



## Ways to Preserve Environmental Diversity in Algerian Legislation

Mousa Achour\*

University of Algiers 1

Faculty of Law Said Hamdine

Phone Number : 0550 40 02 29

Email Address : moispl@yahoo.fr

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### Abstract

The subject of this research revolves around the study of the means used by Algeria to preserve the Environment and Biodiversity, so that we first discussed the study of the concept of the Environment in International law and in Algerian law; then to the concept of Environmental Protection law, by studying its definition, characteristics and relationship to other laws; and then we touched on studying the Legal Protection of the Environment in the Algerian legislation through studying the areas of Environmental Diversity protection in Algerian law through discussing penal, civil and administrative protection; then we studied the legal mechanisms for environmental protection by discussing the most prominent environmental problems in Algeria and the role of Algeria in Environmental Protection, and we concluded with a set of results related to improving environmental protection and preservation methods.

**Keywords:** Environment, Biodiversity, Environmental Protection, Environmental Diversity.

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\*Submitted author



## Introduction:

The term environment symbolizes everything that surrounds a person such as water, plants, animals, air and food, as the relationship between man and the environment is described as a reciprocal relationship, meaning that both parties affect and are affected by the other, for when the elements of the environment are clean and healthy this would reflect positively on humans and society as a whole.

As a result, the protection of the environment and the sustainable development of its natural resources has become a common goal among the various countries of the world today, and in order to achieve these goals, a set of international terms and conditions have been adopted globally by the countries of the world cooperating with each other in this regard. Today, international measures related to environmental protection and preservation have become recognized both at the local and global levels<sup>1</sup>.

The responsibility for preserving the environment lies with everyone, starting with members of society, groups and institutions, and it may not seem easy to apply, as sometimes the necessary measures to protect the environment conflict with human gain and the institutions' financial profit<sup>2</sup>.

Therefore, it is necessary to try to use the right tools and common sense, to develop a set of incentives to encourage committed institutions, and to enact some laws to help preserve the environment. Consequently, many countries, including Algeria, seek to provide the necessary legal protection for the environment with all its components, through many mechanisms, methods and means.

According to the above, the following questions can be put forward: What are the means of protecting the environment in Algeria?

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Israa Engila, research on preserving the environment, on 10/21/2021 on the following website:  
<https://www.mawdou3.com>

2

- An article entitled Preserving the Environment is Everyone's Responsibility, without author, on 03/25/2021 on the following website:  
<https://www.hyatok.com>



## **The First Topic: the concept of the environment and the law of environmental protection**

Defining the environment from the scientific and legal point of view is not an easy task, especially since it is one of the modern and thorny terms and concepts in the law specifically, and this term cannot really provide the necessary legal protection for the environment unless it well is defined and delimited. The concept of the environment is often associated with biological diversity, if it is not often considered a single concept <sup>3</sup>.

Defining the environment from a scientific and legal point of view is not an easy subject, especially since it is one of the modern and thorny terms and concepts in the law in particular, which cannot protect the environment unless the latter is defined and controlled. The concept of the environment is often associated with biodiversity if it is not considered in Most of the time the concept is the same.

### **First: The Concept of the Environment**

Interest in the concept of the environment has emerged at the international and national levels, as a new social value that must be preserved and protected from any action that could damage it. Accordingly, the definition of the environment will be discussed in the following aspects:

#### **The first section: the definition of the environment in international law**

Many international conferences and organizations have contributed to the definition of the environment. Among the most important of these definitions are the following:

#### **First: the United Nations Organization <sup>4</sup>**

The United Nations defined the environment on several occasions, including:

##### **1- Stockholm Conference**

The use of the term 'environment' appeared for the first time in the United Nations Conference for the Development of Human Resources held in Stockholm, Sweden between 5-16 June 1972, instead of the term 'human environment', "Le milieu humain", where this new term of environment was given a broad conception and became considered as the set of natural, social

<sup>3</sup>

- a. Bokoro Manal, Lectures on the scale of environmental law and sustainable development, third year A + B, University of the Montouri Brothers, Constantine, Algeria, 2016.

<sup>4</sup>

- It should be noted that, according to the definition of the United Nations International Convention on Biological Diversity, biological diversity means "the variation of living organic organisms derived from all sources, terrestrial and marine ecosystems, aquatic organisms and ecological compounds, quoting from: Dr. Ismail Najm al-Din Zangana, environmental administrative law, study Comparative analysis, Al-Halabi Human Rights Publications, 2012, p. 39.



and cultural systems in which humans and other organisms live, from which they derive their sustenance and perform their activities. meet human needs<sup>5</sup> .

The Stockholm conference is considered the first conference of its kind related to declaring the concept of the human environment in a scientific manner, and with a scientific plan, while singling out not a small part of the principles that resulted from the conference to work on confronting the phenomenon of marine pollution<sup>6</sup> .

## **2- In the United Nations program**

The United Nations Program defined the environment as the sum of natural and social resources available at a specific time in order to meet human needs. In its conception, the environment is viewed as a self-contained system, and not a particular field with precise boundaries, and therefore it is customary to say that every study related to the environment is an interdisciplinary study<sup>7</sup> .

## **Second: in other sources**

### **1- In jurisprudence**

In legal jurisprudence, there was no agreement on a definite concept of the environment, mainly due to the difficulty of developing a legal conception of this term. The legal character of the jurist that pushes them to be specific and precise in choosing words, hoping to reach a definition that is comprehensive to what falls under it and to prevent other notions from entering it, is a major cause in preventing them from agreeing on a specific definition<sup>8</sup> .

Accordingly, Professor Lanversin emphasized that the term environment is vague and ambiguous, and its scope is unclear and not precisely defined, as it corresponds to a clear idea in its content, but it is not completely defined in what surrounds it<sup>9</sup> .

Nonetheless, it was defined by Dr. Ahmed Abdel Karim Salama as: “the sum of the natural, vital, social, cultural and economic factors, which exceed in balance, and affect humans and other organisms, directly or indirectly.”<sup>10</sup>

<sup>5</sup>

Khaled Maysoum, and Nass Yahya, Legal Protection of Biodiversity in the Framework of Sustainable Development, Comparative Study, Ahmed Deraya University, Adrar, Algeria, 2018, p. 45.

<sup>6</sup>

- Ali Adnan Al-Fail, Legislative Methodology in Environmental Protection (Comparative Study), Dar Al-Thaqafa for Publishing and Distribution, first edition, Jordan, 2012, pg. 49.

<sup>7</sup>

Dr. Ahmed Lahkal, pg. 28, quoting Dr. Ismail Najm al-Din Zangana, previous reference, pg. 39.

<sup>8</sup>

Dr. Maged Ragheb Al-Helou, Environmental Protection Law in the Light of Sharia, Manshaat Al-Maarif, Alexandria, 2002, p. 39.

<sup>9</sup>

See the provisions of the Convention on Biological Diversity.



## 2- In the World Food Organization (FAO)

According to the FAO, the definition of the environment was associated with the definition of biological diversity or biodiversity, so that it was considered as a multiplicity of patterns of living organisms in the environment, and it includes plant and animal organisms and their genetic characteristics in addition to the ecosystem in which they live. Therefore, it can be divided into numerical ones on the one hand and genetic ones on the other hand, as the genetic<sup>11</sup> makeup differs within individuals of the same species .

### The second section: Defining the environment in comparative systems

We consider its definition in the Algerian legislation and then in the rest of the comparative laws:

#### First: In Algerian legislation

The environment has been defined through many internal national legislations; we will discuss the most important of them as follows:

#### 1- In the law related to environmental protection

The Algerian legislator, in his definition of the environment, limited the meaning of the environment to the natural elements, within the framework law 03-10 of July 19, 2003 in the text of Article 03 of this law, that the environment consists of vital and abiotic natural resources such<sup>12</sup> as land, air, water, subsoil, plants and animals .

In the sense that the Algerian legislator restricted the meaning of the environment to the natural elements without the elements in which man enters into their existence and this is what led legal texts to fill this void by introducing unnatural elements caused by human action into the concept of the environment, which was evident in the amended and complementary provisions of Law 29/90 related to preparation and reconstruction, as well as Law 04/98 related to the protection of<sup>13</sup> cultural heritage and other laws .

He also defines the environment under Article 4 of Law No. 03-10 related to the protection of the<sup>14</sup> environment in the context of sustainable development as follows: "The environment consists of abiotic and vital natural resources such as air, air, water, land, subsoil, plants and animals, including genetic heritage, and the forms of interaction between these resources." , as well as

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<sup>10</sup> The previous reference.

<sup>11</sup> <http://localhost:8080/xmlui/handle/123456789/422>

<sup>12</sup> See the text of Law 03/10 related to environmental protection within the framework of sustainable development.

<sup>13</sup> Basem Mohamed Shehab, Public Participation in Solving Environmental Problems, article published in the Science magazine Legal and Administrative, University of Tlemcen, 2003.

<sup>14</sup> Law No. 10-03 of July 19, 2003 relating to the protection of the environment within the framework of sustainable development, GC 43 of which, according to Article 113, the provisions of Law No. 83-03 of February 5, 1983 relating to the protection of the environment were repealed.



places, landscapes and natural features.”<sup>15</sup> Here we find that the Algerian legislator did not give a precise definition of the environment, as we find Article 2 of it stipulates the objectives of environmental protection, while Article 3 of it included the components of the environment.

Although the legislator did not single out a special definition of the environment, however, by reference to Law No. 10/03, the environment can be considered as the environment in which a person lives, including water, air, soil, living and non-living organisms, and various facilities. Thus, the environment includes both the natural and the artificial environment.

## 2- In the Algerian constitution

With regard to the successive Algerian constitutions since 1963, the focus on environmental protection was not sufficient. The 1963 constitution did not provide for environmental protection at all, unlike the 1976 constitution, which made environmental protection one of the competencies of the National People’s Assembly in the field of legislation, especially in the field of public health, hygiene and the preservation of livestock. The same path was followed by the constitutions of 1989 and 1996 in the field of environmental protection<sup>16</sup>.

We note, in general, that the issue of the environment has received the care of the Algerian constitutional founder, given the importance of the environment in the life of individuals and their blissful living, as well as their development and continuity<sup>17</sup>. The duties of people and their role in protecting the environment, and this is through the text of Article 68 of the Constitution.<sup>18</sup>

The conclusion from this definition is that the Algerian legislator focused on the broad concept of the environment, which means its total inclusion of the natural environment that includes natural elements, such as water, air, soil and sea, antiquities, sites, tourism, artistic and architectural heritage, industrial facilities and others<sup>19</sup>.

## Second: Defining the environment in comparative laws

### 1- In French legislation

<sup>15</sup> [setif2.dz/modle/mod/book/tool/print/index.php?id=5712](http://setif2.dz/modle/mod/book/tool/print/index.php?id=5712)

<sup>16</sup> For more, see Issa Zahiyah, Constitutionalization of the Right to a Healthy Infrastructure and its Impact on Environmental Legislation, an article in the Journal of Comparative Legal Studies, volume7, numero1, pages 936-956 dated: 06/28/2021

<sup>17</sup> See Dr. Abdel Nasser Ziyad Hayajneh, Environmental Law, The General Theory of Environmental Law with an Explanation of Environmental Legislation, House of Culture, Publishing and Distribution, 2014, pages 290 and beyond.

<sup>18</sup> See the text of Article 68 of the Algerian Constitution of 2016, which stipulates the citizen’s right to a healthy environment and its preservation, and the duties of natural and legal persons to protect it.

<sup>19</sup> - For more details on the right to the environment, see: Dr. Abdel Nasser Ziyad Hayajneh, previous reference, p. 102 et seq.



The French legislator adopted a broad concept of the term environment in the law issued on July 10, 1976 regarding the protection of nature, and according to him, the environment is a term that expresses three elements, namely: (nature, natural resources, places and natural tourist sites)<sup>20</sup>.

## **2- In Egyptian legislation**

The environment was defined in the Egyptian legislation according to Article 1 of the Egyptian Environmental Law, which is Law No. 4 of 1994, as “the biosphere that includes living organisms, the materials it contains and the air, water and soil that surrounds it, and the facilities that man establishes.” This definition came in agreement with modern jurisprudential definitions<sup>21</sup> that expanded the concept of the environment protected by law.

## **Second: the Concept of Environmental Protection Law in Algeria**

Determining the concept of environmental protection law determines for us the status of environmental law among the branches of law, and enables us to know the development of environmental protection fields.

### **The first section: the definition of the environmental protection law and its characteristics**

Exposure to legal means to protect the environment necessarily requires defining the law that includes environmental protection and clarifying its characteristics.

## **First: Defining the Environmental Protection Law**

### **1- In the International Community**

The term environmental law was not known or one of the priorities of the international community, but this law began to be known after the emergence of the effects of environmental deterioration due to industrial progress, population explosion, wars and the resulting pollution of the elements of the environment, leading to what has become known as global warming, and through this the dating for an environmental law started with the first United Nations Environment Conference that was held in 1972 in Stockholm, Sweden, then the Earth Summit in Rio de Janeiro, Brazil in 1992<sup>22</sup>, and the Johannesburg Summit on Sustainable Development in South Africa in 2002. Through all these conferences and what followed, many international

<sup>20</sup>

Dr.. Aref Salih Mukhlif Hamad Al-Asafi, Environmental Management, Administrative Protection of the Environment, Dar Al-Yazuri, first edition, Amman, Jordan, 2009, p. 200 et seq.

<sup>21</sup>

<http://hdl.handle.net/123456789/2606>

<sup>22</sup>

Hassani, Abdel Jalil, International Mechanisms for the Protection of Biodiversity in the Seas for the year 2017. Website: <http://hdl.handle.net/123456789/863>



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environmental treaties and agreements were concluded and ratified by states. It was incorporated<sup>23</sup> into its internal legislation, thus effectively establishing environmental law .

The environmental law is defined as a branch of public law whose legal system is established to<sup>24</sup> protect and preserve the environment.

Environmental law regulates the means by which legal protection of the environment is provided, both in terms of the institutions responsible for this protection, or the legal texts prescribed for it.

Accordingly, the definition of environmental law is that it is a set of legal rules that aim to protect and preserve the environment through managing and regulating human activity, identifying behaviours that pose a threat to the environment, including criminalizing these<sup>25</sup> behaviours and searching penalties for them .

## **2- In Algeria**

Due to the emergence of environmental problems and their increasing severity, the matter required the development of a law that guarantees the protection of the environment. Therefore, the Algerian legislator decided to enact rules that regulate and protect the environment, despite the complexity and abundance of environmental problems.

Based on the definition given to the term environment and in front of the legislator's silence on setting a definition for the law of environmental protection, we can define it as a set of legislative and regulatory rules concerned with regulating the environment in which a living organism lives with its various components, as well as the facilities established by man, whether they are<sup>26</sup> industrial, social or economic facilities .

There are also those who defined the environmental protection law as a set of legal rules that seek to respect the protection of all that it bears from nature, and from nature, and to prevent any<sup>27</sup> attack on it .

So what is meant by protection is protection in its broad sense<sup>28</sup> , because it is not the result of<sup>29</sup> ordinary legislation, but rather it is embodied in international covenants and constitutional

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<sup>23</sup>

Author Wissam Wannous, information on the Environmental Protection Law on the previous website.

<sup>24</sup>

[https://www.me.gov.dz/a/?page\\_id=219](https://www.me.gov.dz/a/?page_id=219)

<sup>25</sup>

See Maher Muhammad Al-Momani, "The Legal Protection of the Environment in the Hashemite Kingdom of Jordan." The National Books Department, Jordan, first edition. Year: 2004.

<sup>26</sup>

<https://www.mohamah.net/law>

<sup>27</sup>

Legal research on environmental protection on the website: [https://www.me.gov.dz/a/?page\\_id=219](https://www.me.gov.dz/a/?page_id=219)



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rules, where we find the majority of the world's constitutions, and if they do not establish special protection for the environment, they at least guarantee the right to life in special environmental conditions that are appropriate, including the Algerian constitution in its article 54 stipulating the right of citizens to health care<sup>30</sup>.

Referring to the text of Articles 1, 2 and 3 of Law 10/03, we find that it defines the horizons it aspires to achieve and the principles on which it is based. Article 1 stipulates the following: "This law defines the rules for protecting the environment within the framework of sustainable development."<sup>31</sup>

Article 2 also includes a number of objectives that are hoped to be embodied behind the enactment of environmental protection rules. Among these objectives, we find the promotion of sustainable national development, work to ensure a sound living framework and prevention of all forms of pollution and damage to the environment by ensuring the preservation of its components, repairing damaged environments and promoting rational ecological use. Natural resources as well as the use of the purest technologies and the support of information and sensitization of society to ensure its participation in measures to protect the environment<sup>32</sup>.

Article 3 of the aforementioned law also contained<sup>33</sup> general and basic principles that should be respected and acted upon, such as the principle of preserving biological diversity, according to which it must be taken into account when carrying out any activity, and avoiding harm to biological diversity.

The same article included a principle according to which every person whose activity causes harm to the environment shall bear the costs of all measures to prevent and reduce pollution.

## Second: Characteristics of the Environmental Protection Law

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It should be noted that the definition of the Environmental Protection Law includes all the legal rules approved by the legislator intending to regulate any field of the environment, whether it is related to the protection of natural environments, public health, housing, agricultural or industrial lands. Previous site

29

Legal research on the bodies responsible for protecting and promoting the environment in the field on the site:  
[https://www.me.gov.dz/a/?page\\_id=219](https://www.me.gov.dz/a/?page_id=219)

30

The environment in Algeria between the past and the future and the urgent task - a periodical magazine published for the secretariat of the state in charge of the environment No. 1 and 2 Algeria for the year 1999.

31

The previous reference.

32

Amaria Ben Kaaba, and Belmahi Zine El Abidine, an article on the protection of the air environment from pollution in Algerian legislation and international agreements, Journal of Ijtihad for Legal and Economic Studies, volume9, numero1, pages 488-501 On: 06/01/2020.

33

Article 3 of Law No. 10/03 stipulates a set of general principles on which this law is based, the most important of which are the principle of preserving biological diversity, the principle of non-degradation of natural resources, the principle of preventive activity and the correction of environmental damage with priority at the source, and other principles.



Through our reading of the Algerian Environmental Law, we came to a number of characteristics that characterize this law, and they are summarized as follows:

### **The environmental law is a law of an administrative nature**

This is clearly evident from the powers and privileges granted to the state to achieve the public benefit, as it also appears in the administrative means that the legislator authorized the administration to intervene in order to protect the environmental public system, such as the state's authority to grant licenses, orders and bans ...<sup>34</sup>

### **2. Environmental protection law is a branch of public law**

It regulates the relationship between management and individuals, and the protection of the environment falls within the framework of the public interest ...<sup>35</sup>

### **The rules of the environmental protection law are of a mandatory nature**

This is because its rules are an order that individuals may not agree to violate, because it contains repressive texts and penalties against every violator of its provisions, and even goes beyond that, as it obliges the administrative authorities in charge of implementing the Environmental Protection Law to respect its rules in accordance with the principle of legitimacy ...<sup>36</sup>

### **3- The Environmental Protection Law is a multidisciplinary law**

This is due to the fact that it deals with the issue of the environment, the latter which is characterized by its ramifications, the large number of its fields, and the environmental problems that are raised in reality ...<sup>37</sup>

### **4- The rules of the Environmental Protection Law are characterized by a combination of the legislative aspect and the institutional aspect**

This is because it identifies some measures to protect the environment, and in return monitors a number of agencies from ministries, regional groups and agencies that work to ensure environmental protection ...<sup>38</sup>

<sup>34</sup>

Journal of Scientific Research in Environmental Legislation  
Volume 4, Number 1, Pages 22-32, 07-03-2014

<sup>35</sup>

Al-Haqiqa magazine, an attempt to define the concept of the environment in Algerian law, the writer Boualem Bouzidi. Volume11 Numéro4, Pages353-391 2012-12-30 dated

<sup>36</sup>

An article by Baraa Al Dwaikat, published on July 21, 2020, on the website:  
<https://mawdoo3.com/%D8%AD%D9%85%D8%A7%D9%8A%D8%A9%D8%A7%D9%84%D8%A8%D9%8A%D8%A6%D8%A9%D9%81%D9%8A%D8%A7%D9%84%D8%AC%D8%B2%D8%A7%D8%A6%D8%B1>

<sup>37</sup>

Journal of Scientific Research in Environmental Legislation, previous reference.



## 5- A recent law

Environmental law did not appear except at a recent stage compared to other laws. The beginning of this law was the crystallization of a set of principles embodied in the provisions of international treaties and conventions, and texts in national legislation, in the second half of the twentieth century, but the follower of this environmental law notes the great speed in its development, for example in Algeria did not pass a law on the environment until 1983, although the protection of the environment is a primary goal in a wide range of domestic legislation such as the public health law and the penal code <sup>39</sup>.

## 6- Environmental law is of a preventive nature

It has become necessary to address environmental violations before they occur, that is, in a precautionary manner, and this is in accordance with principles of a proactive preventive nature, and one of the most important of these principles is the principle of precaution which was openly stated in the Rio Declaration among principle 15 which states that “countries must take the precautionary method according to its capabilities”, and through internal laws, Law 03/10 related to the protection of the environment within the framework of sustainable development explicitly stipulates this principle through the text of Article 02 of it “The protection of the environment within the framework of sustainable development aims to prevent all forms of pollution and damage to the environment by preserving its components <sup>40</sup>”.

## The second section: the relationship between the environmental protection law and other laws

Since the Environmental Protection Law is concerned with preserving public order, which makes it relevant to internal public law, and the justification for this proposition is that this law regulates the relationship between individuals and the administration more than it regulates it between individuals, because environmental protection falls within the framework of the national interest and is therefore undertaken by public authority.

### First: its relationship to administrative law

#### 1- Environmental law and public order

<sup>38</sup>

Journal of Scientific Research in Environmental Legislation Author: Bakoush Muhammad Amin

Volume 7, Numéro 2, Pages 467-4772017-06-10 Protecting the Environment in the Algerian Penal Code on the previous reference.

<sup>39</sup>

- Martine Rémond-Guilloud “du droit de détruire essai sur le droit de l’environnement” P.U.F. edition 1.paris 1989.

<sup>40</sup>

An attempt to define the concept of the environment in Algerian law. Author: Boualem Bouzidi, previous site



Among the important topics dealt with by administrative law is what is known as the activity of administrative control, which aims to maintain public order with its three components, which are security, health and tranquillity<sup>41</sup>.

And the administrative authorities entrusted with the application and implementation of the Environmental Protection Law have been granted by this law the authority to issue regulations, especially those related to pollution control and the preservation of natural and environmental resources, and this will not come except by using the means of administrative control in order to preserve the general environmental system. It is worth mentioning that administrative control in the field of environmental protection includes three legal systems: the system of permissibility, licensing, and prohibition<sup>42</sup>.

## **2- The link between the environmental protection law and the administrative law**

Based on the foregoing, it can be said that there is a close link between both administrative law and environmental protection law, so the latter can be considered a branch of administrative law, since most of its texts are of an administrative nature.

### **Second: its relationship to criminal law**

Some laws have included penalties arranged by the legislator in the case of abuses and assaults committed against the right of the environment, including the Penal Code, the Health Law, the Forest Law, and the Consumer Protection Law<sup>43</sup>.

For its part, the Environmental Protection Law included punitive penalties against anyone who did not respect its rules<sup>44</sup>, and this, despite what was said about this trend because the penalties included in the penal law are unable to achieve deterrence for behaviours that violate environmental regulations, as deterrence – according to this point of view - comes at a later stage after committing the behaviour harmful to the environment<sup>45</sup>.

<sup>41</sup>

Wanes Nass Yahya, "Environmental Management in Algeria." Dissertation for obtaining a master's degree. University of Oran in 1998/1999.

<sup>42</sup>

The environment in Algeria between the past and the future and the urgent task - a periodical magazine published For the Secretary of State in charge of the Environment No. 1 and 2 of 1999, previous reference.

<sup>43</sup>

Tabet-aoul mahi "Development durable and environmental strategy" Office des Publications Universitaires 1998.

<sup>44</sup>

In our opinion, this opinion, although it is sound in some aspects, but it can be said that environmental legislation tried to adopt a policy through which the method of prevention prevails over the method of punishment, and therefore it shows the rules that must be respected in advance, by the necessity of passing through the application for a permit or obtaining approval By the concerned interests, under penalty of criminal prosecution and the penalty devoted to it, the previous reference.

<sup>45</sup>

Journal of the Researcher for Legal and Political Studies. Author: Amina Makdis

Volume 4, Number 1, Pages 291-317, 2019-06-09 Penal protection of the environment in Algerian legislation - an analytical study in the light of the Algerian penal code and environmental legislation.



## The second topic: legal protection of the environment in Algerian legislation

The issue of legal protection of environmental diversity has been a preoccupation of countries, and this is due to the great importance it acquires and the large number of problems posed by the environment<sup>46</sup>.

## The first requirement: areas of environmental diversity protection in Algerian legislation

In addition, the concept of legal protection of the environment is a broad concept and in constant change, because the areas of protection embodied in these rules cannot be known in advance, since the world and the environment are in constant change, but it is possible to refer to:

### Section one: criminal and civil protection

With regard to the preventive aspect of legal protection in Algeria, it is clear to us that Algeria has known a great delay in this field, by not adopting plans for environmental protection, as economic planning that takes a balance between development and environmental protection was not adopted except through the 1993 plan for the first time, which led to the spread of pollutants<sup>47</sup>

in a chaotic manner, and other schemes such as the local scheme and sectoral schemes such as the development and reconstruction scheme and others have also known a great delay in the field of active associations with regard to the environment, these associations are no longer effective due to the daily violations of the environmental field and that the law that necessitated their establishment came late in 1990. Also, the text on associations was delayed until 2003, which made them newly established and with incomplete experience.

### First: penal protection

#### 1- The basis of criminal liability for environmental damage

As for the penal protection, which aims to achieve deterrence, we found that environmental crime, like other crimes, requires the presence of the elements of the crime, such as the legal element and the material and moral element, although environmental crimes are characterized by the weakness of their moral element, because the occurrence of criminal behaviour alone leads to prejudice to the environment without regard to will of the perpetrator<sup>48</sup>.

The law also dealt with the manner of penal follow-up on environmental crimes and some of the penalties prescribed for them. However, due to the lack of qualification of judges, the weakness

<sup>46</sup>

[https://www.me.gov.dz/a/?page\\_id=219](https://www.me.gov.dz/a/?page_id=219)

<sup>47</sup>

Abdel Lawy Jawad, "Criminal Protection of the Environment - A Comparative Study." Graduation Note for a Master's Degree. University of Tlemcen, Year: 2004/2005.

<sup>48</sup>

Dr. youcef Benacer "la legislation environnementale in algerie" la revue algerienne. 1993



of administration in this field, and the multiplicity of special laws related to the environment, it<sup>49</sup> made the task of the judiciary difficult to stand up to environmental crimes .

And given that the most dangerous and largest sources of pollution result from the classified establishments, which have been for a long time far from accountability, which made them one of the largest causes that led to the pollution of the environment in Algeria until the recent laws gave more consideration to this situation and required the application of penal accountability to<sup>50</sup> legal persons, i.e., classified establishments and their representatives .

## 2- The role of the criminal judiciary in protecting the environment

The criminal penalty is the imposition of punishment on the perpetrator of the environmental crime, which is consistent with the rest of the crimes in the necessity of providing its elements,<sup>51</sup> which are the legal element, the material element and the moral element .

Also, in view of the nature of environmental crime, special laws have authorized some authorities to initiate public action, in addition to the judicial police. As for the penalties, we find them scattered in several laws.

The law also entrusted the task of filing a public lawsuit to the Public Prosecution, which it exercises in the name of the community, and this is a general rule. However, the legislator made an exception to this principle by allowing other parties to file a public lawsuit, taking into account the mixed system in the article of criminal procedures, so every victim of a non-environmental activity has the right to file it. However, the most important body authorized by the legislator to initiate a public lawsuit other than the Public Prosecution in Environment Law 10/03 is the environmental associations, and this would give greater credibility to the criminal<sup>52</sup> prosecution .

## Second: Civil Protection

### 1- The basis of civil liability for environmental damage

As for civil protection, we find that the Algerian legislator did not refer to the protection of biodiversity in the civil law, and did not refer to it in other laws, which led us to find difficulties in determining the basis of civil liability for environmental damage.

<sup>49</sup>

Journal of the Researcher for Legal and Political Studies. Author: Amina Makdis, Volume 4, Number 1, Pages 291-317 2019-06-09 Penal protection of the environment in Algerian legislation - an analytical study in the light of the Algerian penal code and environmental legislation, previous reference.

<sup>50</sup>

Patrick misretta "la responsabilité penale du délinquant écologique". This is for the doctorate en droit. On the 13th of January 1998 at the University of Jean Moulin.Lyon.

<sup>51</sup>

For more details, see Tashour Abdel Hafeez, "The System of Restoring the Status to What It Was in the Field of Environmental Protection," an article published in the Journal of Legal and Administrative Sciences, University of Tlemcen. Year: 2003.

<sup>52</sup>

Nasreddine Hanouni, "Legal and Institutional Means for the Protection of Ghabat in Algeria." The National Office Educational Works. Year: 2000.



He touched on the methods of compensation, such as monetary compensation, which is intended to redress the damage in the case in which it is not possible to restore the situation to what it was before, and in the field of environmental damage, he preferred to use the method of in-kind compensation whenever possible, because some things cannot be compensated with money<sup>53</sup>.

The Algerian legislator, in accordance with Law 10/03, has resorted to allowing the legally approved associations to file lawsuits before the competent judicial authorities for any infringement of the environment, even in cases that do not concern the persons affiliated with them regularly, and the affected natural persons can authorize these associations to file, in their names, compensation claims<sup>54</sup>.

Executive Decree 98/276 empowered state environmental inspectors to represent the administration in charge of the environment before justice, allowing them to file lawsuits without having a special mandate for that.

## **2- Applications of civil liability before the Algerian judiciary**

In fact, there are very few cases related to environmental protection in the Algerian judiciary, and this is due to several reasons, whether due to the lack of training and specialization of judges in environmental disputes because they are disputes of a complex technical nature, which require the expertise of specialists who are used by the judge to adjudicate the dispute<sup>55</sup>.

## **Section Two: Administrative Protection**

### **First: The role of management in protecting environmental diversity**

In the administrative field, we find that the administration, due to its powers in granting licenses and preventing some from carrying out activities that it deems as a violation of the environment, thus plays a fundamental and preventive role in protecting the environment, as for the penal aspect, there is a huge imbalance in the punitive aspects, for example environmental protection<sup>56</sup>

law (03/83) included weak penalties, not commensurate with the danger posed to the environment, as it limited it to imprisonment and fines only, and made the fine one type despite the difference in amounts according to each misdemeanour or violation, although there are other types that appeared in some advanced legislation such as the proportional fine and the conditional fine<sup>57</sup>, and even the new environmental law did not take a large step forward in the

<sup>53</sup>

See the provisions of Ordinance No. 58/75 of September 26, 1975, amended and supplemented by Law No. 10/05 of June 20, 2005 containing the Civil Code.

<sup>54</sup>

Law No. 03/10 of July 19, 2003 relating to the protection of the environment within the framework of sustainable development.

<sup>55</sup>

Ammar Boudiaf, "The Algerian Judicial System." Dar Rehana for Publishing and Distribution. Edition The first. Algeria in 2003.

<sup>56</sup>

See the provisions of Law No. 83/03 of February 5, 1983 relating to the protection of the environment.

<sup>57</sup>

As it is in British legislation.



field of penalties, which would require the Algerian legislator to find principles, and therefore it is necessary to agree on a minimum of principles, the most important of which are:

- 1- That states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources in accordance with their environmental policy, and they have a responsibility to ensure if the activities that<sup>58</sup> fall within their jurisdiction or under their control cause damage to the environment .
- 2- Countries must enact effective environmental legislation that reflects environmental standards, administrative goals, and priorities of the environmental and development framework to which obligations apply, represented by the general commitment to prevent and reduce pollution, the international commitment to prevent pollution, as well as the commitment to the principle of environmental impact assessment.
- 3- Obligation to pay compensation for the act of pollution.
- 4- Benefit from the experiences of previous countries, especially the European Union, and Southeast Asian countries to simulate environmental technology.
- 5- Establishing an early warning network and centre for environmental and natural disasters and providing ways to confront them and mitigate their negative effects as much as possible, such as the problem of marine pollution, air pollution and its impact on the<sup>59</sup> environment .

## **Second - administrative responsibility applications**

In the administrative judiciary and in the field of annulment cases, in which the judge monitors the legality of the decision taken by the administration on a unilateral basis, we find some cases, especially in the judge's control over the delivery of the building permit in the field of planning and reconstruction, and we refer in this regard to the Supreme Court's decision to examine and inspect the building, which would endanger public health or public<sup>60</sup> security to refuse to give a building permit .

In the area of administrative responsibility or full jurisdiction, we refer to the Supreme Court's decision that if the public authorities do not take any preventive measure to ensure security around the places that cause damage, they are responsible for compensation, in a case whose facts are summed up in the fall of two children into a pond filled with water. Dirty water caused their deaths, and the inspection report proved that the public authorities,

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58

Ahmed Abdel-Karim Salama, "The Environmental Protection Law - A Foundational Study in National Systems and the Convention." King Saud University Press, Saudi Arabia, 1997, p. 113.

59

Where all phenomena and current climatic conditions in the world indicate that they are abnormal, a bell sounded for danger at the last conference held in Durban, South Africa, where fingers point to man and his negative impact on the environment, and the rise in temperature and global warming that led to climate changes on Earth .

60

Michel Prieur "Droit de l'environnement" 4<sup>ème</sup> édition 2001. dalloz-édition Delta 2001.



represented by the President of the Municipal People's Assembly, did not take any preventive<sup>61</sup> measures to ensure security around this pond, especially since buildings were built near it .

What can be concluded from the foregoing is that the criminal judiciary in Algeria, like the civil and administrative judiciary, does not know a large volume of cases related to the environment.

However, there are some examples in the Algerian judiciary, including those related to water theft, sand theft from beaches, littering in the streets, and noise.

### **The second requirement: legal mechanisms to protect the environment in Algeria**

In the Algerian legal system, the first legal text giving importance to the legal protection of the environment was issued in 1983, but it came too late. Consequently, the Algerian legislator attempted to remediate this situation by according more importance to the environmental field since the appearance of the first law in the aforementioned date to the last one in 2003. Several decrees have been issued, all of which attempt to limit the attacks on the environment and protect it in various ways; ministries and departments have succeeded in this, and they began drawing attention to Algeria's ratification of many treaties<sup>62</sup> and agreements .

### **The first section: Algeria's role in protecting the environment and biodiversity**

We must first address the environmental problems that Algeria has known, and then its role in solving the latter.

### **First: the most prominent environmental problems in Algeria and the central administration's rotation to solve them**

#### **1-: The most prominent environmental problems in Algeria**

<sup>61</sup>

Yles Chaouch Bashir, "Environmental Protection through Environmental Taxes and Fees," an article published in the Journal of Legal and Administrative Sciences, University of Tlemcen. Year: 2003, p. 85.

<sup>62</sup>

Of these decrees, we mention: 1 - Presidential Decree No. 277/88 of November 05, 1988, which includes the terms of reference of the corps of inspectors in charge of environmental protection, its organization and work. No. 90/78 of February 27, 1990 relating to studies of impact on the environment. 4- Executive Decree No. 98/339 of November 03, 1998 that sets the regulation that applies to classified establishments and defines their list. 5- Executive Decree No. 98/276 of 12 September 1998 qualified employees to represent the administration in charge of the environment before justice. 6- Executive Decree No. 99/253 of November 07, 1999 containing the formation, organization and functioning of the Committee for Guarding and Monitoring Classified Facilities. Preparing the territory and the environment. Executive Decree No. 09/01 of January 7, 2001 organizing the central administration and the Ministry of Territorial Development and the Environment. 9- Executive Decree No. 115/02 of April 3, 2002, which includes the establishment of the National Observatory for the Environment and Sustainable Development. - Executive Decree No. 03/493 of December 17, 2003 amending and supplementing Executive Decree 96/59 of January 27, 1996, which includes the General Inspectorate for the Environment and the organization of its work.



### Ways to Preserve Environmental Diversity in Algerian Legislation

A: Local environmental problems: Biodiversity in Algeria suffers from many threats. According to the Treaty on International Trade in Endangered Species of Wild Fauna and

Flora<sup>63</sup> (CITES), there are 75 species out of 121 species in Algeria threatened with extinction, divided into 23 species of fish, 14 species of mammals, and 11 species of

birds, and the cypress trees<sup>64</sup> that live in the Tassili N'Ajjar region or Tassili N'Aajer in Algeria are among the most endangered plant species currently, of which only 200 trees remain in the Biosphere Reserve in Tassili, in addition to the black pines and fragrant

junipers<sup>65</sup>. Among the most endangered animals in Algeria are: ungulates such as

gazelles, antelopes, Barbary lamb, Barbary ram or Arroy, and Barbary deer<sup>66</sup>, in addition to the cheetah, the monk seal<sup>67</sup> and the Barbary macaque<sup>68</sup>.

As for fisheries, it is expected to decline by 30% over the next twenty years, and tuna, anchovies, sardines, and some types of shrimp will be the most affected species<sup>69</sup>.

During the past twenty years, the Algerian environment has been exposed to other forms of environmental degradation, such as erosion and coastal erosion, which resulted from sea level rise and the cumulative effects of storms. Because of this, Algeria lost about 40-

80% of its beaches during the past fifty years<sup>70</sup>.

B- Common environmental problems with neighbouring countries: Algeria suffers from several other environmental problems that it shares with a number of African countries, such as lack of drinking water supplies, soil erosion as a result of overgrazing and wrong agricultural practices, desertification, and pollution of the coast and rivers resulting from improper discharge of sewage

water, oil refining waste, soil erosion and fertilizer-laden water runoff<sup>71</sup>.

<sup>63</sup>

Convention on International Trade in Endangered Species of Wild Fauna and Flora.

<sup>64</sup>

Tassili Cypress.

<sup>65</sup>

Thuriferous Juniper.

<sup>66</sup>

Barbary Sheep.

<sup>67</sup>

Monk Seal.

<sup>68</sup>

Barbary Macaque.

<sup>69</sup>

For more, see Bassem Mohamed Chehab, "Public Participation in Solving Environmental Problems," an article published in the Journal of Legal and Administrative Sciences, University of Tlemcen. Year: 2003.

<sup>70</sup>

See the same previous reference.

<sup>71</sup>

See the provisions of Decree No. 76/80 of October 23, 1976, amended and supplemented by Law No. 98/05 of 25 June 1998 containing maritime law.



Therefore, Algeria seeks to find appropriate and effective solutions to the problems that the Algerian environment suffers from. Today, it is a party participating in several international agreements targeting various environmental issues, as will be discussed later.

## **2-: Rotation of the central administration to solve environmental problems**

A: Central Environmental Administration after Law No. 83-03: Law No. 83-03 related to environmental protection was issued to define the legal framework for the national policy for environmental protection, which aims to protect natural resources, prevent and combat all forms of pollution and harm, and improve the standard of living and quality of life, as Law No. 83-03 took the protection of nature, the preservation of animal and plant species, the maintenance of biological balances, and the preservation of natural resources from all causes of deterioration that threaten them are actions of national interest, and this is what makes environmental protection

<sup>72</sup> among the priorities that the central administration watches over, and tasks have been distributed to several departments as follows:

- Ministry of Irrigation, Environment and Forests: Environment was attached to the Ministry of Irrigation and Forests following the governmental amendment of 1998, and by virtue of Decree 84-126, the Ministry undertakes the implementation of the national policy in the field of irrigation, environment and forests, and ensures the protection and development of the environment and the natural forest and plant wealth. In view of the ministerial structures that preceded it, the Ministry of Irrigation, Environment and Forests is considered the only ministry that knew a kind of stability, and its activity continued from 1977 to 1988, but it did not reveal <sup>73</sup> the elements of the national policy for the environment during this period .

Attaching the environment to the Ministry of Research and Technology: through Decree 90-392, Environmental protection tasks were entrusted to the Minister Delegate for Research and Technology, who prepares the national policy for environmental protection, studies and proposes measures and means necessary to protect it, and implements all studies and research related to environmental protection and preservation. The central administration of the Ministry of Research and Technology was organized through Decree 90-393. The reason for attaching the environment to the Ministry of Research and Technology is due to the scientific and technical <sup>74</sup> nature of environmental issues .

<sup>72</sup>

For more, see Hamida Gamila, "Legal Means for Environmental Protection - A Study in the Light of Algerian Legislation." A note by Neil Master's degree, University of Blida, year: 2001.

<sup>73</sup>

See the provisions of Law No. 12/84 of July 23, 1984, amended and supplemented by Law No. 20/91 of December 02, 1991 containing the general system of forests.

<sup>74</sup>

See the provisions of Executive Decree No. 90-392 dated 14 Jumada al-Awwal 1411 corresponding to December 01, 1990, which defines the powers of the delegated minister for research and technology, and thus the environment sector was transferred to the Ministry of Education according to this decree.

See also the provisions of Executive Decree No. 90-393 of December 12, 1990, according to which the environment sector was re-attached to the Ministry of Research and Technology, and through which the central administration of the Ministry of Research and Technology was organized in Article 26 thereof.



### Ways to Preserve Environmental Diversity in Algerian Legislation

Transforming the environment into the Ministry of Education: The task of protecting the environment did not last long in the drawers of the Ministry of Research and Technology, as before, and was transferred again to the Ministry of National Education, which kept the same directorates that were under the previous ministry<sup>75</sup>.

The Ministry of Interior, Local Communities, Environment and Administrative Reform: An attempt to support the environment through a strong ministry. Shortly after the environment was attached to the services of the Ministry of National Education, it was thrown in the hands of the Ministry of the Interior. As a result, for this constant transformation of the environment from one ministry to another, the Algerian legislator endeavoured to search for stability for the mission of the environment within the arms of a specific ministry, and to rectify the deficit in the field of environmental protection and support it. Consequently, the task of protecting the environment has been attached to a strong ministry that is present at the central and local levels and possesses the material and human capabilities that recommend it to carry out this task to the fullest.

The structures of the Ministry of Interior and Environment were organized in the form of several directorates, and the General Directorate remained subject to the provisions of Decree 93-235 temporarily until the new decree regulating the General Directorate of the Environment was issued, which stipulated the creation of two directors of studies and a general inspectorate for the environment to assist the director general of the environment<sup>76</sup>.

- The State Secretariat for the Environment: As shown by what was presented of the development of the ministerial structures to which the task of protecting the environment was attached, it always appeared as if this task was entrusted to a non-specialized administration or an administrative body other than the one it should be attached to, and this explains all this jumbling and muddling, which the mission of protecting the environment witnessed among all ministries, and for that came the initiative to individualize the environment sector, with a special administrative body that carries out only the task of protecting the environment, this first experience was embodied through the creation of the State Secretariat for the Environment<sup>77</sup>.

- Ministry of Public Works, Territory Development, Environment and Urbanization: The environmental protection file did last in the drawers of the Ministry of Public Works and Territory Development for only a few months, so that the central authorities once again demonstrated their inability to imagine an appropriate solution to achieve stability for the

<sup>75</sup>

See the provisions of Law 98/04 of 06/15/1998 related to the protection of cultural heritage and based on Legislative Decree No. 03/324 of 05/10/2003 that includes how to prepare the permanent plan for the preservation and reclamation of the preserved sectors.

<sup>76</sup>

The previous reference.

<sup>77</sup>

Law No. 06/04 of August 14, 2004 relating to the conditions of architectural production and the practice of Architect profession.



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**Ways to Preserve Environmental Diversity in Algerian Legislation**

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environment sector. For the first time, the task of environmental protection was transferred to a private ministry, it is the Ministry of Territorial Planning and the Environment<sup>78</sup> .

- Ministry of Territory Development and Environment: The text came to establish the Ministry of Territory Development and Environment, which consists of several directorates, and each directorate consists of sub-directorates<sup>79</sup> .

B: Environmental Protection Law No. 03-10 of July 19, 2003, related to the protection of the environment within the framework of sustainable development<sup>80</sup> . Through the foregoing, we conclude that the environmental administrative structures that existed before 1983 did not have a legal framework to exercise their powers and specializations, and after 1983 the legislator began issuing a series of laws related to the protection of the environment. However, the issue of the effectiveness of environmental legal rules was raised in the complete absence of national plans and programs for the environment, as the first national program for the environment was adopted in 1996 and entered into force in 1997.

Then came those environmental provisions of a holistic nature integrated with ecological paths and relationships codified in a unified codification called the Algerian Environmental Protection Law No. 10 of 2003<sup>81</sup> .

It should be noted in this regard that one of the most important definitions presented for sustainable development is that development that enables peoples and states to meet their needs without compromising the ability of future generations to meet their needs, i.e, an attempt to reconcile the inevitability of development and the preservation of the environment in which we live<sup>82</sup> .

The legislator specified in Environment Law 10/03 a two-year deadline for the issuance of regulatory decrees. However, these decrees have not been issued and the deadline was not met, which leaves us facing a legal vacuum that will inevitably complicate the task of the administration and the judiciary in performing their role in protecting the environment.

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<sup>78</sup>

For more details, see the provisions of Law No. 29/90 of December 01, 1990, amended and supplemented by Law No. 05/04 of August 14, 2004, relating to planning and reconstruction.

<sup>79</sup>

As the first article stipulates that the central administration in the Ministry of Territorial Development is under the authority of the minister, whose tasks were determined by Executive Decree No. 08 (38), from the Secretary-General, the Chief of Staff, the General Inspectorate (39), the General Directorate of Environment and the Directorate of Reception Programming and general studies for the preparation of the region, the Directorate of Regional Action, Summarization and Coordination, the Directorate of Major Works to prepare the region, the Directorate of City Promotion, the Directorate of Legal Affairs and Disputes, the Directorate of Cooperation, and the Directorate of Administration and Means.

<sup>80</sup>

Amended by: Law No. 06-07 of May 13, 2007, relating to the management, protection and development of green spaces.

<sup>81</sup>

Boualem Bouzidi, an attempt to define the concept of the environment in Algerian law, on the previous site.

<sup>82</sup>

<http://www.bejaiadroit.net>.



## Second: Algeria's role in protecting the environment

Algeria has a significant role in protecting the environment through its efforts to implement internal laws and by applying the provisions of the agreements it has ratified.

### 1- National efforts to protect the environment and biodiversity

Algeria has developed national strategies and an action plan related to its environmental affairs and sustainable development. The country has adopted a number of sectoral programs related to several environmental matters, on top of which are desertification, waste management, and the protection of coastal and marine areas. Algeria has worked seriously to improve the legal framework for environmental protection since 2000<sup>83</sup>.

The environment had a share in Algeria's economic plans, as it has adopted a promising program for the development of the sustainable energy sector and the effective use of it in a way that guarantees reliance on renewable energy by 40% by 2030<sup>84</sup>.

The main sectoral programs on which the national strategy is based are as follows:

- The National Plan for Action and Adaptation to the Phenomenon of Climate Change<sup>85</sup> for the year 2003.
- Integrated sectoral water management policy program<sup>86</sup>.
- The National Program for Energy Conservation<sup>87</sup>.
- The National Program for Integrated Solid Waste Management<sup>88</sup>.
- National action plan to combat desertification<sup>89</sup>.
- Renewable Energy and Energy Efficiency Program.

Among the efforts made in the environmental field, what Algeria has done in the field of wetlands, which include complexes, such as: the coastal lake or refugees, and salt lakes, as it

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<sup>83</sup> The previous reference.

<sup>84</sup> See the provisions of Law No. 20/01 of December 12, 2001 related to the preparation of the territory and sustainable development.

<sup>85</sup> National Plan of Action and Adaptation to Climate Change.

<sup>86</sup> Programme of Sector Integrated Water Management Policy.

<sup>87</sup> National Programme of Energy Conservation.

<sup>88</sup> National Program of Integrated Municipal Solid Waste Management.

<sup>89</sup> Program of Renewable Energy and Energy Efficiency.



works to protect wetlands on its lands from destruction and excessive use of them, and Algeria ranks eighth in the world in terms of the specific area of wetlands according to the Ramsar Convention, and this classification is very important for the dry environment of Algeria, in which water scarcity represents a real problem, and today it plays a leading role among North African countries in preserving the environment<sup>90</sup>.

## 2- The agreements signed by Algeria to protect the environment

Algeria signed the United Nations Framework Convention on Climate Change (UNFCCC) as a party not included in Annex I in 1993. It also ratified the Kyoto Convention in 2004, declaring its international participation in addressing climate change and its potential impacts, especially on natural ecosystems, and the durability and sustainability of economic development. Algeria is one of the countries that are highly vulnerable to this phenomenon from an economic and natural point of view.

Therefore, Algeria worked on the gradual integration of this phenomenon with all economic and social sectors and institutions in the country, dealing with all aspects related to it and trying to adapt to it, in addition to adopting the national strategy for climate change, which aims to strengthen the institutional and legislative framework, and institutional capacities, and to educate<sup>91</sup>

the masses through some participatory methods. This strategy is based on three main pillars : adapting to climate change, ensuring the sustainable development of the country and mitigating greenhouse gas emissions.

Algeria is making a number of international efforts in order to preserve the environment, as it was part of a number of international agreements concerned with environmental affairs, including:

- Treaty on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed by Algeria on 21/2/1984.
- The Ramsar Convention on Wetlands, signed by Algeria on March 4, 1984.
- The Convention on Biological Diversity, signed by Algeria on June 13, 1992.
- Migratory Bird Treaty.
- The International Whaling Agency.
- Agreement of the General Fisheries Commission for the Mediterranean.
- Agreement establishing the European and Mediterranean Organization for Plant Protection.

<sup>90</sup>

In this regard, see an article by Rabih Thamer, Bin Nasser Wahiba, a study in the light of Law No. 09-03 related to consumer protection and the suppression of fraud.

- Compliance Control Within The Framework Of Ensuring The Effectiveness And Implementation Of The Compliance Obligation. -a Study In Conformity With The Law N° 09/03 Related To The Protection Of The Consumer And Antifraud-

Journal of the Researcher for Legal and Political Studies, volume4, numero2, pages1186-1215. On: 01/80/2020.

<sup>91</sup>

The previous reference.



<sup>92</sup>  
- International plant protection agreement .

## Section Two: Penalties and measures applied to protect the environment

The penalties and measures stipulated in the criminal law for the environment vary in order to confront environmental violations. The modern trend of the Algerian legislator is to tighten penalties in general in the field of environmental violations. However, the methods of confronting the criminal risk of the environmental offender differ in the light of the International Convention for the Safety of Life at Sea <sup>93</sup> .

- The African Convention for the Conservation of Nature and Natural Resources <sup>94</sup> .
- Agreement establishing the Arab Organization for Agricultural Development. Agreement establishing the Desert Locust Control Authority in Northwest Africa <sup>95</sup> .
- Protocol on Specially Protected Areas and Biological Diversity in the Mediterranean Sea.

This and other agreements that we cannot mention here.

In the provisions of the Penal Code and the criminal law of the environment in particular, we find that the Algerian legislator sometimes prefers punishment in order to deter the offender, and at other times he resorts to precautionary measures with a preventive goal.

### First: the original penalties

They are four types, reflecting the seriousness and type of environmental crime committed: <sup>96</sup>  
felony, misdemeanour or violation :

#### 1- The death penalty

Despite the great controversy surrounding this punishment, we can say that it reflects the seriousness of the delinquent so that he cannot be rehabilitated, and this punishment is the most severe punishment, and in fact the death penalty is rare in Algerian environmental legislation due

<sup>92</sup>

More details on the content of these agreements see the website: <http://hdl.handle.net/123456789/732>

<sup>93</sup>

Law No. 02/02 of February 5, 2002 relating to the protection and enhancement of the coast.

<sup>94</sup>

<http://hdl.handle.net/123456789/732>

<sup>95</sup>

We find its provisions in Law No. 20/01 of December 12, 2001 related to territorial preparation and sustainable development.

<sup>96</sup>

See the provisions of Order No. 66/155 of June 08, 1966 containing the Code of Criminal Procedure.



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to its seriousness<sup>97</sup>. If environmental protection laws seek to protect the basic rights of individuals, including the right to life, penal legislation also protect this right<sup>98</sup>.

Among the examples that we can give in this field are what the Algerian legislator stipulated in the maritime law, whereby the death penalty is imposed on the captain of an Algerian or foreign ship who deliberately throws radioactive waste into the waters belonging to the Algerian judiciary<sup>99</sup>.

The Algerian legislator also provided for the death penalty in the Penal Code, in the event of assault on the ocean or introduction or leakage of a substance into the atmosphere, underground, or waters, including territorial waters, which would endanger human or animal health or the natural environment. The legislator has classified these acts as sabotage and terrorist acts<sup>100</sup>.

## 2- Imprisonment

Among the texts in which the legislator referred to the penalty of temporary imprisonment is Article 396 of the same law, with temporary imprisonment from ten (10) to twenty (20) years for whoever intentionally sets fire to forests, cultivated fields, trees, or wood<sup>101</sup>.

### 2- A prison sentence

This penalty is not applied unless we are in the process of an environmental misdemeanour or violation, and one of its characteristics is that it is a temporary punishment<sup>102</sup>, and it is noted that most of the penalties for environmental crimes in the legislation for environmental protection in Algeria have been subjected by the legislator to the penalty of imprisonment, whether he

<sup>97</sup>

Maddah Khalidiya, an original study of the penal system of the criminal responsibility of the legal person in the light of the amendment of the Penal Code and the Code of Criminal Procedure by the Algerian legislator for the articles related to media in the Algerian Penal Code. A comparison between the amended Penal Code in 2001 and 2011, pp. 100-111.

<sup>98</sup>

See the provisions of Ordinance No. 66/156 of June 8, 1966 containing the Penal Code.

<sup>99</sup>

See the provisions of Ordinance No. 76/80 of October 23, 1976, amended and supplemented by Law No. 98/05 of 25 June 1998 containing maritime law.

<sup>100</sup>

The previous reference.

<sup>101</sup>

Article 66 of Law 19/01 related to waste management, control and removal stipulates the following: "He shall be punished with imprisonment from five (5) to eight (8) years and a fine from one million dinars (1,000,000 DZD) to five million (5,000,000 DZD) or one of these two. The two penalties only apply to anyone who imports, exports, or works to transit hazardous special waste, in violation of the provisions of this law.

<sup>102</sup>

An article entitled "Penal Protection of the Marine Environment in Algerian Legislation" by Rima Makran. In the previous magazine.



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considers it a misdemeanour or a violation<sup>103</sup>, and examples of the penalty of imprisonment in the law 03/10 related to the Environmental Protection Law within the framework of sustainable development<sup>104</sup>, we find it in Articles 81, which states: “A penalty of imprisonment from 10 days to 3 months and a fine of five thousand dinars (5,000 DZD) to fifty thousand dinars (50,000 DZD), or only one of these two penalties, shall be imposed on anyone who abandons or ill-treated a domesticated, pet, or an imprisoned animal, whether overt or covert, or exposing him to an act of cruelty, and in the case of recidivism, the penalty shall be doubled. As for the hunting law<sup>105</sup>, we also find many examples of the penalty of imprisonment, including what was stipulated in Article 85, which punishes with imprisonment from two (2) to three (3) years whoever practices hunting or any other hunting activity outside the areas and periods stipulated in this law<sup>106</sup>.

We also find the penalty of imprisonment in the Forest Law, as Article 75 of it stipulates that anyone who exploits or transports forest products without a permit shall be punished with imprisonment from 10 days to two months.

We also find the penalty of imprisonment in Law 19/01 related to the management, control and removal of waste<sup>107</sup>. Article 60 of it punishes anyone who directly reuses chemical packaging to contain foodstuffs with imprisonment from two months (2) to one year, and in the case of recidivism, the penalty is doubled<sup>108</sup>.

<sup>103</sup>

<sup>103</sup> See the provisions of Law 03/10 of July 14, 2003 related to sustainable environmental protection, J.R. No. 43 issued on July 20, 2003, as amended and supplemented.

<sup>104</sup>

In addition to that, we find: what is stipulated in Article 81, which punishes with imprisonment from ten (10) days to three (3) months for anyone who abandons or mistreats a domesticated animal, pet or imprisoned, in public or in secret, or exposes it to a cruel act, and in the case of Recidivism doubles the penalty.

In the context of protecting water and aquatic media, Article 93 punishes with imprisonment from one to five years any captain subject to the provisions of the International Convention for the Prevention of Pollution of Sea Water by Hydrocarbons concluded in London on May 12, 1954, who commits a violation of the provisions relating to the prohibition of pouring or mixing of hydrocarbons into the sea, and in the case of Recidivism doubles the penalty.

<sup>105</sup>

See Law No. 11/01 of July 3, 2001 related to marine fishing and aquaculture.

<sup>106</sup>

Whoever attempts to hunt or fish without a hunting license or license or by using a third party's hunting license or license shall be punished with imprisonment from two (2) to six (6) months, and whoever hunts, seizes, transports, sells or uses protected items shall be punished with the same penalty. Or sell, buy, offer for sale, or embalm them.

<sup>107</sup>

See Law No. 19/01 of December 12, 2001 relating to the management, control and removal of waste.

<sup>108</sup>

Whoever mixes hazardous special waste with other waste shall also be punished by imprisonment from three (3) months to two (2) years, and shall be punished by imprisonment from six (6) months to two years (2) whoever delivers or works to deliver these hazardous wastes for the purpose of treatment To a person exploiting a facility that is not authorized to treat this type of waste, and in case of repetition, the penalty shall be doubled.



As for the new Water Law 12/05<sup>109</sup>, we also find a penalty of imprisonment. Anyone who obstructs the free flow of surface water in the valleys' streams leading to compromising the stability of edges and public facilities and harming the preservation of silt layers shall be punished with imprisonment from two (2) to six (6) months, and the penalty will be doubled. in the case of recurrence<sup>110</sup>.

These are some examples of the penalty of imprisonment in the Environment Law and other laws related to it, which we cannot mention because of their abundance, but we have only mentioned the most important ones.

### 3- A fine

A fine is one of the most effective penalties, because most of the environmental delinquents are economic investors who are greatly affected by this type of punishment, in addition to the fact that most environmental crimes are crimes resulting from industrial activities aimed at achieving an economic interest. Indeed, the environmental damage would not have existed had it not been for the arbitrary access to this interest.

However, it must be noted that the Algerian legislator is interested, through the new laws related to the environment, in raising the maximum and minimum limits for the fine in environmental crimes<sup>111</sup>.

One of the characteristics of this penalty is that it may come in the form of an original penalty prescribed for the criminal act<sup>112</sup>.

The fine may come as a consequential penalty in addition to the imprisonment penalty. Examples of this are what was stipulated in the Environment Law 10/03 in its Article 102 by imposing a fine of five hundred thousand dinars (500,000 DZD) on everyone who exploited a facility without obtaining a license- without mentioning the imprisonment penalty- and the amount of this fine may reach a fine of up to one million dinars, 1,000,000 dinars, and it is imposed on

<sup>109</sup>

Law No. 05/12 of September 4, 2005 relating to the Water Law.

<sup>110</sup>

Anyone who dumps dirty water or pours it into wells, springs, public drinking places, valleys and canals, or places unhealthy materials in water structures and installations designated for water supply that may lead to pollution, shall be punished with imprisonment from one to five years. The license issued by the competent department shall be punished by imprisonment from six (6) months to two years.

<sup>111</sup>

Examples of this are:

What was stipulated in Article 84 of Law 10/03, which punishes anyone who causes air pollution with a fine from 5000 DZD to 15000 DZD.

Likewise, what was stipulated in Article 97 of the same law, which punishes with a fine from one hundred thousand dinars (100,000 DZD) to one million dinars (1000,000 DZD) every captain who causes his misbehaviour, recklessness, negligence or violation of the laws

<sup>112</sup>

We find the fine as an original punishment, in the Forest Law 12/84, as Article 79 of it stipulates that whoever strips lands without a permit shall be punished with a fine of 1000 DZD to 3000 DZD, and a fine of 1000 DZD to 10,000 DZD per hectare shall be imposed on anyone who strips land on forest property. national.



anyone who exploits a facility in contravention of a procedure that ordered the suspension or closure of its operation<sup>113</sup>.

## Second: Ancillary and Complementary Environmental Sanctions:

These penalties come in the second degree after the original penalties, and they are:

### 1- Ancillary penalties

There is no recourse to this type of punishment unless we are dealing with an environmental crime, and environmental crimes in environmental legislation, as we have seen previously, are few, since most crimes are misdemeanours or infractions, but they can be applied to felonies punishable by Articles 87 bis, 432/2 and 396/2 of the Penal Code and Article 66 of Law 19/01 related to waste management and removal.

The legal quarantine is the most prominent of these penalties, which can be applied to the environmental delinquent, by which we mean depriving the criminal of his right to manage his money for the duration of the sentence, in addition to depriving him of national rights, and this penalty is applied by force of law.

### 2- Complementary penalties

This type of penalties complement the original ones, and among the most important of these penalties, which can play an important role in confronting our environmental delinquency:

A- Confiscating part of the funds of the perpetrator of the environmental crime: a procedure that is not applied in misdemeanours or environmental violations unless there is a legal text that decides it. For example, what is stipulated in Article 82 of Law 11/01 related to marine fishing, which states: "In the case of using explosive materials the fishing vessel shall be seized if its owner is the perpetrator of the violation"<sup>114</sup>.

And what was stipulated in Article 89 of the Forest Law 84/12<sup>115</sup> that: "In all cases of violations, the forest products in the place of violation shall be confiscated."

Article 170 of the Water Law 12/05 also stipulates that supplies and equipment that were used in the completion of new wells or drilling or any changes within the quantitative protection zones may be confiscated.

B- Dissolution of the legal person: that is, preventing him from continuing to carry out his activity in accordance with Article 17 of the Penal Code. It would have been better if this

<sup>113</sup>

Hunting Law 04/07 also punishes with a fine from twenty thousand dinars (20,000 DZD) to fifty thousand dinars (50,000 DZD) anyone who attempts to hunt or fish without a hunting license or license using a license or hunting license, in addition to the penalty of imprisonment.

<sup>114</sup>

Law No. 04/07 of August 21, 2004 relating to the hunting law.

<sup>115</sup>

See also the provisions of Law No. 02/03 of February 17, 2003 specifying the general rules for use and exploitation Beach tourists.



punishment was taken, i.e., the dissolution of the moral person, as an original punishment<sup>116</sup> in line with the modern trend that takes the penal responsibility of the moral persons.

### **Conclusion:**

In order to develop a strategy for dealing with natural environmental wealth, we need to improve the mechanisms of identifying it by using the capabilities of universities and research laboratories specialized in remote sensing and geographic information systems, which have become effective means in controlling and identifying the plant environment and the natural surroundings, in addition to using databases as a useful technology in collecting the existing species and helping to identify and classify their habitats. They also serve as a national archive for the existing wealth, which facilitates tracking of their condition. Studies must also be carried out to determine the economic value of these riches.

This allows for good utilization of this, in addition to improving the legislation that governs dealing with these resources and setting controls for them. Investment in the field of environmental protection must also be encouraged as part of a system to develop citizen awareness of these resources and their importance. Plans must also be drawn up and developed to combat some problems such as desertification, pollution and forest fires as factors that threaten this diversity. Also, the protection of endangered plant species, the establishment of banks to preserve these species, the protection of animal species by rationing hunting operations, and the attempt to re-breed extinct or in endangered species.

Programs must also be put in place to develop the awareness of the population in the desert and plain areas of the importance of protecting biodiversity and helping them to exploit the available resources, which allows them to satisfy their economic needs without destroying the natural environment.

Therefore, efforts must be combined, and national environmental laws should be reconsidered and given utmost importance in line with the conferences and treaties ratified by Algeria for the sake of an environment and sustainable development that benefits everyone.

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See the text of Article 17 of the Algerian Penal Code.



In the end, the environment is not an end or a luxury, as it is an integral part of the concept of complete and sustainable development, which does not stop at the present, but also looks to the future with a clear vision and a steady step.

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