

Criminalization and punishment policy for environmental violations in Algerian legislation

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Abstract directly impacts human life in all its aspects. But if it is damaged, its effects are negatively impacted, to the point of threatening the very existence of the environment as a living being alongside other creatures. Therefore, it receives significant and growing attention at both the international and national levels. Hence, the importance of environmental protection emerges in confronting any act that could pollute it, whether intentional or unintentional, conscious or unconscious, and whether the perpetrator is a natural or legal person. This has led societies to adopt the principle of environmental protection in their constitutions. The right to a healthy environment has become a constitutional right that transcends many other rights. This right is enshrined in specific texts that include criminal and punitive rules to confront various acts of environmental aggression by criminalizing and imposing penalties on perpetrators, achieving general and specific deterrence.

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I. Introduction

There is no doubt that the environment is a fundamental factor that directly impacts human life in all its aspects. If it thrives, human affairs prosper ; if it is harmed, this negatively reflects on humans, threatening their existence as living beings, along with other creatures. It is primarily an issue of existence, which is why it receives significant and increasing attention internationally and nationally. The ongoing challenge between unlimited development in all its fields—especially in industry-based economies—and its negative impacts on the environment, which serves as the vessel for societies' lives, means the fate of the latter is tied to what the former will become.

From this perspective, the importance of environmental protection emerges, confronting every act that may pollute it, whether intentional or not, conscious or ignorant, and whether its perpetrator is a natural or legal person. This has led societies to adopt the principle of environmental protection in their constitutions, making the right to a healthy environment a constitutional right that supersedes many others, enshrined through numerous legislative texts, among which punitive ones are the most important.

The Algerian legislator, like its counterparts in other countries within the international community, sought to achieve this protection by enacting special texts that encompass regulation, encouragement, and deterrence. Through the latter, it has worked and continues to work on enacting punitive texts to confront various acts of aggression against the environment by criminalizing them and stipulating penalties for their perpetrators to achieve general and specific deterrence.

This leads to the following problematic question : **"What is the Criminal Policy adopted by the legislator to protect the environment from any infringement ?»**

This problem will be addressed by studying the topic in three sections. The first section will define environmental crime and the specificity of its legal element. The second section will examine the material element of environmental crime, and the third will cover the specificity of the moral element in environmental crime. We will also attempt to review the opinion of legislation, jurisprudence, and doctrine in each instance.



***Previous Studies**

1-Nacer Zerourou, Criminal Protection of the Environment in Algerian Law, University of Algiers 1 (Benyoucef Benkhedda), Doctoral Dissertation (PhD Thesis), 2017.

2-Wanassa Jeddi, Criminal Protection of the Air Environment – A Comparative Study Between Islamic Sharia and Positive Law, Mohamed Khider University of Biskra, Doctoral Dissertation (PhD Thesis), 2016/2017.

3-Mohamed Lmoussakh, Criminal Protection of the Environment, A Comparative Study Between Islamic Sharia and Positive Law, Mohamed Khider University of Biskra, Doctoral Dissertation (PhD Thesis), 2009.

4-Jawad Abdellaoui, Criminal Protection of Water from Pollution (A Comparative Study), Abou Bekr Belkaid University of Tlemcen, Master's Thesis (or PhD Thesis), 2004.

5-Sabrina Tounsi, Environmental Crimes in Algerian Legislation, Mohamed Khider University of Biskra, Master's Thesis/Dissertation, 2014/2015.

6-Criminal Prosecution Procedures in Environmental Crimes, (Study with no author specified), Barika University Center, Master's Dissertation (Mémoire de Master), 2023.

7-Mechanisms for Combating Environmental Pollution Crimes in Algerian Legislation, (Study with no author specified), University of Ghardaia, Master's Dissertation (Mémoire de Master), 2023.

*** Objectives of the Study: Environmental Crimes**

The primary aim of this study is to **evaluate the efficacy of the national criminal policy** in protecting the environment from aggressions and violations, while providing insights and recommendations for developing the relevant legal and executive frameworks.

A. General Objectives

1. **Analytical Objective:** To thoroughly analyze and evaluate the legal texts related to the criminalization of environmentally harmful acts, and to identify existing strengths and deficiencies in the legislation.
2. **Critical Objective:** To critically assess the penal policy established for environmental crimes and determine the proportionality of the mandated penalties (fines and imprisonment) relative to the severity of the environmental damage to public health and society.
3. **Guidance Objective:** To propose practical and implementable recommendations aimed at strengthening the role of the judiciary and



executive agencies (such as the Environmental Police) in combating environmental offenses.

B. Specific Objectives

1. **Legal Inventory:** To catalogue and classify all legislative and regulatory provisions that criminalize environmental aggressions within the national law (specifically Law 03-10 and other specialized statutes).
2. **Crime Definition:** To define the material and moral elements (Rukn) of the environmental crime and investigate the **challenge of legally proving** environmental harm before judicial authorities.
3. **Corporate Liability:** To analyze the status of **criminal liability for legal persons** (companies and institutions) concerning environmental crimes, and to clarify the penalties and measures applied to them.
4. **Restorative Measures:** To study the role of the criminal judge in activating **compensatory and restorative measures** (such as mandatory pollution removal and environmental rehabilitation) as alternatives to traditional penalties.
5. **Operational Constraints:** To identify the **procedural and technical obstacles and challenges** encountered by judicial police and agencies responsible for monitoring and combating environmental crimes.
6. **Legislative Comparison:** To conduct a brief comparative analysis between the national legal provisions and those of a leading international or regional jurisdiction (such as the European Union or another advanced state) to incorporate best practices.

II : Definition of Environmental Crime and the Specificity of its Legal Element

Since the environment is the vessel that ensures the continuity of life for living beings, it was necessary to provide it with special protection by criminalizing various acts of aggression that fall under the term (**environmental crime**). Therefore, this section will be studied in two subsections, through which we will explain the conceptual framework of environmental crime and the specificity of its legal element.

II.1-Definition of Environmental Crime

The Algerian legislator has not provided any definition for environmental crime [(UNESCO & ALI ZIN , 1984)], leaving the matter to criminal jurisprudence, which defined it as : (**Every positive or negative, intentional or unintentional conduct, emanating from a natural or legal person, that harms or attempts to harm an element of the environment, whether directly or indirectly**) [(hilal, 2005)]. It has also been defined as every breach of a legal obligation to protect the environment, or anything that constitutes an unlawful



aggression against the environment in violation of the rules regulating it, which prohibit such aggression and specify the penalties for their violation.

Thus, an environmental crime is committed by acts that exceed the provisions set to regulate the environment, whether positively or negatively by omission, regardless of whether these acts originate from a natural or legal person, and regardless of location, whether within or outside the country.

II.2 : Specificity of the Legal Element in Environmental Crime

The legal element appears in the text that criminalizes and punishes specific acts according to what is known as the **principle of legality of criminalization and punishment**, meaning there is no crime or punishment except by a law issued by an authority representing the people and competent in legislation [(Mostafa, 1983)].

Thus, the basis upon which the rule of criminal legality is founded is to guarantee the protection of individual liberties against any overreach by the executive and judicial authorities beyond their constitutionally and legally established competencies. Neither authority has the right to take measures against individuals unless there is a prior text issued by the legislative authority regulating the matters subject to intervention. Did the Algerian legislator apply this legal logic in establishing rules for criminalizing acts harming the environment ? This is what we will discover through the following branches.

1- Retreat of the Legislative Authority in the Scope of Environmental Criminalization

The general principle of criminalization and punishment dictates that the criminalizing and punishing legal rule should be issued solely by the legislative authority, in accordance with the requirements of Article 140 of the Algerian Constitution [(Law 16-01, 2016)]. Criminalization in the environmental field, as a principle, can only be by a legislative text monopolized by the legislative authority. However, due to the specificity of the environmental field, which is primarily a technical domain requiring deep technical knowledge, the intervention of the administration becomes imperative and necessary to meet the needs and requirements of protecting the environment from acts of aggression. This has led the Algerian legislator to cede some of its legislative powers to the administration, considering the unique nature of the environment and, consequently, environmental crime.



Thus, the role and powers of the administration have expanded within the framework of regulating environmental crime as a secondary legislative body. This is something we have observed with the Algerian legislator when confronting a specific type of crime due to its vulnerability to the particularity of the environment in which it arises, such as customs crimes. The administration thus becomes functionally qualified for the legislative role, arguing its understanding and awareness of the various technical mechanisms for environmental protection from various aggressions, through a set of mechanisms.

-Legislation by Ordinances as a Mechanism for the Administration to Combat Environmental Crime

Legislation by ordinances derives its legitimacy from Article 142 of the amended and supplemented 1996 Constitution. The President of the Republic may legislate by ordinances in urgent matters in case of a vacancy in the National People's Assembly or between parliamentary sessions, after consulting the State Council, provided that the texts are presented to the first parliamentary session for approval or rejection, otherwise they are considered null and void. In this context, Ordinance No. 06-05 concerning the protection and preservation of certain endangered animal species was issued [(journal, 2006)], as well as Ordinance No. 06-08, which amended and supplemented Law No. 85-05 concerning health protection and promotion .

-Expansion of Legislative Delegation as an Administrative Mechanism to Combat Environmental Crime

The expansion of legislative delegation is evident through the concession made by the legislative authority in favor of the executive authority, represented by the President of the Republic, within the legislative sphere on specific subjects and for a defined period. The executive authority then replaces the legislative authority in exercising legislative powers in the form of decisions that acquire the force of legislative action [(Pactat, 1996)], which is known as legislation by virtue of a delegation law.

It should be noted that the Algerian Constitution did not directly stipulate delegated legislation. This means it emerged indirectly – by allowing, under legal texts within the framework of regulation – the executive authority to intervene in defining the elements of crime and its scope of criminalization in its most precise elements, in many texts issued by the legislative authority, which some refer to as "**blank criminalization**".



Therefore, this method is an effective mechanism that aligns with the specificity of the environment and related crimes, by ensuring conscious legal intervention regarding the technology associated with the environment and its pollution. This is difficult for legislation to cover in a timely manner consistent with the dynamism of environmental phenomena and their problems, especially since the smooth implementation of laws on the ground is always linked to the intervention of the executive authority.

An example of this is what is stated in Article 100 of the Environmental Protection Law, which penalizes with imprisonment for two (2) years and a fine of five hundred thousand dinars (500,000 DZD) anyone who throws, discharges, or causes leakage into surface or groundwater or into sea waters subject to Algerian jurisdiction, directly or indirectly, any substance or substances whose effect or interaction causes harm, even temporarily, to human, plant, or animal health, or leads to the reduction of the use of tourist areas. When the discharge operation is authorized by a decision, the provisions of this paragraph apply only if the requirements of that decision are not respected....

A second example in the Penal Code is what is stipulated in Article 444/2, which criminalizes and punishes any act that would flood roads or properties of others by raising the outlet of mills, factories, or swamps above the level determined by the competent authority.

2- The Interpretive Function of Legislation in the Field of Environmental Crime

This branch will be discussed in two points: the first concerns the function of administrative interpretation, and the second, the function of judicial interpretation.

- Legislative Interpretation:

The interpretive function entrusted to the executive authority within the framework of regulation is a newly developed function due to the technical and specialized nature of the environment and, consequently, environmental crime. It is essential for achieving interaction between criminal law and environmental protection to understand and comprehend technical terms, which has led some to consider environmental law as a law for specialists and technicians. Therefore, it became necessary to overcome legislative shortcomings in their formal sense and open the field to specialists to keep pace with criminal legality in the environmental domain.



An example of this is what is stated in Article 88 of Law 01-11 concerning marine fishing and aquaculture: **(Anyone who introduces, hunts, transports, or sells males, fry, tadpoles, or larvae without a license, in violation of the provisions of Article 39 of this Law, shall be punished with a fine of two hundred thousand dinars (200,000 DZD) to four hundred thousand dinars (400,000 DZD))** [(Law 01-11 , 2001)]. These terms remained ambiguous until the issuance of Executive Decree No. 04-188, which specifies the procedures for hunting, transporting, marketing, and introducing males, larvae, fry, and tadpoles into aquatic environments [(Executive Decree 04-188, 2004)]. Before the issuance of this decree, the administration would intervene in defining the elements of the material element by clarifying the meaning of these terms.

On the other hand, the expansion of the environmental sphere has led to the expansion and complexity of acts of aggression against it by many delinquents who exploit numerous legal loopholes to achieve huge profits at the expense of the environment, especially factory owners. This makes it necessary to make punitive texts more flexible to confront everything new in this field. It is not possible to rely solely on traditional criminalization rules to confront environmental criminal diversity; rather, they must be amended and adapted to accommodate new criminal acts affecting the environment.

- Judicial Interpretation

Judicial interpretation is one of the acts over which legal scholars have differed regarding its attribution to the judiciary, especially in the penal field [(Kada, 2018)]. However, it is generally agreed among scholars that the judge must adhere to a strict interpretation of legal texts [(pénal)]. Did the judiciary adhere to the rule of strict interpretation within the framework of criminalizing rules for environmental crimes ?

The judiciary has adopted the idea of strict interpretation of legal texts due to the specificity and complexity of cybercrime. An example of this is a case brought before the courts concerning the prosecution of an individual for committing two misdemeanors : discharging wastewater and used water into pits, causing air pollution, in accordance with Articles 46 and 172 of Law 05-12 and Articles 83 and 47 of Law 03-10 related to environmental protection within the framework of sustainable development. The court acquitted the defendant on the grounds that Article 84 of Law No. 03-10 punishes individuals who violate the provisions of Article 47 of the same law for causing air pollution. By referring to Article 47/1, it appears that it relates to violating conditions that prohibit or regulate the emission of gas, smoke, vapor, or liquid or solid particles into the



atmosphere. Therefore, according to this article, the defendant did not emit any emissions into the atmosphere [(Cour, 2016)], a ruling that was upheld by the Council upon appeal by the Public Prosecution [(cour, 2016)].

Therefore, it is observed through the judiciary's decisions in these and other rulings that it adheres very strictly to the rule of narrow interpretation, to the extent that it may not recognize interpretation at all in the environmental field, which is characterized by its technical nature. This could be an impediment in confronting acts of aggression against the environment, making it necessary to provide judges with environmental training. This would allow for prosecutions within a seemingly interpretative scope, based on the judge's knowledge of environmental terminology and its technical dimensions, while intrinsically adhering to the criminalizing text within the framework of criminal legality.

3- Application of Environmental Criminal Law in Terms of Time

The principle of immediate and direct application of legal texts dictates that any legal text applies immediately to future events and does not apply retroactively. However, this may create a problem in the case of environmental crime, given that it can be a continuous crime committed at every moment of its continuation. This has led to a jurisprudential divergence between accepting the retroactive application of the new law and the necessity of adhering to immediate application based on the direct effects of the crime.

What can be said regarding environmental crime is that it is not sufficient to simply state that the new law applies immediately to ongoing incidents that originated before it, or to apply it retroactively to incidents that occurred before its issuance, as long as the characteristic of continuity isolates us from this concept. A continuous crime is considered committed at every moment of its continuation. Thus, the application of the new law to it is an implementation of its subsequent effect, as it affects the future and does not apply to the past, as long as the crime remains committed after the new law comes into force without any exception. The criminal situation is what met the new law to be subject to it, and it is not this law that retroactively applies to encompass it. This means that the law applies if the state of continuity ceased before its entry into force, which also affects the issue of the extinction of this crime. The statute of limitations for public action does not begin to run until the date of the termination of the criminal act, such as the cessation of pollution. An example of this is stated in Article 147 of Law No. 14-05: **(Anyone who continues exploitation works without regard for the prohibition stipulated in Article 50 of this Law shall**



be punished with imprisonment from six (6) months to three (3) years and a fine of 1,000,000 DZD to 2,000,000 DZD) [(14-05, 2014)].

III The Material Element in Environmental Crime

The prevailing principle in the criminal field is that there is no crime unless the criminal intent is materialized by an external act ; therefore, there is no crime without a material act [(MOHIDDINE, 1994)]. This material act is manifested in the criminal behavior for which the legislator prescribes a criminal punishment. Thus, we will discuss this section in two subsections : the first will clarify the specificity of the material element in environmental crime, and the second will cover the legislator's classification of environmental crimes and their prescribed penalties.

III.1 Specificity of the Material Element in Environmental Crime :

This subsection will be explained through three branches: the first will examine the issue of ambiguity in the material element of environmental crime, the second will address the issue of attempt in this crime, and the third will discuss the issue of descriptive or qualificative conflict within the framework of environmental crime.

1- Ambiguity of the Material Element in Environmental Crime

Observing the texts that regulate the environmental field, one finds that the Algerian legislator did not adhere to precision and clarity in defining the material element of environmental crime through penal texts. Many texts came with broad meanings, even encompassing more than one meaning without providing definitions or clarification, which created what is known in jurisprudence as "**open criminalization**", especially given the wide scope of legislative delegation regarding the definition of the material element by granting this power to the executive authority in the form of administration through what are called implementing texts within the framework of regulation, which violates the principle of legality.

An example of this is what is stated in Article 498 of the Maritime Law, which criminalizes and punishes the captain of an Algerian or foreign vessel within Algerian territorial waters if he assists or tows a nuclear-powered vessel or any other vessel transporting fuel or other dangerous materials specified by regulation without immediately notifying the competent authorities of the location of the vessel in danger and the nature of its damage. Consequently, the



phrase "**(other dangerous materials)**" allowed the regulation to classify a huge number of dangerous materials.

Secondly, the ambiguity of the material element is evident through the characteristic of criminalizing negative acts as well, which are numerous and varied and give rise to environmental crime. Most environmental crimes are negative crimes based on omission to perform an act required by law, unlike general law crimes which are primarily based on positive acts. Criminalization in the environmental field is fundamentally based on criminalizing negative acts committed by violating obligations or procedures previously defined and regulated by the legislator to achieve environmental protection based on administrative licenses. All of this is aimed at confronting a potential future danger to the environment, which is another indication of the latter's importance and the legislator's concern for it.

Thirdly, the material element in environmental crime is characterized by being formal, meaning that environmental crime is primarily a **crime of danger**. Criminalization, in this context, refers to the seriousness of potential consequences. Criminalization is primarily preventative rather than punitive and deterrent, regardless of whether the desired outcome is achieved by the perpetrator [(Behnam, 1995)]. This means that the legislator's intent was to criminalize these consequences due to their seriousness, as a preventative measure. It is not required for the harmful act to occur ; rather, for some crimes, the mere possibility of harm is sufficient for the crime to be established.

2- Attempt in Environmental Crime

The Algerian legislator defined attempt in general law crimes through Article 30 of the Penal Code as all attempts to commit a felony that begin with an overt act or unambiguous acts directly leading to its commission are considered as the felony itself if they are not stopped or their effect is not thwarted except due to circumstances independent of the perpetrator's will. As for misdemeanors, attempt is only punishable by a specific text, unlike infractions where there is no attempt at all, according to Article 31 of the same law.

Contrary to general rules, attempt in environmental crime is considered a crime in itself, as the legislator equated it with the complete crime [(OFISIAL, 2003)], based on considering attempted acts as independent acts.

On the other hand, it is observed that the legislator has subjected some environmental misdemeanors to the rules of general law regarding attempt. An



example of this is what is stated in Article 86 of Law No. 04-07 concerning hunting : **(Anyone who attempts to hunt or hunts without a hunting license or authorization... shall be punished)**. Attempted hunting here means preparation and commencement with unambiguous acts, but the crime was not completed for a reason beyond the perpetrator's will, making him subject to the rules stipulated in Article 31 of the Penal Code mentioned above.

It should be noted, thirdly, that the legislator used a new term, namely "**any preparations,**" which extends to criminalizing preparatory acts contrary to general rules, in cases where the planned crime is of great seriousness, as appears in Article 10 of Law No. 03-09, where the legislator criminalized, regarding a felony, anyone who **(.....b- makes any preparations of any kind for the use of chemical weapons)**.

3- Descriptive or Qualificative Conflict within Environmental Crime

The principle of criminalization is that each crime has a detailed description of its elements through a single description based on a legislative text representing its legal element. However, the situation differs in environmental crime, where we may find multiple descriptions for a single act, which may create a descriptive conflict between crimes within environmental criminal laws or between them and general law crimes, leading to a jurisprudential dispute regarding the determination of the legal basis for this issue.

An example of descriptive conflict between crimes within the environmental framework is what is stated in Article 173 of Law No. 14-05, which includes the Mining Law: **(Violations of this law and its implementing texts in the field of activities related to the search for and exploitation of mineral or fossil materials in the sea shall be punished in accordance with the provisions of Articles 174 to 184 below, without prejudice to penalties that may be imposed otherwise, particularly under the Maritime Law and legislative provisions relating to environmental protection within the framework of sustainable development)** [(14-05, the mining law, 2014)]. It is observed that the same facts constituting the criminal act are subject to more than one description and qualification given the multiplicity of texts that criminalize them in many sectors.

As for the descriptive conflict between environmental crimes and general law crimes, we find that the Penal Code addresses many crimes whose facts are originally an environmental crime stipulated in a special law. An example of this is what is stated in Article 444/2 of the Penal Code, which criminalizes and



punishes anyone who floods roads or properties of others by raising the outlet of mills, factories, or swamps above the level determined by the competent authority. In the same context for the same facts, we find Article 169 of Law 05-12 concerning water, as amended and supplemented, which criminalizes and punishes anyone who violates the provisions of Article 15 of the same law. The latter article refers to obstructing the free flow of surface water in wadi channels, which affects the stability of banks and public installations and harms the preservation of alluvial layers.

In both cases, the problem of multiple descriptions for the same act arises, especially given the difference in penalties between them, from simple to aggravated.

There have been multiple viewpoints on this issue, some calling for adherence to the rule that the specific restricts the general, or adopting the rule of the more severe description in application of Article 32 of the Penal Code [(art 32 penal law)].

What can be said is that whenever a special criminalizing text that criminalizes acts affecting the environment exists concurrently with a text in the Penal Code, the special text takes precedence over the general text. Special punitive texts issued in environmental matters precede the application of punitive texts found in the Penal Code, as long as the special law is an exceptional law that exists due to the specificity of the environment and related crimes, a matter confirmed by the Supreme Court in many of its decisions [(journal s. c., 2005)].

As for the second case, which involves the existence of more than one text of the same legal and organizational nature (e.g. environmental legislation) that criminalizes and punishes the same criminal act, the rule of the more severe description applies. That is, a single custodial sentence is imposed, and its duration may not exceed the maximum penalty legally prescribed for the crime with the more severe description. However, applying this rule absolutely may render or impede the application of environmental law texts, given that most of them are misdemeanors and violations compared to general law crimes, which are mostly felonies and misdemeanors. Therefore, the legislator must intervene to review the penalties prescribed in the environmental sector to relieve the judge of applying the more severe description, while also working to define and restrict environmental crimes to this field after abolishing them from the Penal Code.

III.2- Legislator's Classification of Environmental Crimes and Their Prescribed Penalties



The Algerian legislator, in its criminalization of acts affecting the environment, has adopted several classifications, ranging from felonies to misdemeanors, and finally to infractions.

1- Felonies Related to Environmental Crime

It is observed that the Algerian legislator has designated the classification of felony through the Penal Code, as well as the Maritime Law and the Law on Waste Management, Control, and Removal [(01-19, 2001)].

In the Penal Code, we mention what is stated in Articles 87 bis 1 and 87 bis /5, which criminalize and punish with the death penalty any act aiming to attack the environment or introduce toxic substances or leak them into the air or underground or discharge them into territorial waters, thereby posing a danger to the environment [(Younis, 2013)]. Article 369 of the same law also stipulates imprisonment from 10 to 20 years for intentionally setting fire to forests, cultivated fields, and trees.

On the other hand, the legislator, through Article 47 of the Maritime Law, imposed the death penalty on any ship captain, regardless of nationality, who intentionally dumps radioactive waste into Algerian territorial waters. Law No. 01-19, in its Article 66, stipulates imprisonment from 5 to 8 years and a fine of 1,000,000 DZD to 5,000,000 DZD or one of these penalties for importing or exporting hazardous special waste in violation of the legal procedures in force in this regard.

2- Misdemeanors and Infractions Related to Environmental Crime

The Algerian legislator has classified offenses affecting the environment as misdemeanors and infractions through Law No. 01-19 and Law No. 03-10.

- Misdemeanors and Infractions Stipulated in Law 01-19 Concerning Waste Management

For example, Article 61 stipulated imprisonment from 6 months to two (2) years and a fine of 300,000 DZD to 100,000 DZD or one of these penalties for any act that leads to the mixing of hazardous waste with other waste, with the penalty doubled in case of recidivism.

Article 63 also stipulated imprisonment from 8 months to 3 years and a fine of 500,000 DZD to 900,000 DZD or one of these penalties for anyone who uses a waste treatment facility, including hazardous waste, without respecting the



procedures stipulated in this regard. If the person disposes of it, buries it, or neglects it in unauthorized places, the penalty shall be from one to three years and a fine of 600,000 DZD to 900,000 DZD or one of these penalties, in accordance with Article 64. In case of recidivism, the penalty is doubled.

- Misdemeanors and Infractions Stipulated in Law No. 03-10 Concerning the Environment

The Algerian legislator has prescribed imprisonment from two (2) months to 6 months and a fine of 50,000 DZD to 100,000 DZD for violating the commencement of conditions where the emission of gas, smoke, vapor, and liquid or solid particles into the atmosphere is prohibited or regulated, in addition to the conditions under which monitoring takes place, with the possibility for the judge to set a deadline for the completion of works and landscaping stipulated in the regulation, and also ordering the execution of necessary landscaping at the expense of the convicted person [(Saidan, 2008)].

On the other hand, in the field of the marine environment, the legislator, through Article 90, stipulated imprisonment from 6 months to two years, and a fine of 100,000 DZD to 1,000,000 DZD or one of these penalties, as a punishment for any captain of an Algerian vessel or any person supervising dumping operations or on board Algerian mechanisms or fixed or mobile floating platforms if the provisions of Articles 52 and 53 of this law are violated with the aim of harming public health or marine ecosystems, or obstructing marine activities, or degrading water quality and reducing its recreational and aesthetic value, or carrying out dumping operations without obtaining a license from the Ministry of Environment.

The legislator, through Article 94, also imposed a penalty of one to five years imprisonment and a fine of 1,000,000 DZD to 10,000,000 DZD on any ship captain subject to the provisions of international treaties for the prevention of marine pollution by hydrocarbons concluded on 12/05/1954 in London and its amendments, if the captain commits the crime of dumping or mixing hydrocarbons in the high seas, and the penalty is doubled in case of recidivism.

A fine of 100,000 DZD to 1,000,000 DZD is imposed under Article 99 on the captain of a vessel carrying dangerous, toxic, or polluting goods, traversing near waters subject to Algerian authority, or entering them without reporting any incident that occurred to the vessel that could threaten the environment.



Thus, it is observed that the legislator has diversified penalties in the field of environmental crime, most of which are severe, to the extent of imposing penalties for not taking necessary precautions in advance before the act of pollution occurs. This is commendable given the seriousness of the resulting impacts. However, the legislator has overlooked punishing legal persons in many cases. For example, there is no provision in the texts of Law No. 03-10 concerning environmental protection that includes the accountability of legal persons, unlike what is stipulated in Article 18 of Law 03-09, which includes crimes violating the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Therefore, the legislator must address this legislative gap.

IV- Specificity of the Moral Element in Environmental Crime

This section will be studied through three subsections: the first will cover the nature of criminal intent in environmental crime, the second will address the issue of equating intent and negligence in environmental crime, and the third will discuss the issue of dispensing with intent in complicity.

IV.1 Nature of Criminal Intent in Environmental Crime

Crimes generally require the presence of general and specific criminal intent. However, it is observed that the majority of environmental crimes are dominated by general criminal intent only, which makes them intentional simply by the perpetrator's knowledge of the criminalization and their will to commit the crime. This makes intent easy to prove, as the mere occurrence of the material activity immediately creates a presumption and indication that the perpetrator's will was directed towards committing it, and the latter must prove the contrary. A good example is the exemption of the administration from proving criminal intent in environmental customs crimes.

This characteristic contradicts the principle that the Penal Code does not genuinely punish the **(event)** but rather the **(culpable or careless will)**, making environmental penal law one of the most important sources of material crimes [(wazir, 1988)]. Thus, the criminal judge does not delve into the criminal intentions underlying the perpetrator's act as much as they examine the availability of the material activity constituting the crime, given that the legislator has excluded fault in many environmental crimes as a basis for attributing criminal responsibility for these crimes.



The English judiciary has affirmed this idea. In a case concerning the crime of causing a toxic, harmful, or polluting substance to enter a river, according to the Pollution Prevention Act (Alphacell, LTD-v-Woodward), the accused company argued for the absence of intent or negligence. This defense was rejected on the grounds that the act falls within the category of acts that have no true criminal character, yet public interest dictates punishment.

This principle was also adopted by the Supreme Court of Arizona regarding the crime of air pollution in the case of (State v. Arizona Mines Supply Co.), where a company official responsible for pollution prevention was convicted due to the high level of air pollution exceeding the permissible limit. He was convicted despite evidence that he had taken necessary measures to avoid it. The Supreme Court affirmed in its decision that **(the state is not obliged to prove knowledge as a prerequisite for conviction ; all that needs to be decided in such situations is whether the act was committed or not)** [(Bilal, 1993)].

IV.2- Equating Intent and Negligence in Environmental Crime

One of the indicators of the weakness of the moral element in environmental crime is the legislator's and the judiciary's equating of intent and negligence in many instances. Thus, both intentional and unintentional errors are treated equally, which has increased the power and authority of the prosecution by indirectly exempting it from the burden of proving criminal intent to harm the environment.

Every natural or legal person involved in an activity that may cause environmental damage must ensure the application of environmental prevention rules. That is, the error is assumed and defined before the material act of the crime occurs. The negligent person deserves punishment for not exercising caution and taking necessary precautions to protect the environment, and that bad faith is not directed at the act, but rather at violating economic dealing rules that would harm the environment and which cannot be claimed not to be known [(78-80, 1976)].

Thus, environmental crime may arise from negligence or default, where there is no link between its outcome and its perpetrator. Although the Algerian legislator did not explicitly consider it unintentional, it is inferred to be intentional by directing intent towards negligence. An example of this is the legislator's equating of intentional pollution and unintentional pollution in Article 4 of the Environmental Protection Law within the framework of sustainable



development, by stating that environmental pollution is **(any direct or indirect change to the environment, caused by any act that causes or may cause a situation harmful to human, plant, and animal health and safety, air, atmosphere, water, land, and collective and individual properties).**

Another example is what is stated in Article 479/3 of the Maritime Law, which affirmed the imposition of penalties stipulated in Article 264 of the Penal Code, if the act mentioned in the first paragraph above (any captain who sails intentionally or negligently with a vessel in poor navigation condition, insufficiently equipped, unprepared or supplied...) caused injuries resulting in temporary total disability, knowing that Article 264 refers to intentional assault and battery.

Another example is what is contained in Article 56 of Law 01-19 concerning waste management, control, and removal [(01-19 L. , 2001)]: **(Any natural or legal person who practices an industrial, commercial, artisanal, or any other activity, who discards or neglects household waste and similar waste or refuses to use the waste collection and sorting system placed at their disposal by the bodies specified in Article 32 of this law, shall be punished with a fine of 10,000 DZD to 50,000 DZD. In case of recidivism, the penalty is doubled).**

IV.3- Dispensing with Intent in Complicity in Environmental Crime

The general rule is that an accomplice is punished if they commit an act that supports the principal perpetrator's action with knowledge of the criminal activity and awareness that their knowledge constitutes contribution and assistance in committing the crime. However, returning to environmental crime, we find that the legislator deviated from this rule. Firstly, it considered the act of complicity an independent crime in itself, without needing to refer to the original crime. An example of this is what is stated in Article 10 of Ordinance 06-05 concerning the protection and preservation of certain endangered animal species **(...any person who allows, facilitates, assists, or contributes in any way to the hunting of animals or animal parts... shall be punished with imprisonment...).**

Secondly, the legislator neglected to focus on the moral element in complicity in environmental crime. Responsibility for complicity arises simply from a direct or indirect relationship to the original crime or its principal perpetrator, without taking into account the extent to which the perpetrator



benefited from this contribution or from the crime, as indicated in Article 10 mentioned above.

V-Conclusion

Given the utmost importance of the environment, considering that anything affecting it or its safety will similarly, or even more negatively, and directly impact the lives of all creatures without exception, threatening their existence and that of humans alongside them, the Algerian legislator, like other legislators, has enacted regulatory texts in the environmental field and supported them with strict punitive texts. It was necessary to give them a kind of specificity derived from the unique nature and importance of the environment. Thus, it deviated from general rules on several points, whether in the legal element, the material element, or even the moral element, considering it a material crime that does not require specific criminal intent and does not require the achievement of a result desired by the offender for its establishment. It even went further by making the crime based on mere negligence, thereby equating it with intent, and in support of this, made acts of complicity and preparation independent crimes in themselves, without needing to be linked to the original act of the principal perpetrator.

However, the legislator should address the following points:

*** Legislative and Legal Recommendations**

1. **Unification of the Legislative Arsenal:** Implement a **unified criminal environmental code** to consolidate the scattered provisions (currently spread across the Penal Code, Law 03-10, and specific legislation). This ensures clarity and simplifies judicial application.
2. **Criminalization of Illicit Enrichment:** Explicitly stipulate mechanisms for **confiscating profits and financial gains** secured by corporate entities or individuals as a result of committing environmental crimes, thereby eliminating the economic incentive for such offenses.
3. **Review of Fines' Value:** **Significantly raise the maximum ceiling for financial penalties**, particularly those imposed on **legal persons** (corporations), ensuring that the magnitude of the fine substantially exceeds the cost of regulatory compliance.
4. **Activation of Joint Liability:** Uphold the principle of **joint criminal liability** between the natural person (the executive or responsible manager) and the legal person (the company) when an environmental offense occurs.

*** Judicial and Enforcement Recommendations**



5. **Specialization of Environmental Judges:** Establish **specialized judicial divisions** or **appoint environmental judges** within the courts. These personnel must be trained and equipped with the necessary technical and scientific knowledge to adjudicate complex environmental cases.
6. **Empowerment of Environmental Police:** **Strengthen the powers and resources of the Environmental Police** and authorized judicial enforcement officers, providing them with advanced **scientific technologies** (e.g., mobile labs, monitoring devices) for the prompt and accurate collection of environmental evidence.
7. **Mandatory Restorative Measures:** Encourage judges to utilize **supplementary penalties** and **mandatory restorative measures**, such as ordering the perpetrator to finance **damage remediation** and **environmental rehabilitation**, rather than relying solely on traditional punitive fines.
8. **Dissemination of Judicial Rulings:** Systematically publish the **final judicial rulings** concerning environmental crimes to enhance **general deterrence** and raise public awareness regarding the rigorous enforcement of the law.

*** Preventive and Community Recommendations**

9. **Protection for Whistleblowers:** Provide robust **legal and professional protection mechanisms** for individuals who report environmental crimes (whistleblowers), potentially including incentive rewards for their disclosures.
10. **Activation of Civil Society :** Grant accredited **environmental associations** a more effective role in criminal proceedings by facilitating their designation as a **Civil Party** in environmental damage cases.
11. **Environmental Education and Awareness:** Integrate **environmental and legal education** into curricula and intensify media campaigns to raise general public awareness that the environment is a shared and criminally protected asset.



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