment, finding solutions for waste management, and taking precautionary measures aimed at protecting the environment, health, and the population. It also conducts periodic reviews of warning and prevention systems for pollution incidents that may affect the environment and public health. (Lakhal, 2014, pp. 149–150.)

Section Two: Environmental Administrative Sanctions

Administrative sanctions refer to those imposed by administrative authorities, delegated by the legislator, on a natural or legal person in the event of committing offenses affecting the environment. The administration's authority to impose an administrative sanction is fundamentally contingent upon the existence of a prior legal provision, whether legislative or regulatory in origin.

- **Subsection one : Financial Administrative Sanctions**

These are sanctions imposed on the environmental polluter that affect their financial liability without infringing upon their physical integrity, personal

freedom, or social status. (Zankana, p. 340) The most important forms include:

- **Subdivision One: Administrative Monetary Sanction**

A financial penalty consists of a sum of money imposed by the competent environmental administrative authority pursuant to a legal provision, whether legislative or regulatory, on individuals or facility owners who have committed environmental violations. The penalty must be paid to the state treasury in lieu of criminal prosecution. Financial penalties are the most commonly used administrative sanctions due to their ease of imposition, rapid collection, and absence of adverse side effects.

Environmental financial penalties are generally set between a minimum and maximum amount, with administrative authorities having discretionary power to impose the appropriate sanction on the environmental offender, provided it is proportionate to the committed or harmful violation. These penalties can take several forms:

- The first form is the fixed penalty, where the minimum and maximum limits are specified. It may also be a fixed amount, leaving no discretion to the administrative authority, which must simply apply the legal provision and the stipulated penalty.
- The second form is the relative penalty, where the law does not specify a fixed amount; instead, it is linked to the damage caused or the benefit obtained or intended from the environmental violation.
- The third form is the daily deterrent penalty, assessed and calculated based on the severity of the environmental violation, its duration, and the financial situation of the offender.
- It may also take the form of a settlement between the administration and the offender, in the shape of a contract of submission, as the administration dictates the terms, which the second party (the offender) must accept. Examples include exceeding permissible emissions of smoke or toxic gases from vehicles or producing noise pollution; in such cases, administrative authorities impose an immediate penalty to be paid by the offender without the right to contest it.

The competent authority to impose administrative fines in the field of environmental protection is either the Minister in charge of the environment, specialized environmental administrative bodies, or other entities established and empowered by law. In all cases, the individual convicted of an administrative financial penalty has the right to appeal the decision before the administrative courts, in accordance with the prescribed timeframe and conditions.

- **Subdivision Two: Administrative Confiscation**

Confiscation is one form of general financial administrative sanctions issued by the legally empowered administration through an individual administrative decision to deter violators of the prevailing laws and regulations. It is a sanction of a real nature, as it targets the object of the violation rather than the person committing the violation. (ʿAlī, 2023, p. 850) Confiscation differs clearly from fines, as it is applied directly to the property itself, whereas a fine targets a specific amount of money. Moreover, confiscation is always accompanied by another primary penalty, whereas a fine may constitute a primary penalty on its own, although it is often a supplementary sanction.

Administrative confiscation may be general, encompassing the entire wealth of an individual, which is constitutionally prohibited, or specific, targeting particular property, usually movable, such as goods, products, or any item exported or imported into the country. Confiscation may be mandatory, as imposed by law, or discretionary, leaving the administration with the authority to decide whether to impose it. (ʿAlī, 2023, p. 850)

- **<u>Subsection two: Non-Financial Administrative Sanctions</u>**

Non-financial administrative sanctions consist of subsequent deterrent measures that are not financial in nature, and their impact on the offender's financial liability is indirect (Zankana, p. 346). They may take the form of a warning or notice, suspension of activity, or more severe measures such as license withdrawal.

- **Subdivision One: Warning and Notice**

A warning or notice represents the lowest level of administrative sanctions

that can be imposed on those who violate environmental protection laws. A written document is issued specifying the violation(s) identified by environmental oversight authorities, indicating the severity and gravity of the potential sanction if non-compliance occurs (Kateb, p. 17). The Algerian legislator has adopted this procedure in several legal texts related to environmental protection. For example, Article 25 of Law 03-10 stipulates that, based on a report from environmental services, the Wal (Governor) issues a warning to the operator of a facility not listed among classified establishments, which has caused hazards or damage, and sets a deadline for taking the necessary measures to eliminate the identified risks or damages. (Law No. 03-10, 2003, Arts. 17–18)

- **Subdivision Two: Suspension of Activity**

When the operator fails to correct the deficiencies in their activity despite the warnings issued, the administration resorts to a more severe sanction represented by the suspension of activity until the necessary remedial measures are taken. Temporarily suspending the activity is merely a preventive measure aimed at compelling the operator to remedy the environmental damage caused, especially when the warning has proven ineffective and the continuation of the polluting activity may cause irreparable environmental consequences. The administration resorts to this measure when prior warnings fail to deter violations of environmental protection rules, given its effectiveness in putting a definitive end to hazardous activities and preventing their future practice. (Al-Arabi, 2021, p. 131)

Examples include Article 06, Paragraph 2 of Executive Decree No. 93-165, which stipulates: If the operator or manager does not comply within the specified deadlines for this warning, a temporary suspension of the operation, either wholly or partially, may be declared based on the proposal of the environmental inspector and by decision of the Wali competent at the regional level. (Toumi, 2022-2023, p. 252) Similarly, in the field of waste management and prevention of associated risks, the legislator stipulated temporary prohibition when violators fail to comply with legal measures for environmental protection, as provided in Article 48, Paragraph 2 of Law No. 01-19: In case of non-compliance, the mentioned authority shall

automatically take the necessary precautionary measures at the expense of the responsible party and/or suspend all or part of the illegal activity. (Al-Arabi, 2021, p. 131)

- **Subdivision three: License Revocation**

The licensing system is considered a power of administrative control exercised by the administration over individual liberties with great caution. The administration does not have discretionary authority in granting a license as long as the legal conditions are fulfilled. While the powers of the administration in granting licenses are constrained, its authority to revoke or annul them is extensive, given its wide-ranging power to partially or fully prohibit any developmental activity if it is deemed a real threat to the environment. Accordingly, environmental legislation allows the withdrawal or cancellation of licenses if the operator violates technical conditions and precautionary measures for environmental protection.

License revocation is considered one of the most severe administrative sanctions in the field of environmental protection, as it leads to a complete prohibition of the activity and deprives the operator of the right to conduct the activity. This reflects the principle that the right to development, growth, and prosperity is contingent upon respecting the rights of other individuals and even future generations to live in a healthy environment.

The application of this system in Algerian legislation is extensive, including, for instance, Article 87 of the Water Law, which states that a license or water usage privilege may be revoked without compensation after a notice is issued to the license or privilege holder, in the event of non-compliance with the conditions and obligations arising from the provisions of this law, the implementing regulations, as well as the license or terms and conditions manual. (Law No. 05-12, 2005/2008/2009)

2. CONCLUSION

In order to guarantee the legal protection of the environment, laws have been enacted that include administrative environmental sanctions for the sake of the public interest and the protection of society in general, from the serious consequences resulting from environmental damages caused by violations against it.

This is what has been addressed in this study, in which we dealt with both the administrative bodies and institutions as well as the administrative procedures capable of protecting the environment through the imposition of sanctions.

We concluded through this study a set of results as follows:

- The establishment of several central and local bodies that supervise and implement environmental protection laws, but what is noticed in reality is the lack of activation and coordination between these bodies.
- The Algerian legislator has worked to strengthen environmental protection laws through legal and legislative texts, such as Law 03/10 related to environmental protection within the framework of sustainable development. These laws and legislations included legal preventive mechanisms before the occurrence of danger, and corrective ones after the occurrence of danger to limit the spread of the environmental damage that occurred.
- The administration has the right to impose deterrent administrative sanctions in the environmental field. The legislator has required that some activities be subject to licensing, and has granted the administration the power to take deterrent administrative measures according to its discretionary authority, such as formal notice, suspension of activity, withdrawal of licenses, and other procedures.

3.RECOMMENDATIONS

- It is necessary to activate the role of the monitoring bodies in the local communities by issuing legal texts that define the content of this monitoring precisely, to control activities that pose a threat to the environment.
- Involving all actors in the field of environmental protection alongside the administration, such as the contribution of associations to implement environmental decisions indirectly, by participating in the preparation of reports, studies, and strategies related to environmental protection, and through their membership in some bodies, and by imposing respect for legality by resorting to the judiciary.
- Supporting and activating the texts of environmental liability, through the periodic evaluation of the laws related to the environment.

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