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The Role of Judicial Control in Environmental Protection

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Abstract:

This study highlights the role of judicial control in environmental protection, where the Algerian legislator has designated this category and granted it powers and tasks to fulfill the necessary role of environmental protection. Since the environment is one of the essential necessities in the life of the citizen that must be given significant attention and importance to preserve it, this preservation requires specialized agencies and bodies that perform the tasks of environmental conservation. The legislator has defined and granted judicial police officers' tasks and powers under the Code of Criminal Procedure, particularly Articles 12, 15, and 21. These tasks include investigating and searching for crimes, initiating public prosecution, conducting investigations, and collecting evidence of all crimes stipulated in the Penal Code. These tasks are carried out under the supervision of the Attorney General, and the Public Prosecutor manages them at the level of each court.

Keywords: Judicial control; Environment; Investigation; Inquiry

Introduction

Protecting the environment from any potential harm necessitates the legislator to establish mechanisms and agencies tasked with maintaining the environment against any threats, which consequently affect the health and safety of the citizen. To this end, the legislator introduced what is known as judicial control, assigning it, among its various tasks, the mission of environmental preservation.

Judicial control is carried out by individuals known as judicial police officers or agents. Article 12 of the Code of Criminal Procedure defines the persons responsible for judicial control, including judges, officers, assistants, and employees specified in the first chapter related to judicial control.

Furthermore, the legislator has identified the individuals who possess judicial police powers in Articles 15 to 21 of the Code of Criminal Procedure, as well as Article 111 of Law 03/10, concerning those with general jurisdiction. These individuals are authorized to ascertain all crimes punishable by the Penal Code and its complementary laws. Additionally, some individuals with special jurisdiction are limited to detecting crimes within their sector-specific jurisdiction.

This leads us to the following problem statement: Have judicial police officers, with their powers and tasks, succeeded in protecting the environment from the dangers that threaten it?

To answer this problem, we followed the descriptive-analytical method and content analysis approach, as they are suitable for such studies.

The aim of this study is to highlight the powers and tasks granted by the legislator to judicial police officers, as well as the material and legal means at their disposal to achieve their primary goal, which is to protect the environment from any threats.

The outline of this article is as follows: Introduction to the topic, Problem statement and analytical methodology, Hypotheses, Explanation of the objectives of the scientific article

SECTION ONE: PERSONS OF JUDICIAL CONTROL

The Algerian legislator has established two categories of individuals tasked with protecting the environment from any imminent danger. The first category consists of judicial police officers with general jurisdiction, which will be

discussed in the first subsection. The second category includes those with special jurisdiction specifically for environmental matters, which will be covered in the second subsection.

Subsection One: Judicial Police Officers with General Jurisdiction

The legislator has defined individuals who possess judicial police powers in Articles 15 to 21 of the Code of Criminal Procedure, as well as Article 111 of Law 03/10. These individuals have the authority to ascertain all crimes punishable by the Penal Code and its complementary laws. Additionally, some individuals have special jurisdiction limited to detecting crimes within their sector-specific domains. We will discuss these individuals in the following detailed breakdown:

First Branch: Individuals Performing Judicial Control with General Jurisdiction

The legislator has listed a group of qualified public individuals and granted them the status of judicial police officers to ascertain crimes stipulated in the Penal Code and its complementary laws, including environmental crimes, the focus of this study. The Algerian legislator categorizes judicial police officers with general jurisdiction into:

First: Judicial Police Officers

Judicial police officers are individuals granted this status by law, as defined exclusively in Article 15 of the Code of Criminal Procedure. They include:

a. Heads of Municipal Councils:

This status is granted to the heads of municipal councils upon their appointment and ends when their term concludes. The importance of granting judicial police officer status to the head of a municipality lies in their proximity to the citizens¹, making them the closest officials to detect and investigate crimes within their municipal jurisdiction.

Despite this, it is observed that most municipal heads do not perform their duties in the realm of judicial control, which necessitates reconsidering the granting of judicial police officer status to them, or at the very least, reducing the powers granted to them.

b. Officers and Ranked Personnel in the National Gendarmerie:

Officers and ranked personnel, regardless of their rank or length of service, hold the status of judicial police officers. However, for National Gendarmerie personnel, they must have at least three years of service in the Gendarmerie and must be appointed through a joint decision by the Minister of Justice and the Minister of Defense, following approval by a special committee.

c. Police Commissioners and Officers:

Police commissioners and officers also enjoy the status of judicial police officers regardless of their length of service. For national security inspectors, they must have served in their position for at least three years and must be appointed by a joint decision from the Minister of Justice and the Minister of the Interior.

d. Officers and Non-Commissioned Officers of Military Security:

Officers and non-commissioned officers of military security are also granted the status of judicial police officers through a joint decision by the Minister of Justice and the Minister of Defense.

It is worth noting that the Public Prosecutor now holds the status of a judicial police officer under Law No. 06/22, which amends the Code of Criminal Procedure². Article 36 states: "The Public Prosecutor oversees the activities of judicial police officers and agents within their regional jurisdiction and has all the powers and authorities associated with the status of judicial police officers." However, despite being the highest-ranking official in the public prosecution service, the Attorney General is not granted this status by the legislator.³

Second branch: Judicial Police Agents

The Algerian legislator refers to judicial police agents in Article 19 of the Code of Criminal Procedure, identifying them as:

- Employees of the police services.
- Ranked personnel in the National Gendarmerie.
- National Gendarmerie personnel.
- Military security personnel who do not hold the status of judicial police officers.

As mentioned in Article 111 of Law 03/10, the individuals specified in Article 21 of the Code of Criminal Procedure include:

- Heads of departments.
- Engineers.
- Technical agents.
- Technicians specialized in forestry, land protection, and reclamation.

Article 16 of the Code of Criminal Procedure defines the duties of judicial police officers and their local jurisdiction within the boundaries where they perform their regular functions. However, in urgent situations, they may perform their duties within the entire jurisdiction of the judicial council to which they are attached, and they may also operate nationwide if requested to do so by the competent judge. They must be assisted by judicial police officers who work in the concerned residential area. In both cases mentioned in the previous paragraphs, they must inform the Public Prosecutor in whose jurisdiction they are operating beforehand.

Subsection Two: Individuals Performing Judicial Control with Special Jurisdiction for the Environment

Most environmental legislations specify individuals qualified to detect violations of their provisions, who perform their duties alongside judicial police officers. The individuals specified in Article 111 of Law 03/10 include:

- Employees and agents mentioned in Article 21 and subsequent articles of the Code of Criminal Procedure.
- Environmental inspectors.
- Technical staff of the administration responsible for the environment.
- Officers and agents of civil protection.
- Maritime affairs administrators.
- Port officers.
- Agents of the National Coastal Guard Service.
- Captains of National Navy ships.
- Engineers of the Marine Signals Service.
- Captains of State marine research vessels.

- Technical agents of the Scientific and Technical Research Institute and Marine Sciences.

- Customs agents.

- Algerian consuls abroad are tasked with investigating violations of the provisions related to sea protection, gathering all information to identify the perpetrators of these violations, and reporting it to the Minister in charge of the environment and the relevant ministers.

Additionally, a significant number of individuals appointed by the legislator to detect environmental crimes are specified in special environmental laws. These include mining police, urban planning police, fishing inspectors, water police, etc. Given the numerous agencies assigned to detect environmental crimes, we will address the most important ones:

First Branch: Environmental Inspectors

According to Article 111 of Law 03-10, environmental inspectors are authorized to detect violations and misdemeanors related to the environment⁴, whether these are specified in special environmental laws or other relevant laws. Environmental inspectors carry out their duties for the National Agency for Environmental Protection after taking an oath⁵. They operate under the supervision of the minister in charge of the environment⁶. As the primary and most important body for combating environmental crimes, environmental inspectors draft reports on observed violations, which include the name and title of the environmental inspector, the identity of the offender, the location and circumstances of the inspection, and the relevant law and offense. They are tasked with:⁷

- Investigating and detecting violations of environmental legislation and regulations.

- Ensuring the enforcement of regulatory provisions for environmental protection, conservation of animals and plants, preservation of natural materials, and protection of air, water, and the marine environment from all forms of degradation.

- Ensuring compliance with the conditions for establishing and operating classified installations for environmental protection according to applicable legislation and regulations.

- Ensuring compliance with waste treatment and disposal conditions.

Second Branch: Forestry Police

The legislator has granted judicial police status to forestry officers under the Forestry Law, stating: Forestry police duties are performed by judicial police officers and agents, as well as the technical forestry authority specified in Article 21 of the Code of Criminal Procedure.⁸

The law requires forestry officers to wear official uniforms, carry a badge and daily logbook, carry a hammer and measuring tape⁹, and be armed when conducting regular and special field patrols.

The forestry police follow methods of investigation and inspection, examining any crime that requires precise determination of the crime scene, seizing any tools used if found at the violation site, preserving evidence, searching for witnesses, and ultimately drafting a report detailing all data, facts, and investigation results.¹⁰

Third Branch: Urban Planning Police

Due to shortcomings in environmental legislation, the General Directorate of National Security established specialized teams called "Urban Planning and Environmental Protection Police." Additionally, the National Gendarmerie created an Environmental Protection Unit. The Urban Planning Police coordinate with local technical services in urban development and environmental protection, providing assistance in enforcing and respecting laws and regulations. The tasks of the Urban Planning and Environmental Protection Police units include:

- Ensuring optimal enforcement of legislative and regulatory provisions in urban development and environmental protection.
- Preserving the beauty of cities, residential areas, and neighborhoods.
- Enforcing building permits for all types of construction while preventing unauthorized construction and reporting it to the relevant authorities.
- Ensuring compliance with regulations regarding building signage and workshop openings.
- Combating illegal encroachment on lands and public roads and warning violators.
- Organizing awareness and information campaigns for citizens in coordination with the media.

In this context, it is worth noting Urban Planning Inspectors, who are among the most qualified agents to inspect environmental crimes. They were granted judicial police status under Executive Decree No. 09-241, allowing them

to investigate violations and misdemeanors in urban planning¹¹ and seek assistance from public forces if their duties are obstructed.

Fourth Branch: Mining Police

The Mining Police consists of mining engineers from the National Agency for Geology and Mining Control, who are required to take a legal oath¹². These engineers are qualified to perform administrative and technical oversight, as well as monitor mining exploration and exploitation. According to the Mining Law, they investigate violations of legislative and regulatory provisions and conduct inspections of mining operations¹³. They also visit mines to monitor compliance with environmental protection measures during mining operations. Some of their main tasks include:

- The mining police ensure compliance with the rules and standards that provide cleanliness, safety, and exploitation conditions according to mining regulations to preserve the environment and its components. They monitor:
- Compliance with environmental management plans and the enforcement of laws related to environmental protection rules.
- Exploration and exploitation operations, as well as the management of explosives and their use.
- Reporting environmental protection rule violations to the relevant administration.

Fifth Branch: Water Police

A unit called the Water Police was established because of the nature of these crimes, where qualified individuals with high competence are required for inspection to control and prove crimes¹⁴. The Water Law designates the Water Police, who report to the authority responsible for water resources, granting them judicial police status after taking the legal oath¹⁵. The Water Police can seek assistance from public forces if there is resistance from the violator during inspections. Their tasks include:

- Searching for violations and inspecting critical crimes affecting public water properties.
- Documenting violations in reports that include evidence, facts, and necessary data.

Sixth Branch: Urban Planning Inspectors

Urban Planning Inspectors are significant agents in inspecting environmental crimes related to urban planning. Algerian legislation grants them judicial police status through Executive Decree No. 09-241. They operate under peaceful authority, searching for violations of legislation and regulations in urban planning and inspecting them¹⁶. They can seek assistance from public forces if their duties are obstructed.

It is worth noting that the legislator has set two conditions for agents and employees to enjoy the status of urban planning inspector¹⁷:

- Passing the professional exam conducted for state engineers and architects with at least five years of actual service in this capacity.
- Selection after registration on the selection list, within 20% of the positions to be filled, among state engineers and architects with at least 10 years of actual service in this capacity.

SECTION TWO: DUTIES AND POWERS OF JUDICIAL POLICE OFFICERS AND OBSTACLES FACING THEM IN PERFORMING THEIR DUTIES

The duties and powers of judicial police officers vary depending on the nature of each activity and each committed crime. These duties range from receiving complaints and reports related to the environment to conducting investigations and drafting reports specifically for environmental crimes, among other tasks assigned to them, as discussed in the first part. In addition to these duties, there are numerous obstacles that hinder the effective performance of judicial police officers, which we will address in the second part.

Subsection One: Duties of Judicial Police Officers

The Algerian legislator, through Law No. 10-241, stipulated that judicial police officers carry out the tasks outlined in Articles 12 and 13. Their duties include receiving complaints and reports, gathering evidence, initiating preliminary investigations, and drafting reports on environmental crimes. Additionally, through environmental laws, the legislator emphasized the need to maintain professional secrecy.

First Branch: Receiving Complaints and Reports Regarding the Environment

A complaint is a notification submitted to the judicial authorities about a committed crime or one about to occur, either from the victim, the aggrieved party, or a third party not directly involved. The complaint does not have to be in a specific format or manner; it can be verbal or written. Reporting plays a significant role as it assists judicial authorities in early detection, containment, and mitigation of the effects of the crime.

However, the specificity of environmental crimes, especially pollution, often makes reporting them difficult. Many of these crimes can occur and be realized without anyone knowing, except for specialists equipped with specific tools for detection¹⁸. Ordinary citizens may find it challenging to discover environmental violations, which poses a problem for prosecuting crimes against the environment.

On the Algerian legislator's part, some individuals are obligated to report damages resulting from violations of legal and regulatory rules related to environmental protection¹⁹. The legislator has also imposed penalties on those who fail to comply with this obligation. For example, the Algerian legislator obliges ship captains carrying dangerous, toxic, or polluting goods passing near Algerian territorial waters or within them to report any maritime accidents that may cause pollution or damage to marine or coastal environments²⁰. Judicial police officers, upon receiving complaints and reports regarding environmental crimes, must document them in writing to preserve the information. They must record the time and place of the crime in the report and provide its legal description, as this will be beneficial in the subsequent stages of legal proceedings.

Second Branch: Investigative Procedures

Investigative procedures begin the moment the judicial authorities become aware of the crime. The purpose of these procedures is to investigate all the circumstances and details surrounding the crime, as well as gather information about the reported crime and the tools and means used in its commission²¹. In this regard, judicial police officers have the authority to enter places where it is permissible for officials to conduct investigations in public areas. They can also take samples of soil, air, or water to verify their safety and compliance with the standards required by law.

Third Branch: Drafting Reports on Environmental Crimes

The Algerian legislator, in Law No. 10-241, obliges judicial police officers to draft reports on their activities and promptly notify the public prosecutor of the felonies and misdemeanors that come to their attention. The legislator also emphasizes the necessity of drafting reports through Article 101 of Law No. 03-10 concerning environmental protection, which requires documenting violations in reports prepared by judicial police officers and environmental inspectors in duplicate. One copy is sent to the governor of the province, and the other copy is sent to the public prosecutor.

The drafting of reports on environmental crimes, especially by specialized judicial police officers, is a crucial procedure. It involves documenting all evidence and clues to enable the investigating authority and the judiciary to make appropriate decisions regarding the prosecution of the case. The specificity of environmental crimes requires thorough documentation in police reports because judicial police officers with specialized expertise in environmental matters possess the knowledge and competence necessary for this task, unlike the investigating and judicial authorities.

While sending reports to the public prosecutor is a standard procedure as they oversee judicial matters, the role of the governor in receiving these reports raises questions. Here, the governor appears to act as an intermediary alongside the public prosecutor in matters related to reports, through measures and actions undertaken by them.

Fourth Branch: Compliance with Professional Secrecy

The nature of the work of specialized judicial police officers, tasked with monitoring compliance with environmental laws, exposes them to the secrets of institutions, establishments, and factories they inspect, including their records, data, and storage areas. Disclosing these secrets or allowing unauthorized access to them could impact competition and hinder the economic and financial interests of the institution or establishment, thereby impeding development.

The legislator's concern for safeguarding this information obtained by specialized judicial police officers is evident in their explicit prohibition against using it except to verify compliance with the legal and regulatory rules governing environmental protection. Furthermore, the dissemination or unauthorized access to this information is strictly limited by law²².

This commitment to professional secrecy is clearly articulated within the relevant environmental protection laws, where the legislator emphasizes the responsibility of judicial police officers in maintaining confidentiality²³.

In conclusion, for the aforementioned tasks and authorities to be effectively carried out by the judicial authorities, the members of the judicial police must possess capabilities and resources that can be classified into two types:

1. Individual skills necessary for each member of the team, which form the basis for the efficient performance of their duties, including abilities in research, investigation, evidence collection, etc.

2. Collective knowledge and expertise within the team, which may not be required of each individual member but collectively cover specialized knowledge in specific industries or activities, familiarity with environmental policies, administrative and judicial regulations, environmental legislation, protocols, and the rights of environmental inspectors or judicial police officers.

Subsection Two: Obstacles Facing Specialized Judicial Police Officers

The tasks assigned to specialized judicial police officers always come with difficulties and risks, a reality also applicable to those operating within the realm of environmental law. Managing environmental crimes demands patience and perseverance in dealing with facility owners and violators, in addition to enduring the challenges of environmental work. This includes adverse health effects on judicial police officers due to exposure to pollution sources and hazardous environmental conditions.

Despite the risks they face, specialized judicial police officers encounter other significant problems that impede their work, and these problems include:

First Branch: Shortage of Necessary Measurement Devices and Equipment

Surveillance devices and measurement tools necessary for proving environmental damage crimes are crucial for judicial police officers. Without these tools, detecting and accessing such crimes becomes challenging. Notably, these essential resources are often insufficiently available to all judicial police officers. Moreover, controlling all environmental violations, especially those related to surpassing environmental standards and ratios, proves difficult. Some laws, such as Iraqi law, mandate establishments producing environmental pollution to provide specific measuring devices for pollution monitoring. If

unavailable, consulting governmental or private advisory offices and laboratories becomes necessary²⁴.

Second Branch: Non-cooperation with Judicial Police Officers

Judicial police officers often face numerous and unfortunate challenges when entering various artisanal and industrial establishments to carry out necessary inspection tasks. These challenges primarily stem from the lack of cooperation from those in charge of these establishments. Sometimes, employees within these establishments obstruct and impede the entry of judicial police officers and hinder them from carrying out their necessary tasks smoothly and easily. They justify their actions by claiming they have not received instructions from their superiors to cooperate. Additionally, in some cases, they tamper with or hide important information and data that would assist judicial police officers in their monitoring and inspection process, out of fear that it may be used as evidence against them²⁵.

Such behavior can sometimes be attributed to ignorance of environmental laws and regulations, despite most of them stipulating the possibility of enlisting police officers' assistance when necessary. These regulations also include strict penalties for anyone who fails to comply with the orders of judicial police officers or obstructs their work.

Third Branch: Shortage of Specialized Technical Support

Despite the issuance of comprehensive environmental protection laws in Arab countries since the 1990s, the competent authorities still struggle to effectively implement them due to confusion regarding how to activate these laws. This is primarily caused by a significant shortage of qualified national personnel, including technical experts and environmental specialists within the judicial police force. One of the fundamental obstacles hindering the enforcement of environmental laws and international and regional environmental agreements is the evident lack of trained national personnel in the field of environmental law enforcement. Although most Arab environmental protection legislation prioritizes the development of national human resources, there remains a wide gap between legal provisions and practical implementation. This hampers the application of existing environmental laws and regulations, despite their importance in mitigating their long-term negative impacts on the environment and human health for achieving sustainable development to preserve natural resources. Furthermore, the official bodies responsible for enforcing international and regional environmental agreements do not necessarily consider them as binding as national

legislation or domestic law. This failure to fully utilize these agreements contributes to the failure to protect our beautiful Arab environment²⁶.

Conclusion:

In conclusion, this study has addressed the role of judicial police in environmental conservation, highlighting and defining the responsibilities of those charged with judicial police duties, specifically focusing on those with general expertise. We then delved into the detailed tasks and authorities entrusted to them. Moreover, we discussed the obstacles and challenges negatively affecting the work of judicial police officers, such as the shortage of specialized technical support and lack of cooperation with judicial police officers, and the shortage of necessary measurement devices and equipment.

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