



Criminal Liability of Classified Establishments for Environment Offences -A Study in the Light of Algerian Legislation

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Abstract:

The classified establishment is considered a technical unit, classified by the Algerian legislator under Executive Decree No. 07-144, and because it poses a particular risk to humans and the environment, the legislator has subjected it to special procedures for its establishment, culminating in the granting of either a license or a permit depending on the category.

Given to varying degrees of harm caused by these establishments, which necessitates holding them accountable, and because criminal liability is considered the most important form of liability of all, I have sought to examine the extent to which the liability of these classified establishments is established by investigating their liability as legal persons. Since the liability of the later does not preclude the accountability of the persons in charge of them, including the manager and supervision, what is the nature of the manager's liability? Is he held accountable only for his own personal acts, or he be held accountable for the acts of those working under his supervision and oversight?

Keywords: classified establishments, manager, personal liability , Public Legal Persons,

Introduction :

Classified establishments offer significant benefits, both economically and socially; however, they also have considerable implications for human health and the natural environment. This stems from the danger these establishments pose to water, soil, air, the environment and the living environment, which has contributed to transforming the environment from a source of utility and comfort into a source of concern, epidemics and disease.

Since the regulations of criminal liability in the field of environmental crime are characterized by several specific features stemming primarily from the nature of the offences itself, they have come to represents the type of liability that most

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defies traditional regulations. Furthermore, as classified establishments have a major impact on the environment, being the most significant sources of pollution in terms of their severity and scope, this necessitates their legal accountability. Hence, since criminal liability is considered the most important form of liability, this has led us to investigate the criminal liability of these classified establishments by posing the following question: to what extent has the Algerian legislature recognized the criminal liability of classified establishments for environmental offences?

To answer this question, this research has been divided into two sections; with the first section devoted to the liability of classified establishments as legal persons. It seeks to examine the extent to which the provisions of environmental law relating to the liability of classified establishments are consistent with the provisions of the Penal Code concerning the criminal liability of legal persons, since the liability of classified establishments does not preclude the accountability of its representatives. I have devoted the second section to the liability of the manager of the establishment, in his capacity as the person responsible for its management

Section One: Liability of Classified Installations as a Legal Person

Whilst a natural person is the traditional subject of the Penal Code; to whom its substantive and procedural provisions should apply when they commit an act or omission constituting a danger or harm, an important question arises to extent a legal person can be held criminally liable for offences committed by its agents; given that legal persons now pose a particular threat to the environment, where at the national level or international one.

Classified institutions are legal persons to which Algerian legislature has applied special regulations due to the danger these institutions pose to the environment. I shall therefore devote this section to examining the conditions of criminal liability for classified institutions and, finally, the penalties prescribed for these institutions.

1.1: Conditions of Criminal Liability for Classified Institutions

The liability of classified establishments requires us to begin by examining the conditions for the liabilities of such establishments, by addressing the establishment criminally liable for environment offences, the necessity of a provision establishing the criminal liability of classified establishments, and the



commission of an environmental offence on behalf of the classified establishment by its organs and representatives.

1.1.1: The Classified Entities Criminally Liable for Environment Offences

The criminal liability of classified establishments has gone through two stages; the first stage involved the exclusion of criminal liability for such establishments and the holding to account of those in charge of them as natural persons rather than legal persons, namely the manager and the owner, in accordance with Articles 61 and 87 of Environmental Law No. 83-03¹, followed by Law No. 03-10 on the Protection of the Environment within the Framework of Sustainable Development², which established the criminal liability of legal persons represented by classified establishments in accordance with Article 18 thereof.

So, what is meant by “*classified establishments*”?

In accordance with Article 18 “*classified establishments*” refers to factories, workshops, quarries and mines, and, in general, facilities operated or owned by any natural or legal person, public or private, which may pose a risk to public health, hygiene, safety, agriculture, the environment, natural resources, sites, landmarks and tourist areas, or which may cause a disturbance to the neighborhood

As defined by Executive Decree No. 07-144³, which sets out the list of classified establishments as any fixed technical unit in which one or more of the activities specified in the Executive Decree No. 07-144, which sets out the list of classified establishments, are carried out.

Accordingly, establishments have been classified into four categories: an institution classified in the first category, which includes at least one establishment subject to an administrative license; an institution classified in the second category, which includes at least one establishment subject to a license from the regional competent wali; and an institution classified in the third category, which includes at least one establishment subject to a license from the president of the regional competent People’s Council, in addition to an institution.

classified in the fourth category, which includes at least one establishment subject to a license from the regional competent Municipal People’s Council⁴. The legislator subsequently amended the Penal Code by Law No. 04-14 by Law No. 04-15⁵, which established the criminal liability of legal persons, as well as by Law No. 04-15 amending the repealed Code of Criminal Procedure⁶, whereby the Penal Code classified legal persons into public and private entities.



1-Public Legal Persons

In accordance with Article 49 of the Civil Code, public legal persons are the State, the wilaya and the municipality, as well as public establishments of an administrative nature. Consequently, public legal persons are divided into territorial legal persons, local or regional authorities, each of which manages public services of various kinds within a part of the State's territory these authorities are the wilaya and municipality.

As for service-oriented or special-purpose legal entities, that is public utilities recognized as having legal personality, they are dedicated to achieving a specific purpose. Initially, services-oriented entities or public establishments were limited to purely administrative public utilities; subsequently, they evolved to include public utilities of an industrial and commercial nature⁷.

2-Private Legal Persons

Private legal persons may be profit-seeking, in which case we are dealing with civil and commercial companies, or they may not seek to make a profit, such as associations. So which establishments are classified as criminals?

According to the text of Article 51 bis of the Penal Code, it excludes the State, local authorities and legal persons governed by public law; thus, criminal liability applies to private legal persons but not public ones.

As for Law No. 03-10, it does not explicitly provide for the liability of legal persons, but rather stipulates that the activities of factories, workshops, quarries, mines and any facility owner or operated by any natural person or public or private legal person are subject to this law.

This raises the question of the scope of application of this legal provision: does it apply to both public and private establishments, even though the Penal Code has excluded public legal persons from criminal liability?

It is worth noting that the term "*classified establishments*" in the Environmental Protection Act is analogous to the concept of a legal person, since for a classified establishment to obtain an administrative license to carry out an activity that pollutes the environment, it must possess legal personality, as one of the conditions for submitting an application for an operating license, is that it must include the full name of the project owner, company name or legal form and address of the head office if the applicant is a legal person.



1.1.2: The Necessary Provision Establishing the Liability of Classified Establishment

the establishment of criminal liability for a legal person requires the existence of an explicit provision stipulating the liability of the legal person, as provided for in Article 51 bis of the Penal Code.

Upon reviewing the Environmental Law No. 03-10, we find that it does not explicitly provide for the criminal liability of legal persons, save as provided for in the aforementioned Article 18 thereof. The question arises as to the scope of application of this provision, particularly in the absence of an explicit provision establishing the criminal liability of legal persons.

The Algerian legislature must therefore keep with developments regarding the criminal liability of legal persons, which it explicitly recognized in 2004, whilst the Environmental Law was enacted in 2003, by adding a clear and explicit Article stipulating the liability of legal persons in the event of a breach of the Environmental Law, and this does not concern the Environmental Law alone, but also other specific laws relating to the environment, as was done through Law No. 01-11 on sea fishing and aquaculture, as amended and supplemented⁸.

1.1.3: Commission of the Offence on Behalf of the Classified establishment by its Bodies or Representatives

A legal person is considered an intangible entity and therefore cannot commit criminal acts itself. For this reason, the Algerian legislator has identified the natural persons whose criminal activity gives rise to the criminal liability of the legal person⁹, namely the bodies or representatives of the legal person.

The establishment is therefore only liable through the natural person specified by law, namely those who play a significant role within the establishment, as they are entrusted with its management and supervision, and the establishment's continued operation depends on their will.

This includes all persons or any person to whom the law or internal regulations assign a specific role within the legal establishment's structure¹⁰, entrusting them with its management or administration. The law makes no distinction as to whether the body acted within the scope of its powers and functions or exceeded those powers¹¹.

By "bodies of the legal person" are meant its legal representatives, such as the president, the general manager or the director, as well as the board of directors and the general assembly of partners or members. As for the representatives of the legal person. These may be the president, the general manager or the director or the chairman of the board of directors or the general manager, and may be the liquidator in the event of the company's dissolution¹². As for a classified



establishment, the persons whose actions give rise to criminal liability for the classified establishment are:

1-The Operator: this is the person or persons who exercise control over the activity and bear liability for any damage resulting from that activity: and the operator is the holder of the license granting the right to operate and supervise the establishment; this includes any natural or legal person who carries out or supervises a professional activity, or who has been delegated technical management, including the holder of a license or authorization, or the person who has registered or declared such an activity¹³

2-Head of the Establishment or Institution: criminal liability is imposed on the head of the establishment insofar as he is the person whose actions are deemed to be those of the establishment, and upon whom the modes of operation of the establishment have been personally imposed or entrusted.

3-The Manager: Algerian legislation does not define the term “*manager*” legally, the manager may be the head of the establishment or institution, a member of the management, the general manager or the liquidator. The manager is the natural person who manages the business and affairs of the legal person¹⁴.

for the liability of the classified establishment to rise, the offence must be committed on its behalf, with the aim of securing a benefit for it, such as making a profit or avoiding harm to it, whether that benefit is material or immaterial, direct or indirect, actual or potential, as it is sufficient that the offence was committed to ensure the organization or proper conduct of its business; or to achieve its objectives, even if no benefit as ultimately realized. It logically follows from this

condition that if the offence is committed by one of its members or representatives for their own account or personal benefit, or to harm the legal person, the legal person may not be held criminally liable .

SECOND REQUIREMENT Penalties Prescribed for these Establishment

A criminal penalty is defined as a punishment prescribed by the law and imposed by the court on an offender¹⁵; it involves inflicting pain upon the offender, whether a natural or legal person, in return for their violation of the law which prohibited or commanded the commission of an act or the refraining from it, and this penalty consists of depriving the convicted person of one of their rights or of the right to carry out their activities¹⁶. As the nature of a legal person differs from that of a natural person, this has led to search into penalties proportionate to the nature of the legal person, some of which affect its financial liability, others its existence, and others its activities and reputation.



Penalties Affecting the Financial Liabilities and Existence of the Classified Establishment

Money is the most important objective of a legal person and the most dangerous means by which it commits criminal activities, as the pursuit of benefits and profits is usually the motive and objective behind breaching laws and regulations. Consequently, such funds must be subject to punishment for the offence through the imposition of financial penalty and confiscation; and because this type of punishment does not contribute to the eradication of the legal person's criminality, the legal person must be affected through the possibility of dissolution, closure or placement under guardianship.

1.2.1.1 Penalties affecting the financial liability of the Classified Establishment

Penalties affecting the financial liability of the legal person consist of a fine and confiscation.

The fine consists of obliging the convicted party to pay a sum of money specified in the judgment to the State, and the fine applies in case of offences, misdemeanors or felonies, and have been set by the Algerian legislature under Articles 18 bis and 18 bis 1 of the Penal Code at between one and five times the maximum fine prescribed for a natural person.

Confiscation is the State's seizure of property belonging to another person, by force and without compensation, if such property is connected to a crime committed or consists of items prohibited by law.¹⁷, and is provided for in Article 15 of the Penal Code, which states that confiscation is definitive

i. transfer to the State of specific property or a group of specific properties, their equivalent value where appropriate. Confiscation is a mandatory penalty for felonies and covers items used or intended to be used in the commission of the offence, or those obtained from it. In addition, to gifts or other benefits used to reward the perpetrator of the crime, confiscation also covers items whose manufacture, use, carrying, possession or sale constitutes a crime, as well as items deemed dangerous or harmful under the law or regulations. It is discretionary in relation to misdemeanors unless the law stipulates its mandatory nature, where in the case of minor offences, the law expressly requires it¹⁸.

1.2.1.2 Penalties Affecting the Existence of the Classified Establishment

These penalties are among the most severe that can imposed on a legal person, as they result in the legal dissolution of the legal person, either



permanently through its dissolution or temporarily through its closure, in addition to the possibility of placing it under supervision.

i. Dissolution of classified establishment: The penalty of dissolution of a legal person is equivalent to the death penalty for a natural person; this penalty is provided for in the Article 18 bis of the Penal Code whereas the Environment Law does not provide for this penalty.

ii. Closure of the classified establishment: Closure is a specific penalty consisting of preventing the legal person from carrying out its activities at the location where, or as a result of which, a crime relating to those activities was committed¹⁹. It should be noted that the penalty of closure of a classified facility is provided for the Algerian legislature as an administrative penalty under Article 48/2 of Executive Decree No. 06-198, which grants the regionally competent wali the power to order the closure of a classified establishment in two cases: If, after being given notice, the operator of the establishment fails to submit either an application for authorization or a licence application, and in the event of failure to carry out an environmental review or risk assessment within the time limits specified in Articles 44 and 47 of the aforementioned Decree. The Penal Code, for its part, provides for this penalty, which consists of the closure of the establishment or one of its branches for a period not exceeding five years.

Placing under supervision: Placing a legal person under supervision is considered a precautionary measure, intended to place the legal person

iii. under judicial supervision for a specified period. This system is considered an alternative penalty to closure; its rationale is to avoid the consequences of ceasing operations resulting from the application of the closure penalty to the legal person, which often extends to harming the rights of third parties, as well as the national economy²⁰.

1.2.1.3 Penalties Affecting the Activities and Reputation of Classified Establishments

These penalties consist of prohibiting the establishment from carrying out professional activities, excluding it from public contracts, and publishing the conviction.

i. The prohibition of the establishment from carrying out professional activities is a sanction involving the deprivation of rights, as it prevents the



convicted legal person from carrying out its commercial and industrial activities for fear that further offences may be committed through or in connection with it. This penalty is provided for in the Article 18 bis of the Penal Code and consists of a prohibition on carrying out one or more professional or social activities, either directly or indirectly, either permanently or for a period not exceeding five (5) years. Furthermore, the legislator has stipulated in Article 102 of Environmental Law within the framework of sustainable development that the use of the establishment shall be prohibited until a license is obtained in accordance with Articles 19 and 20 of that Law within the framework of sustainable development.

ii. The exclusion the establishment from public contracts entails depriving the establishment of the right to participate in any contract to which the State, public institutions, local authorities or associations are parties. This penalty renders the establishment unable to enter into public contracts relating to public works, supplies or the provision of services, whether directly or indirectly²¹. The Algerian legislature has set the penalty of exclusion from public contract at a maximum of five (5) years. This penalty is recorded in the establishment register, and details of the establishment's records or its management are communicated to the Public prosecutor's office, investigating judges, the Minister of interior, the financial administration, and the public authorities receiving tenders and public procurements bids²².

The publication of the conviction is an effective penalty and a real threat to a legal person engaged in commercial, industrial and financial activities,

iii. as it affects its reputation, standing and trust place in it by the public. The conviction shall be published either by posting it on walls in the places specified by the judgment itself and for the period determined by law penalizing the offence provided that this period does not exceed two months unless the law penalizing the offence provides otherwise, or by publication in the Official Gazette or by any other means of publication specified by the court, such as newspaper or a number or printed newspapers, or through one or more media outlets, including visual media, radio and television; the body entrusted with the publication must carry it out without objection²³.

It is worth noting that the danger posed by classified establishment to the environment and human health necessities a review of the Environment Law by



incorporating criminal liability for legal persons, in line with the Penal Code which explicitly established this liability in 2004, whereas the Environment Law has not been amended since its enactment in 2003. This is because the penalties set in the Penal Code cannot be applied to such establishments, as they require an explicit provision stipulating the liability of legal persons, furthermore, the penalties set out in the Environment Law cannot be applied because they are largely disproportionate to the danger these facilities pose to the environment, and above all, to human beings.

Section Two: Liability of The Manager of Classified Establishment

In accordance with Article 51, paragraph 2, of the Penal Code, the liability of a legal person does not preclude the prosecution of a natural person as the principal perpetrator or an accomplice to the same offence. In the field of the environment, classified establishments given the activities they carry out, which are typically hazardous, necessitate the establishment of their specific liability for the offence of pollution. Since, these classified establishments are run by natural persons, foremost among whom is the manager, I have chosen to examine the nature of this manager's liability. The manager's liability may be personal liability or liability for the acts of others, and this is what I shall address in turn.

2.1 Liability of the Manager of a Private Establishment for his Personal Fault

He is the natural person who holds full authority to make decisions concerning the classified establishment; he is criminally liable for the pollution emitted by the establishment, and he is the person entrusted with the management or

administration of the establishment, namely the president or the corporate officers appointed to perform administrative functions²⁴. He may carry out all the elements of the offence and thus be a principal offender, or he may be assisted by others and thus be a principal offender along with others, furthermore, the manager may assume the role of an accomplice in the offence, and this is what I shall address in turn.

2.1.1 The Principle Perpetrator

A principal offender is any person who has directly contributed to the commission of the offence or has incited the commission of the act by means of a gift, a promise, a threat, or the abuse of authority, jurisdiction or deception

The perpetrator may act alone or may be joined by other perpetrators in the same offence.



2.1.1.1 The Manager's Liability as a Principal Offender

It is presumed that the manager is aware of the various regulatory and legal procedures imposed by the Environmental Law, and is aware that failure to comply with them harms the environment and constitutes a crime for which he bears personal liability, given that he exercises general authority over the control, supervision and management of the classified establishment²⁵.

The manager is therefore liable for the act of pollution if it is established that he has committed the criminal act, or for negligence in taking the measures required by environmental laws and regulations, including the provisions of by Law No. 88-07 on Health Protection, Safety, and Industrial Medicine, in particular Articles 3, 4, 5, and 38 , concerning the manager's breach of hygiene rules and health protection requirements necessary for the health and safety of workers, in particular their protection from dust, the discharge of waste water, waste, smoke, hazardous fumes and toxic gases, and noise²⁶ , as well as the provisions of the Environment Law regarding the liability of the operator of a classified establishment for pollution resulting from the activities of its workers²⁷. In the event of a change in the operator of a classified establishment, is the former operator or the new operator liable?

In accordance with Article 40 of Executive Decree No. 06-198, which governs the regulations applicable to classified establishments for the protection of the environment, the new operator must, within one month of taking over the operation, submit a declaration to the regional competent wali if the establishment is subject to licensing system, and to the president of the regional competent municipal people's council if the establishment is subject to the declaration system²⁸.

2.1.1.2 The Liability of the Manager as a Principal Perpetrator alongside Others

Primary involvement in a crime requires playing the principal role in its commission, and a crime cannot be conceived without a principal perpetrator

carrying it out. A crime may be committed by a single person, who is then its sole principal perpetrator, as is the case when the manager alone commits the crime, as previously noted.

The act may also be shared by several persons, in which case they are all considered principle perpetrators. A classified establishment may be managed individually by the manager, for example, or collectively by a number of managers; this is the case in limited liability companies, general partnerships, simple partnerships, joint-stock companies and limited partnerships, as well as in civil companies³². These bodies operate collectively through discussions and



deliberations. When an environmental offence is committed, is the collective body held liable, or is each member held liable individually? This because a decision may be taken by consensus or by a majority of members without the consent of other members.

Contribution is based on two pillars: multiple perpetrators and a single offence. Consequently, all directors or managers who contribute equally to the commission of the offence are held liable and, as a general principle, are punished with the same penalty. However, where there are special personal circumstances pertaining to one of the perpetrators, the penalty differs for the person with those special circumstances²⁹.

For complicity to be established, it must be proven that there is a logical link between human error and the occurrence of harm or the violation of environment regulations; establishing this causal link will facilitate the prosecution of several persons, whether or not they are linked by a legal relationship³⁰.

With regard to environmental offences, there is a difference in the application of the element of legal unity compared to general rules, depending on whether there is agreement among the contributing members or managers, or a lack thereof.

Consequently, all managers of a classified establishment operated by a single person or managed by several persons are held criminally liable, and all members of the board of directors are held criminally liable in the case of a classified establishment managed collectively, as they contribute equally to the commission of the environmental offence and are subject to the same penalty as a general principle; however, in the event that special personal circumstances apply to one of the perpetrators, the penalty differs for the person in whom such special circumstances apply³¹.

If a meeting takes place between the managers and there is material and moral unity among those contributing to the offence, each of them is held accountable as a principle offender, as each is considered and offender alongside the others where the material and moral elements of the offence are present³².

However, in the absence of an agreement, the manager or dissenting members must be exempt from liability, as they do not qualify as a principle offender or even an accomplice. Thus, if an environmental offence is committed within the establishment and there was no agreement among the managers to commit the act, only the person responsible is prosecuted, and no one else.

2.1.2 The Manager as an Accomplice to the Offence

The concept of criminal complicity is based on attributing criminal liability to the manager on the basis of the unity of the offence and the plurality of perpetrators; there is a principal perpetrator in committing the crime. In this case,



the physical perpetrator is the subordinate, whilst the manager is the indirect perpetrator, ie. The one who, together with his subordinate, brings the crime to light.³³

Under Article 42 of the Penal Code, an accomplice to a crime is anyone who did not participate directly in the crime but who, in every way, aided and abetted the perpetrator or perpetrators in carrying out the preparatory, facilitating or executing acts thereof, with full knowledge of such acts.

For the instigator to be held liable as an accomplice to the crime, a set of conditions must be met:

- the accomplice's activity must be linked to a principal act punishable by the law;
- the accomplice's activity must take one of the forms prescribed by law;
- and the accomplice must have the intention to contribute to the principal act; finally,
- that there is a causal link between the act of participation and the commission of the principal offence.

2.1.2.1 The Act of Complicity Linked to a Principal Punishable Act

For complicity to arise, there must be a principal act punishable by law; if there is no original act punishable by law, then complicity does not arise. Since, if this characteristic is linked to a punishable original act, it loses this characteristic and becomes unlawful conduct in accordance with the original act to which it is linked, and the original act is only unlawful if it is punishable.

All that the law requires is that the original act be punishable, regardless of the original perpetrator; as the latter may not be punished due to lack of intent or the existence of defences against liability or punishment; the original act does not lose its criminal nature and remains a criminal offence subject to punishment, since these are considered purely personal grounds from which perpetrator is exempted, provided they are present in him and not in those who participated in the crime with him³⁴.

2.1.2.2 The Act of Complicity within the Forms Prescribed by Law

Accessory participation includes the act of an accomplice which has acquired criminal character by virtue of its connection to the criminal act committed by the principal offender; and since preparatory acts precede the physical acts of

committing the crime, the accomplice's act usually precedes or occurs simultaneously with that of the principal offender³⁵.

The accomplice's participation in the crime is established whenever they assist or cooperate in the commission of the crime, as provided for in Article 42 of



the Penal Code. Assistance is defined as providing aid, meaning the performance of any act for the offender that helps them commit the crime or overcomes any obstacles or difficulties that might prevent the crime from being carried out. Complicity by assistance is established when the accomplice intentionally intervenes with the perpetrator in a manner that facilitates the commission of the crime, and any form of assistance in its commission, whatever its form or nature, constitutes complicity³⁶.

Assistance may precede the commission of the crime or occur simultaneously with it; however, assistance following the commission of the crime is not a form of complicity in the crime but rather a separate offence in its own right.

In the case of assistance prior to the commission of the crime, there is a time gap between the provision of such assistance and the execution of the crime; this is what we refer to as preparatory acts. As for assistance occurring simultaneously with the crime, the law stipulates that the accomplice must not remain at the scene of the crime after providing assistance; if they remain at the scene of the crime after the principal offender has begun to carry out the crime, the person who provided the assistance is considered a principal offender alongside them. This is what the legislator referred to as “facilitating act” or “executing act” and the difference between them, according to legal doctrine, is that the former occurs at the start of the execution of the crime, whilst the latter accompanies the final steps in the commission of the criminal act³⁷.

2.1.2.3 Criminal Intent on the Part of the Manager

It is not sufficient for the manager of the establishment to be considered an accomplice to a crime merely because they have committed an act of complicity, such as aiding and abetting, and the crime has been committed by the principal offender. As a result, rather, it is also required that the manager had the intent to contribute to the principal offence³⁸.

This is because the manager of the partner establishment must have the intention to contribute to an environment offence committed or attempted by another person. On this basis, the criminal intent required by the legislator of the partner differs from the criminal intent or negligence required of the principal offender. The criminal intent of the manager always consists of deliberate criminal intent, that is, the manager’s will to commit the environmental crime and the realization of the result whilst being aware of the constituent elements of the crime committed by the principal offender³⁹.

It should be noted that there is a difference between the intent of the accomplice and that of the principal offender; the difference between them does not lie in the



elements and components of intent. As intent always consists of knowledge and will, but rather lies in the focus, where the principal offender's knowledge is directed towards the elements and components of the offence, whilst his will is directed towards committing the act constituting the offence and towards achieving the criminal result. Whereas the accomplice's knowledge focuses on his conduct, which takes one of the forms specified by law, and on the results arising from that conduct. As for his will, it must be directed towards the act constituting the contribution and towards its result, namely the crime committed by the principal offender⁴⁰.

2.1.2.4 Causal Link between the Manager's Conduct and the Offence

The liability of the manager for environmental offences as an accomplice requires the existence of a causal link between the manager's conduct and the offence committed by the principal perpetrator, meaning that the manager's conduct led to the realization of the result⁴¹.

This link is significant in that it constitutes an element of the material element of accessory liability; its absence results in the absence of criminal liability for the accomplice, and thus the principal perpetrator alone is held liable.

The causal relationship requires that the accomplice's action precede that of the principal perpetrator in time, for if it lagged behind, it would not have been the cause. What matters is not the length or the time interval between the conduct and the result, but rather the actual role played by the accomplice's conduct⁴².

2.2 Criminal Liability of the Principle for the Act of Another

The general rule is that a person is only punished for their own actions; however, in the context of development of economic activities, the concept of criminal liability for the acts of the others has emerged. This applies to industrial establishments whose activities are governed by legal and regulatory provisions aimed at ensuring safety and security, as well as protecting public health and environment. Consequently, the manager, owner or director of the establishment is liable for any breach of these legal provisions, whether the breach was committed by them or by one of their employees⁴³. I shall therefore address the conditions for the criminal liability of the manager for the acts of others.

2.2.1 Commission of an Environmental offence by a subordinate

The liability of the manager of an establishment for the acts of his subordinates requires that the third party commit the material act of the environmental offence, he is legally obliged to ensure compliance with legal provisions⁴⁴, which essentially entail the need to provide his employees with the



necessary means to perform their work properly, as well as due care in issuing orders

and instructions. In addition, to supervising the work of his subordinates himself or appointing a competent person to do so, and carefully selecting his employees, as any negligence on the part of the establishment's manager is deemed a presumptive fault giving rise to criminal liability as a result of his breach of legal provisions^{4 9} .

However, the liability of the owner of the establishment or the principal for the acts of their subordinates differs in case of intentional offences from that in the case of unintentional offences.

2.2.1.1 Manager's Criminal Liability for Intentional Offences of Subordinates

The principal is held liable for the intentional crimes of his subordinates in two cases:

Firstly, the principal is liable for the acts of his subordinates in crimes where the law does not require criminal intent on the part of the perpetrator⁴⁵ .

Secondly, the law requires criminal intent on the part of the principal in crimes where the legislator mandates criminal intent, based on the principle that when the law requires criminal intent for a specific crime, it must be establish that the principal possessed such intent, and it is not sufficient to attribute liability merely to his negligence in supervising his subordinates⁴⁶ .

2.2.1.2 Manager's Criminal Liability for Non-Intentional Offences of Subordinates

The law imposes a general obligation on the principal, namely the obligation to ensure compliance with legal provisions relating to environmental protection. The principal is therefore responsible for supervising their subordinates in order to prevent environmental offences. If an offence is committed by a subordinate as a result of a failure in supervision or oversight on the part of the manager, liability falls upon the manager⁴⁷ .

2.2.2 Causal Link between the Subordinate's Conduct and the Manager's Fault

This requires , on one hand, the existence of wrongful conduct on the part of the principal that is contrary to the conduct expected of him by the legislator, and which he should have performed to prevent the criminal result from occurring. On the other hand, the existence of a causal link between the principal's fault of the



person responsible for the act of another takes the form of passive conduct consisting of a failure to fulfil the duty of supervision and oversight.⁴⁸.

2.2.3 Absence of Delegation of Authority by the Manager

The liability of the principal for the acts of his subordinates is conditional upon the principal not having delegated to another the duty of supervision and oversight of his subordinates. On this basis, the French court have held that delegation or

French Court of Cassation ruled that the owner of an industrial enterprise could be exempted from criminal liability for the offence of polluting a watercourse into which harmful substances had been discharged, provided it was established that he had delegated his powers, authorized his subordinates to act on his behalf, or provided them with the necessary authority to ensure compliance with the obligations laid down for the sake of public safety and the public interest^{5 4 49}.

Finally, it may be said that the criminal liability of a manager may be personal liability resulting from his own criminal act, or it may be liability for the acts of others, namely his subordinates, resulting from his failure to supervise them properly.

Conclusion

The right to healthy environment is constitutionally guaranteed, which necessitates reconciling it with the right to development. Since, establishments are a means of achieving development, and certain pose risks to the environment, the legislator has subjected them to classification and specific procedures: culminating in the issuance of a license or permit depending on the category, and giving the environmental risks posed by these establishments criminal liability has been established, whether as a legal person or on the part of those in charge.

Establishing criminal liability for classified establishments require a review of the Environmental Law through its amendment to include an explicit provision stipulating that they are to be punished as legal persons, so that the provisions relating to the liability of legal persons contained in the Penal Code as amended and supplemented by Law No. 04-15 can be applied. This is because this liability was established after the Environmental Law of 2003 came into force, whilst maintaining the liability of general classified establishments, provided that appropriate penalties such as fines are applied to them, rather than dissolution or closure, which are not commensurate with the nature of general legal person.

It should be noted that penalties are subject to the principle of personal liability, a principle enshrined in the Constitution under Article 167, meaning that



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punishment applies only to the person who committed the offence and cannot be extended to others. However, due to considerations relating to the need to ensure the enforcement of the Environmental Law, as well as the broad scope of criminalization in the environmental field and the gravity of the consequences of environmental offences; criminal liability has been established for the acts of the others. This is achieved by holding the manager laible for both his own acts and those of his subordinates; this liability has no constitutional basis.

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