

Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title

السياسة الجنائية البيئية بين قصور في الردع وحتمية إعادة المراجعة والتثمين

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Abstract:

This study aims to shed light on the trends of criminal environmental legislative policy, as it touched on the most important environmental penalties stipulated to confront environmental crimes.

On the other hand, the most important aspects and deficiencies of this policy addresses, which are represented in particular by the weakness of environmental offenses compared to other penalties, in addition to the reliance on the state of necessity and administrative licensing as cases of absence of criminal responsibility.

Key words: Imprisonment; The Prison; Financial Fine; Necessity.

Introduction:

The Algerian legislator has endeavored to safeguard environmental elements through various enacted legislations, adopting both preventive and protective approaches, such as environmental planning and impact assessment mechanisms.

Conversely, a deterrent aspect has also been incorporated, particularly through the introduction of various criminal sanctions, whether within the core environmental protection legislation or across related regulatory frameworks.

However, with the rapid advancements in science and technology across different fields and economic sectors, environmental offenders have begun employing increasingly sophisticated means in committing environmental crimes. These methods have exacerbated the severity of such offenses and their detrimental impact on natural resources, often rendering criminal sanctions ineffective in achieving their intended deterrent effect. This is especially evident in the inadequacy of imprisonment durations, which frequently fail to correspond to the gravity of the offense, in addition to the insufficiency and inefficacy of financial penalties.

Furthermore, numerous industrial operators have exploited certain legislative provisions introduced by the legislator to exempt them from criminal liability—such as necessity defenses and administrative authorizations—to engage in activities that have contributed to the degradation and destruction of environmental components.

In light of the foregoing, the following question arises: Is the current environmental criminal policy sufficient to deter environmental crime? What are the key obstacles hindering its effectiveness?

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" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

To address this issue, this research paper is structured into two main sections. The first section examines the principal environmental sanctions and their proportionality with environmental offenses, while the second section explores the main factors undermining the effectiveness of environmental sanctions in deterring environmental crime.

1- Section One: Environmental Criminal Sanctions – The Disproportion Between the Gravity of Environmental Crimes and the Penalties Imposed.

Environmental crimes differ in concept and characteristics from conventional offenses under general legal principles. They target environmental elements such as water, air, soil, land, subsoil, flora, and fauna, and may also harm human beings. This distinct nature grants them unique features, which will be examined later.

In response, the legislator has introduced a range of penalties against environmental offenders across various environmental laws, including the core Environmental Protection Law No. 03-10, which governs environmental protection within the framework of sustainable development.¹

1.1- First subsection: The Concept of Environmental Crime

The concept of environmental crime diverges from that of crime in general, leading legal scholars to propose multiple definitions aimed at precisely identifying its key legal aspects.

This conceptual distinction has resulted in environmental crimes exhibiting unique characteristics that differentiate them from other offenses, which will be explored in the following subsections.

First Branch: Definition of Environmental Crime.

In general terms, a crime is any unlawful act committed with criminal intent, sanctioned by law through penalties or security measures. It may also be defined as any act or omission attributed to an individual, warranting criminal punishment.

Environmental crime, however, encompasses any positive or negative act—whether intentional or unintentional—committed by a natural or legal person that directly or indirectly harms an environmental domain².

In this regard, Dr. Nour El-Din Hindaoui asserts that environmental pollution offenses are not among the traditional crimes historically recognized but rather modern offenses addressed through contemporary scientific research. States, through their legislative bodies, have criminalized such acts. He further notes that the objective of these legislations was not merely to protect the environment in the conventional sense but rather to regulate specific aspects of social and economic life³.

Second branch: Characteristics of Environmental Crimes.

Environmental crimes exhibit distinctive characteristics that set them apart from conventional offenses. The most significant of these include:

1. The Difficulty of Defining the Crime.

One of the fundamental challenges of environmental crimes lies in the difficulty of identifying their elements and legal conditions. This complexity stems from the fact that environmental legislation typically establishes only a broad legal framework for such crimes and their corresponding penalties, leaving administrative authorities to define the specific details. Consequently, the precise nature of environmental offenses can often only be determined by referring to specialized regulations issued by administrative bodies or to supplementary legislative texts.

Moreover, environmental crimes are often characterized by obscurity or delayed detection. For instance, in cases of air pollution caused by toxic gases, these pollutants may be

" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

odorless and colorless, making them imperceptible to the public. Their detection often requires specialized expertise to identify the nature and concentration of pollutants, as seen in the impact of cement factory emissions on nearby residential communities⁴.

2. Environmental Crime as an Offense of Risk

Environmental crimes are classified as "formal offenses" or "crimes of risk," meaning that they do not require actual harm to materialize for the crime to be established. In such cases, the mere creation of a hazardous situation is sufficient to constitute a criminal offense, regardless of whether the harmful consequences have occurred.

The concept of risk plays a crucial role in defining the criminal behavior at issue and underscores the rationale behind the legislator's decision to criminalize such conduct. This applies whether the legislator criminalizes the mere existence of risk or the potential repetition of hazardous conduct.

Examples of environmental pollution offenses categorized as crimes of risk include those outlined in the Algerian Penal Code under terrorism-related offenses, which criminalize acts such

as: "Any attack on the environment, or the introduction, leakage, or disposal of substances into the air, soil, or water (including territorial waters) that pose a threat to human health, animal life, or the natural environment".

Additionally, the fundamental environmental protection law (Law No. 03-10) reinforces this principle in Article 57, which mandates that the captain of a vessel carrying hazardous, toxic, or polluting cargo must report any maritime incident that could potentially pollute or damage the marine environment, national waters, or coastlines when navigating within Algerian jurisdiction.

Thus, it is evident that the Algerian legislator has relied on the notion of risk as the basis for establishing environmental pollution offenses in numerous legal provisions⁵.

1.2- Second subsection: Applications of Environmental Criminal Sanctions That Do Not Align with the Severity of the Crimes Committed.

The Algerian legislator has introduced various penalties in environmental legislation, primarily imprisonment and detention. However, these penalties are often inadequate and ineffective when compared to the severity and damage caused by environmental crimes, particularly the reliance on short-term detention as the primary punitive measure.

Notably, Algeria is not the only country with insufficient environmental criminal policies; many European nations have also adopted weak punitive approaches despite the growing severity of environmental crimes. This is evidenced by the European Union's issuance of Directive 2008/99 on the criminal protection of the environment, adopted by the European Parliament and Council on November 19, 2008. Article 1 of the directive states: "The determination of criminal law measures to ensure more effective protection of the environment."⁶

First Branch: Prison Sentences.

Imprisonment is a punitive measure applied to natural persons⁷, involving the deprivation of liberty by placing the offender in a restrictive facility. It is a fundamental penalty in criminal law, with two forms: life imprisonment and temporary imprisonment.⁸

Historically, imprisonment replaced hard labor sentences in French law in 1960. Life imprisonment substituted lifetime hard labor, while temporary hard labor sentences were replaced with imprisonment ranging from 10 to 20 years or 5 to 10 years⁹.

In Algeria, imprisonment has been established as a penalty but is less frequently applied compared to detention, following the approach of both the French and Egyptian legislators. It is a principal penalty prescribed for felonies, with the Algerian legislator setting minimum and maximum limits, a practice also followed in French law.¹⁰

" **Environmental criminal policy between a deficiency in deterrence and the inevitability of review and evaluation title**"

The Algerian legislator has mandated imprisonment for certain environmental offenses, including:

- **Maritime Pollution:** Temporary imprisonment of 10 to 20 years for any ship captain who transports radioactive materials through Algerian territorial waters without notifying the authorities. If a maritime accident occurs, the penalty is increased to life imprisonment.¹¹
- **Illegal Waste Recovery:** The unauthorized collection of hazardous waste is punishable by imprisonment ranging from 5 to 8 years.¹²

Comparatively, Egyptian law (Law No. 4 of 1994) applies imprisonment to all environmental crimes if an aggravating circumstance is present, such as causing permanent disability to a person due to pollution¹³.

second Branch: Detention Penalties

Detention is a liberty-depriving penalty applied to misdemeanors and infractions, distinguishing it from imprisonment¹⁴, which is reserved for felonies. Given that most environmental crimes are classified as misdemeanors or infractions, modern criminal policy demands a graded and proportionate punitive approach in line with the legal classification of these offenses¹⁵.

Examples of Detention in Algerian Environmental Law:

- **Unauthorized Marine Resource Extraction:** Punishable by **six months to two years** of detention.¹⁶

Illegal Disposal of Pollutants in Protected Areas: Punishable by **one to three years** of detention for discharging, dumping, or disposing of materials that alter the physical, chemical, or biological properties of protected ecosystems¹⁷.

third Branch: The Effectiveness of Detention in Deterring Environmental Crime

While the extensive use of detention for environmental offenses in Algerian legislation is commendable -law no. 03-10- , its effectiveness is questionable. Many comparative legal systems, such as those in Belgium and Sweden, have further restricted the use of detention for environmental violations¹⁸.

However, detention, regardless of its duration, often fails to match the gravity of environmental crimes. Dr. Mahmoud Saleh Al-Adli argues that detention, in any form, is insufficient to achieve justice or deterrence, whether general or specific. Justice is incomplete if the penalty does not correspond to the severity of the offense. The damage caused by crimes punishable by detention often far exceeds the severity of the penalty.

For example, if the consumption of contaminated or fraudulent food leads to mass fatalities or congenital deformities due to radioactive contamination, a mere detention sentence would not be just. In such cases, the penalty fails to ensure justice. Similarly, short detention terms do not discourage potential offenders from committing environmental crimes, thereby undermining general deterrence. Likewise, the leniency of the penalty does not prevent convicted individuals from reoffending.¹⁹

Therefore, it is crucial for legislators to impose stricter penalties, particularly for highly dangerous environmental offenses. Replacing detention with temporary or life imprisonment in cases where environmental crimes result in bodily harm or endanger public health is essential to achieving justice and effective deterrence.

2- Section Two: Factors Contributing to the Ineffectiveness of Criminal Sanctions in Deterring Environmental Crime.

Despite the Algerian legislator's adoption of a comprehensive legal framework that criminalizes numerous acts harmful to the environment and prescribes various penalties to curb their prevalence, the reality has demonstrated that these measures have not constituted a decisive

" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

deterrent against environmental offenders. This ineffectiveness can be attributed to several factors, the most significant of which will be examined below.

2.1- The Prevalence of Financial Penalties Over Incarceration.

This section will first define the concept of financial penalties before assessing their effectiveness in deterring environmental crime.

First Branch: The Concept of Financial Penalties

Legal scholars have long debated whether financial penalties serve a purely punitive function or whether they should be regarded as compensatory sanctions. While the term "penalty" often conveys a punitive intent, the compensatory aspect becomes apparent in the way fines are determined to correspond with the harm caused, often imposed jointly on those who contributed to the offense. Additionally, financial penalties are not subject to suspension.

Conversely, another perspective views financial penalties as purely criminal in nature rather than a form of compensation. Under this view, fines are considered personal sanctions imposed exclusively on the convicted individual and are only applied as a supplementary penalty to a principal sanction²⁰.

A financial penalty is essentially an obligation imposed on the convicted party to pay a specified sum of money to the state treasury as retribution for committing an offense. Unlike compensatory measures, its primary purpose is punitive rather than restorative, as it directly impacts the financial resources of the offender.²¹

Many legal scholars argue that financial penalties play a significant role in ensuring environmental protection. However, in our view, such penalties fail to serve as an effective deterrent against environmental offenders, particularly when the offender is a corporate entity. Several arguments supporting this position will be discussed later.

Second Branch: The Effectiveness of Financial Penalties in Deterring Environmental Crime

Financial penalties are among the most widely applied sanctions in environmental legislation, as legislators consider them the most effective deterrent. This is particularly true given the discretionary power granted to judges, enabling them to impose fines commensurate with the harm caused and the severity of the offense.

Some argue that fines contribute significantly to ensuring compliance with legal regulations aimed at fostering economic and social development without compromising environmental integrity. The rationale is that financial penalties impact the assets of industrial, agricultural, and commercial entities, compelling them to adhere to environmental protection laws²².

However, despite the Algerian legislator's reliance on financial penalties while significantly reducing the use of custodial sanctions, fines have not proven to be an effective deterrent against environmental offenders. This ineffectiveness stems primarily from the relatively low minimum and maximum limits set for fines, particularly when imposed on economic actors who derive substantial financial gains from exploiting and encroaching upon natural resources. Consequently, the financial penalties fail to exert a meaningful impact on their financial standing.

The legislator's reluctance to impose stricter financial penalties is largely due to concerns about hindering economic growth. Business owners may be deterred from investing in projects if they face the prospect of severe financial sanctions, especially in industries inherently prone to regulatory violations.

Nevertheless, these concerns should not justify the failure to impose stricter financial penalties. Environmental resources constitute an essential component of economic capital relied upon in developmental projects, and their depletion could have severe long-term consequences.

" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

Given this, several comparative legal systems have opted to intensify financial penalties, including Egyptian, Kuwaiti, Belgian, and French legislators. Notably, France enacted Law No. 583/83 concerning marine pollution from oil, later amended by Law No. 444/90, issued on May 31, 1990. This law draws from the provisions of the 1973 London Convention and its 1978²³ amendment. It is hoped that the Algerian legislator will follow a similar path by strengthening current financial sanctions.

2.2- Second Subsection: Necessity and Administrative Authorization as Grounds for Exemption from Criminal Liability in Environmental Crimes.

The legislator has recognized several circumstances under which criminal liability for environmentally harmful acts may be negated, with necessity and administrative authorization being among the most prominent.

First Branch: The Doctrine of Necessity

The doctrine of necessity is one of the recognized grounds for the exclusion of criminal liability. It refers to situations in which a person is confronted with imminent danger and believes that committing an otherwise unlawful act is the only means of averting the threat. In environmental law, necessity has often been invoked to justify acts of pollution, which, despite being classified as criminal offenses, may not constitute fully realized crimes due to the absence of criminal intent²⁴.

Necessity negates the element of intent by eliminating the offender's criminal will. Article 97 of Law No. 03-10 on Environmental Protection in the Context of Sustainable Development exempts from punishment any discharge justified by urgent measures taken to prevent an imminent and grave danger threatening the safety of ships, human lives, or the environment.

As a condition for invoking necessity, the legislator requires the existence of a genuine threat to life or property, whether that of the perpetrator or others. Additionally, the danger must be imminent, meaning it must be present or about to occur, and the individual must not have played a role in creating the threat²⁵.

To ensure the efficacy of environmental criminal policy, judges—who are entrusted with the discretion to assess the fulfillment of these conditions—must refrain from an overly broad or lenient interpretation, particularly concerning the severity and immediacy of the threat and the extent to which the offender contributed to its occurrence. A strict judicial approach is essential to ensuring effective environmental protection.

Second Branch: Administrative Authorization

Administrative authorization serves as a ground for the exclusion of criminal liability, reflecting the "polluter-pays" principle in environmental legislation. This defense is contingent on two key conditions that render an otherwise criminal act permissible under specific circumstances²⁶.

The first condition requires that the authorization be based on a legal provision explicitly allowing such an exemption. This means that authorization derived from a regulatory decree alone is insufficient, given that most environmental offenses stem from statutory provisions. Consequently, under the principle of legal parallelism, a regulatory decree cannot override statutory provisions.

The second condition pertains to the necessity of adhering to the limits of the authorization. Legislators set maximum permissible pollution levels, and exceeding these thresholds renders the authorization void, thereby reinstating criminal liability, particularly in cases where negligence or recklessness is established²⁷.

Thus, administrative authorization effectively decriminalizes certain environmental offenses. This is based on the legislator's recognition that some activities inevitably result in

" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

pollution due to their hazardous nature. Rather than prohibiting these activities outright, the legislator has opted to regulate them through licensing mechanisms, acknowledging their economic significance.

However, accepting that pollution may result from administrative authorization is a controversial notion. It inherently legitimizes the "polluter-pays" principle, which has been subject to considerable criticism from environmental advocates.²⁸

Moreover, excessive reliance on administrative authorization to justify environmentally harmful acts on economic grounds, without imposing strict limitations, may ultimately lead to the depletion of environmental resources. Given that these resources serve as fundamental economic assets in many industries, their overexploitation could severely impact future economic stability.

Conclusion:

The Algerian legislator has endeavored to establish a criminal legislative framework aimed at safeguarding environmental resources and their diversity, particularly in response to the increasing violations that threaten their existence.

However, as demonstrated in the preceding analysis, this legislative policy is marred by several shortcomings. Chief among them is the overreliance on imprisonment as the primary punitive measure, which often proves inadequate in effectively deterring serious environmental offenses and mitigating their severe repercussions on both nature and human health.

Additionally, the legislator has resorted to financial penalties in the form of fines. While these sanctions play a role in deterring environmental violations, their insufficient monetary value fails to discourage industrial entities from engaging in harmful activities, thereby undermining their intended deterrent effect.

Furthermore, the legal recognition of necessity and administrative authorization as grounds for the exclusion of criminal liability in environmental offenses—especially when applied expansively or with excessive leniency—poses a significant challenge to achieving robust environmental protection.

To establish an effective and comprehensive safeguard for environmental resources, it is imperative for the legislator to classify environmental offenses as serious crimes warranting stricter penalties. Greater reliance should be placed on imprisonment rather than short-term detention, as the latter is often inadequate in addressing the magnitude of environmental harm. This is particularly relevant given that environmental damage tends to have long-term effects on public health, which may only become apparent long after judicial proceedings have concluded.

Moreover, it is crucial to significantly increase the value of financial penalties, especially considering that such fines are typically imposed on industrial, commercial, and artisanal entities with considerable financial resources. The current fines, being relatively low, fail to serve as an effective deterrent.

Finally, the application of necessity and administrative authorization as justifications for the exclusion of environmental criminal liability must be rigorously restricted to prevent their misuse and ensure that they do not become loopholes that enable environmental degradation.

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" Environmental criminal poliicy between a deficiency in deterrence and the inevitability of review and avaluation title"

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