Criminal Sanctions Arising from Environmental Damage Offences

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Abstract:

The protection of the environment within the framework of criminal law has become imperative, given the specific nature that distinguishes environmental offences. These offences are characterised by a high degree of technical and scientific complexity. They are often committed by individuals who possess advanced scientific and professional training, which enables them to evade punishment and conceal the features and consequences of their crimes. It has therefore become essential to keep pace with this technical and technological dynamism in the field of environmental criminality. This challenge has been addressed through the promulgation of specialised environmental protection legislation, which criminalises environmental violations and punishes their perpetrators, reinforcing these provisions with criminal sanctions proportionate to the gravity of the offenses committed. These sanctions take various forms and may constitute principal or ancillary penalties applied to both natural and legal persons alike in cases of noncompliance with the statutory provisions governing environmental protection.

Keywords: environmental pollution; criminal law; criminal liability; environmental crime.

Introduction:

Environmental pollution is an offense that the Algerian legislature has been keen to combat and prevent by prescribing sanctions against the person responsible for causing such pollution, whether this concerns a legal person or a natural person possessing discernment, that is, endowed with the elements of understanding and will. These two elements constitute the basis of criminal responsibility, in the sense that the person must have sufficient awareness of the criminal act he or she commits, of the consequences arising from it, and of the liability resulting from that act. When either of these elements is lacking, criminal responsibility does not arise, in accordance with Articles 47 and 48 of the Algerian Penal Code.

Given the seriousness of the consequences arising from environmental pollution, particularly since these offences not only harm individuals or society, as is the case with ordinary crimes but also threaten the entire world, indeed the planet as a whole, it has become necessary to determine the person responsible for the material act leading to environmental pollution. Accordingly, the criminal liability of legal persons has also been recognised and expressly laid down by law, especially as they are considered the primary actors responsible for

environmental pollution in various fields. The principal aim of this research paper is therefore to identify the basis upon which it is possible to determine the extent of the liability of the person responsible for environmental pollution.

To achieve this objective, and in light of the above, the following research problem may be formulated: **To what extent are the legal mechanisms that the legislator has sought to entrench effectively in addressing and establishing criminal liability for environmental pollution offences?**

We address this problem by adopting a descriptive and analytical method, which involves describing the environmental phenomenon and analysing the various legal provisions related to the subject of the study, particularly Law No. 03--10 on Environmental Protection.

Accordingly, this topic has been divided into the following sections:

In Section One, we address the legal basis for holding individuals accountable for environmental violations; Section Two examines the liability of legal persons; and Section Three is devoted to the liability of third parties for environmental damage offences.

1- The Legal Basis for Holding Individuals Accountable for Environmental Violations

In fact, environmental pollution is attributable primarily to human conduct and activities, which allows us to state that human beings are indeed problems for the environment. The disturbance of environmental and ecological balance is an inevitable consequence of flagrant assaults on the environment.[1] Committed by both natural and legal persons.

As a general rule, a person is held accountable only for offenses personally committed and with understanding and discernment, in application of the principle of the personal nature of punishment, which serves to protect the rights and freedoms of individuals. Accordingly, the criminal liability of a natural person for an environmental offense does not differ from their liability for any other offense they commit, even though it is challenging to identify the personal act in environmental offenses. For this reason, the liability of a natural person is determined in accordance with the law, which is known as statutory (legal) attribution. However, this approach rarely resorts to or relies upon identifying the perpetrator of an environmental offence.[2] (Subsection One). Instead, reliance may be placed on material attribution, which uses the methods of general law to identify the offender (Subsection Two), and it is also possible to have recourse to contractual attribution in determining the environmental offender (Subsection Three).

[1] Mohammed Abd al-Muhsin al-Baqqali al-Hasani, *The Environment between Environmental Protection and Judicial Practice* (Kingdom of Morocco: Ministry of Justice and Liberties), 14.
[2] Taha Mahmoud Ahmad, *Criminal Protection of the Environment from Pollution* (Egypt: Manshat al-Ma'arif, 2007), 40–41.

1-1 Statutory Attribution of Liability in Environmental Offences

Statutory attribution means that the law, in its various forms, undertakes to identify and designate a person or several persons as perpetrators of the offence and to specify the criminal conduct that threatens the environment in all its forms. Under this method, the legal provision itself determines, by name or by reference to a function, the person responsible for performing the duty or refraining from conduct imposed by law, whether expressly or implicitly. However, when the legal provisions related to the environment are examined, the legislator rarely identifies the perpetrator in such a specific manner.

Conversely, it may be observed that, in many instances, the legislator, in the context of environmental protection provisions, tends to determine the identity of the offender in general terms. This is due to the obligations imposed upon the environmental offender by virtue of the relevant legal provisions, a technique referred to as express statutory attribution. An example of this can be found in Article 58 of the aforementioned Law No. 03--10, which explicitly establishes the criminal liability of the ship's master for any act that leads to marine pollution through the discharge or spillage of hydrocarbons from the vessel. In such a case, the ship's master is criminally liable for this act in breach of the applicable law.[3] Here, the legislator clearly identifies the offender by name or by reference to his function.

Implicit statutory attribution, on the other hand, generally arises where the law does not expressly designate the responsible person, but this responsibility is inferred from the legal regime itself.[4] For example, every person in charge of a classified installation is liable for polluting acts that harm the environment, whether through landfilling, dumping, or incineration carried out by employees under their authority.

1-2 Material Attribution in Identifying the Environmental Offender

As previously indicated, this method relies on the techniques and mechanisms employed in general law to determine the status of the offender by attributing to him the material act, whether through positive conduct, where the link between the criminalised act and the perpetrator is established, or through omission, where the person fails to fulfil the obligations incumbent upon him, thereby giving rise to an environmental offence under the applicable legal provisions. These techniques and mechanisms are most commonly used in offences governed by general criminal law. Thus, the person responsible for an environmental offense is the one who performs the material activity constituting the offense, whether alone or in concert with others, or the person who fails to take the measures required by statutes and

[3] Art. 90 of Law No. 03-10 of 19 Jumada I 1424/19 July 2003 relating to Environmental Protection within the Framework of Sustainable Development, *Official Gazette of the Algerian Republic* 43 (20 July 2003), as amended and supplemented.

[4] Sabrina Tounsi, *The Environmental Offence in the Light of Algerian Law* (Master's dissertation in Law, Faculty of Law, University of Algiers 1, 2013–2014), 46–47.

regulations.[5] In contrast, a natural person incurs no liability except with respect to activities criminalised by explicit legal provisions.[6]

Accordingly, any person who engages in material conduct, whether active or passive, that harms the environment is criminally liable for the damage caused to it.

Regarding the Algerian legislator's position, it is evident that he has adopted this form of attribution, as indicated in Article 32 of the aforementioned Law No. 03--10, which imposes an obligation on certain persons to take specific measures necessary to reduce environmental pollution. Failure to comply with these obligations renders them criminally liable by virtue of material attribution.[7] It may also be observed, from the tenor of Article 46 of the same law, that the legislator has broadened the criminalisation of the material activity constituting the offense, in that he does not specify the type or source of gaseous emissions but merely requires that environmental harm be caused.

Notably, the Algerian legislature has followed the French legislature in broadening the concept of criminal participation in environmental offences. Environmental criminal law has adopted a specific concept of participation in such offences by conferring the status of an accomplice in the offense on any person who contributes to it, even where their contribution does not strictly correspond to the classical categories of assistance, provision of means, or instigation. This reflects the legislator's concern to afford greater criminal protection to the environment,[8] which is clearly apparent from the flexible terminology he employs to describe the material element of the environmental offense.

1-3 Reliance on Contractual Attribution to Determine the Status of the Environmental Offender

This form of attribution is known as the theory of delegation of powers, whereby the employer, the head of an industrial or economic undertaking, or the manager of an installation designates a person who shall be responsible for all infringements committed during, or on the occasion of, the activities carried out by the undertaking or installation. In this way, the workers under his authority are relieved of criminal liability for these infringements. This type of attribution is considered the most appropriate for holding legal persons liable for environmental pollution offences.[9]

With respect to the position of the Algerian legislature, it is apparent that he has adopted this form of attribution, particularly since recourse to it may achieve effective deterrence with respect to offences committed within the framework of a legal person for the purpose of establishing criminal liability, especially where competences within an undertaking or installation are intertwined and complex, making it challenging to determine environmental

[5] Taha Mahmoud Ahmad, *Criminal Protection of the Environment from Pollution*, 134.
[6] Faysal Boukhalfa, *The Environmental Offence and Means of Combating It in Algerian Legislation* (Doctoral thesis in Law, specialism in Criminology and Penology, Department of Law, Faculty of Law and Political Science, University of Batna 1, 2017), 76–77.
[7] Art. 32 of Law No. 03-10 on Environmental Protection.
[8] Sabrina Tounsi, *The Environmental Offence in the Light of Algerian Law*, 48.
[9] Ibid., 48.

responsibility. This is reflected in the wording of Article 92, paragraph 3, which provides the following:

'…where the owner or operator is a legal person, the liability referred to in the two preceding paragraphs shall be borne by the person or persons among its lawful representatives or de facto managers who are responsible for supervision or management, or by any person authorised by them. '[10]

2- Legal Person as a Party Criminally Liable for Environmental Violations

There is no divergence in legal doctrine or legislation regarding the recognition of the liability of natural persons for acts that pose a danger and cause harm to others, including their liability for environmental offenses in various forms. The difficulty arises, however, in relation to the liability of a legal person for offenses that cause harm to the environment. This has been the subject of intense doctrinal controversy, with opinions divided between those in favour of recognising such liability and those opposed to it. As a result, comparative legislation has also been affected by this debate and has become divided, with some systems recognising the criminal liability of legal persons and others rejecting it.

In specific legal systems, whether at the national or international level, it has therefore become necessary to acknowledge the liability of legal persons for the environmental damage they cause. In this section, we examine the liability of the legal person from the standpoint of the law.[11] Moreover, the conditions governing the application of this liability (Subsection Two) are as follows:

2-1 Recognition of the Liability of the Legal Person in Algerian Law

The legal person is regarded as the primary actor responsible for environmental pollution in various forms, even though, prior to 2004, the Algerian legislature did not provide for its liability with respect to environmental offences. The reason for this, according to previous studies, is that all enterprises at that time were public entities. This issue was settled in 2004 by recognising the possibility of holding the legal person accountable on the basis that it possesses a will of its own, namely, the collective will that acts in its name and on its behalf.

The Algerian legislature was therefore keen to establish the criminal liability of the legal person in Algerian law by introducing Article 51 bis into the Penal Code, which provides the following:

'Except for the State, local authorities and legal persons governed by public law, the legal person shall be criminally liable for offences committed on its behalf by its organs and lawful representatives, where the law so provides.

The criminal liability of the legal person shall not preclude the prosecution of the natural person as principal or accomplice in the same acts.'

[10] Art. 92(3) of Law No. 03-10.
[11] Basma Abd al-Mu'ti al-Hawrani, *Criminal Liability for Environmental Pollution: A Comparative Study* (Dar al-Nahda, 1st ed., 2015), 139.

It may be observed from the above provision that the Algerian legislature has excluded public legal persons, namely, the State, the wilaya, the municipality and legal persons governed by public law, from the scope of criminal liability, restricting such liability to private legal persons, that is, those governed by private law. Furthermore, a legal person is not subject to prosecution unless there is a specific legal provision that so stipulates.

Thus, not all legal persons can incur criminal liability; they are excluded from such liability under Article 51 bis of the Penal Code, and criminal liability is imposed only on legal persons governed by private law. Excluding the State from criminal liability constitutes an explicit breach of the principle of equality before the courts with respect to the environmental offences it may commit. For the exclusion of local authorities from criminal liability, it would have been preferable for the Algerian legislature to follow the position of the French courts, which recognise the criminal liability of local authorities in relation to the delegation of public services.

With respect to legal persons governed by public law that may be criminally liable for their acts, it would have been preferable had the Algerian legislature enacted a statute or decree specifying those public law legal persons that are subject to such liability or adopted the approach of the French legislature, who has subjected these public entities governed by public law to criminal liability.[12]

Notably, the environmental legislature has also accepted the dual criminal liability of natural and legal persons, as per paragraph 2 of Article 51 bis cited above, to ensure broader and more comprehensive protection of the environment. This is confirmed by Article 92, paragraph 3, of Law No. 03--10 on Environmental Protection.

However, with respect to returning to the Environmental Law, we find that the newly introduced provision not only criminalises the private legal person but also extends to the legal person governed by public law and, more specifically, to public industrial establishments, pursuant to Article 18 of Law No. 03--10 on the environment. This is a commendable step because it is irrelevant to whether the perpetrator is a public or a private undertaking.

Since legal persons in the environmental field are numerous and diverse, the law has succeeded in classifying the majority of them and subjecting them to a single regulatory regime, thereby facilitating their supervision, and has given them the designation of "classified installations".[13] The liability of such an installation can arise only through the natural persons defined by law, namely, those who occupy positions of particular importance within it and are entrusted with its management and supervision, such that the continuation of the installation's activity depends on their administration.

[12] Nasser Zarourou, *Criminal Protection of the Environment in Algerian Law* (Doctoral thesis in Legal Sciences, specialism in Law, Faculty of Law, University of Algiers 1, 2017), 252.
[13] Murad Latami, *The Material Element of the Environmental Offence and Its Practical Difficulties (in Algerian Law)* (Master's dissertation, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Sétif), 62.

The material conduct carried out by the natural person who is a member or representative of the legal person thus constitutes one of the elements of the environmental offence attributed to that legal person.[14]

2-2 Conditions for the application of the criminal liability of the legal person

For the criminal liability of the legal person with respect to an environmental offense to arise, several conditions must be fulfilled, which may be summarised as follows:

2-2-1 The offence must be committed by a person entitled to express the will of the legal person:

The criminal liability of a legal person is an indirect liability, which can only materialise through the act of a natural person who represents the legal person by virtue of a position that empowers them to exercise control and supervision over it. Accordingly, the legal person can only be held criminally liable where the unlawful acts can be attributed to its organs or its lawful representatives, who are necessarily natural persons. This is confirmed by Article 51 bis of the Penal Code, which provides the following:

"The legal person shall be criminally liable for offences committed on its behalf by its organs or lawful representatives, where the law so provides."

The material act carried out by the natural person, who is a member or representative of the legal person, thus constitutes one of the elements of the environmental offence attributed to the legal person. When the legal person mandates that a natural person performs a given act and that the agent commits an environmental pollution offense on behalf of the legal person, the latter will be held liable for that offense since the agent is deemed to be the legal representative of the legal person.[15]

2-2-2 The offence must be committed on behalf of the legal person:

The legal person incurs criminal liability when offences are committed by its members, managers, or legal representative in its name and on its behalf, in the course of activities carried out for the benefit of the legal person.[16] In such a case, the legal person derives an advantage from the activity performed by the natural person; the offense is committed to realise an interest for it, and it is immaterial whether that interest is material or moral, direct or indirect. It is therefore required that the offense be committed on behalf of the legal person, as confirmed by the aforementioned Article 51 bis of the Algerian Penal Code.

[14] Art. 92(3) of Law No. 03-10 relating to Environmental Protection within the Framework of Sustainable Development, previously cited.
[15] Mohamed Amin al-Bashir, *Criminal Protection of the Environment* (Doctoral thesis in Legal Sciences, Faculty of Law, DjilaliLiabes University), 183.
[16] Abd al-Laoui Jawad, *Criminal Protection of Air from Pollution: A Comparative Study* (Doctoral thesis in Public Law, Faculty of Law and Political Science, Abou Bekr Belkaid University, Tlemcen, 2014), 54.

Consequently, offences committed by natural persons in their own personal interest do not give rise to the criminal liability of legal persons.

3. Commission of an act criminalised under environmental law:

Every activity engaged in by the offender must be punishable under environmental law, such as operating a classified installation without prior authorisation. There can be no penalty, no offense or preventive measure except by virtue of a legal provision.

3- Liability of Third Parties for Environmental Damage Offences

According to the constitutional principle of the personal nature of punishment, any person who has no connection with the offence, whether as a principal or an accomplice, remains beyond the reach of criminal sanctions.[17] For punishment to be applied, there must be a material link between the offence and the conduct of the person held responsible for it. The offender must personally contribute to the commission of the offense, and there must exist a causal relationship between the act of participation and the criminal result that the legislator takes into account in defining the offense and prescribing the penalty.

The question that arises is therefore the extent to which criminal liability may be recognised with respect to the act of another. In response to this question, legal doctrine has been divided into supporters and opponents of recognising such liability (Subsection One), subject to certain conditions that must be fulfilled (Subsection Two).

3-1 The Approach Supporting the Recognition of Environmental Criminal Liability for the Act of Another

Legal doctrine has recognised criminal liability for the act of another, by analogy with civil law, which acknowledges liability for one's personal act alongside liability for the act of another. Under this civil law construct, a person is obliged to compensate for damage caused by another person. However, such liability has no place in criminal law, which recognises only pure personal liability; it is inconceivable, in principle, that a person is held accountable for the act of another.

Nonetheless, environmental law may, in certain circumstances, adopt liability for the act of another. Some authors support this approach on the basis of the responsibility of third parties for their duty of supervision and control, even though this runs counter to the constitutional principle of personal criminal liability.[18]

However, the school of thought supporting this form of liability (liability for the act of another) has advanced justifications and reasons for its recognition and has also laid down specific conditions for its application. The primary aim of adopting this type of liability is to broaden the scope of environmental protection through the proliferation of preventive measures applied even to persons who are not themselves directly responsible for polluting

[17] Art. 92(3) of Law No. 03-10, previously cited.
[18] Sabrina Tounsi, *The Environmental Offence in the Light of Algerian Law*, 50.

the environment, such that the mere existence of a fault on the part of one member of a legal person is sufficient to establish the liability of that legal person.[19]

In addition, it helps ensure the effective enforcement of environmental laws applicable to natural persons, legal persons, and third parties alike, particularly in light of the expanding scope of criminalisation in the field of environmental pollution. Currently, environmental degradation has affected the entire world, and the spread of environmental offences has led to ecological disasters impacting numerous states. Many studies and scientific reports have shown severe deterioration of the environment, which is among the reasons that have led to the attribution of criminal liability to managers and operators of classified installations.[20] Another justification for adopting liability for the acts of others lies in the gravity of the consequences arising from environmental offenses, which have come to threaten humanity as a whole.[21]

3-2 Conditions for Recognising Environmental Liability for the Act of Another

With respect to the conditions for the establishment of this liability, it is necessary, before attributing criminal responsibility to the act of another, to ensure the fulfilment of a set of conditions, namely:

A further condition is that a subordinate must commit the offense. In other words, a relationship of subordination must exist between the worker and the head or manager of the undertaking.[22] The principal is liable for the act of his subordinate where the latter acts under his supervision, control and direction, provided there is a link between the subordinate's conduct and the fault of the principal who has failed to fulfil his legal obligations. Without the principal's fault arising from negligence in supervision and control, as well as noncompliance with the environmental regulations in force, the criminal result would not have occurred at the hands of the subordinate.[23]

Conversely, the principal must not have entrusted or delegated to another the duty of supervising and overseeing the activities of his subordinates in his stead. The owner of an undertaking cannot manage it alone, which has led to the emergence of the idea of sharing tasks and, consequently, sharing responsibility whenever circumstances so require. The transfer of powers leads to the transfer of responsibility to the person to whom certain powers of the installation or undertaking are delegated. Nevertheless, the act causing the damage is committed in the interest of the principal, who remains liable for the harm, since it was committed for his benefit and on his account.[24] Accordingly, the notion of adopting liability for the act of another can be realised in the environmental field.

[19] Ibid., 50.
[20] Munir al-Fiti, *Criminal Protection of the Marine Environment from Pollution* (Magister dissertation in Public Law, specialism in Environment and Urban Planning, Faculty of Law, University of Algiers 1, 2014), 109.
[21] Noureddine Hashma, previously cited reference, 157.
[22] Ahsan Bousqia, *Customs Disputes*, 3rd ed. (Algiers: Dar Houma, 2009), 397.
[23] Ahsan Bousqia, *A Concise Treatise on General Criminal Law*, 4th ed. (Algiers: Dar Houma, 2007), 178.
[24] Sabrina Tounsi, *The Environmental Offence in the Light of Algerian Law*, 53.

Notably, situations in which the criminal liability of the person who infringes and causes damage to the environment is excluded, in cases defined by law and described in legal doctrine as grounds excluding liability, that is, situations in which the will is stripped of its legal value, exist. This approach has been adopted by many environmental statutes: anything that negates awareness or freedom of choice is regarded as a bar to establishing liability.[25]

Conclusion

On the basis of the foregoing analysis, this paper reaches the following conclusions:

Pollution, in its various forms and spheres, is at its core attributable to human conduct, leaving no room for doubt that human beings constitute the primary source of environmental problems. The disturbance of the ecological balance is therefore an inevitable consequence of violations perpetrated against the environment, making concern for and protection of the environment an urgent necessity that cannot be disregarded and, indeed, one that is impossible to overlook. To achieve this aim, it is essential to activate and strengthen various legislative and institutional mechanisms, foremost the imposition of criminal sanctions on offenders who infringe on environmental integrity.

The imposition of sanctions on the person responsible, whether a natural or a legal person, for environmental damage combines two fundamental dimensions: a punitive–deterrent dimension and a preventive dimension. The effect of punishment is not confined merely to penalising the offender; it also contributes to reducing the harm arising from activities carried out by natural and legal persons, particularly those that pose a direct threat to the environment, by prompting them to avoid risks that are, in many cases, severe and complex to contain in the future.

Therefore, we propose the following:

- The need to unify legislative provisions related to the environment.
- Encouraging environmentally friendly projects by granting them incentives and tax advantages.
- The implementation of higher levies on environmentally harmful projects is commensurate with the actual cost required to remedy the resulting environmental damage.

[25] Ibid., 65–66.

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