

Tribal Administrative Control of Polluting Industrial Activities

الرقابة الإدارية القبلية على الأنشطة الصناعية الملوثة

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The date of Submission: 2025-04-16

The date of revision: 2025-07-01

: The date of publication: 10-07-2025

Abstract:

The aim of this study is to determine the contribution of tribal administrative control of polluting industrial activity towards achieving balance and harmony between the people's right to engage in various industrial activities, and the role of the state in protection of the environment from pollution and the public health from the dangers of that, provided the administrative power is committed to upholding the legislation covering industrial activity

A healthy use outside of discrimination and replication, Because achieving balance and protecting the environment and health of individuals is not just limited to the existence of law per se, but to its ways of application and to what extent the apply such a law to everyone, even the administration.

Key words: Licensing; proclamation; Administrative monitoring; Preventive control; pollution; the environment.

المخلص:

تلعب الرقابة على الأنشطة الصناعية الملوثة للبيئة، في تحقيق التوازن والتوافق بين حق الأشخاص في ممارسة مختلف الأنشطة الصناعية، ووظيفة الدولة في حماية البيئة من التلوث الصناعي، ولتحقيق تلك الغاية يجب على السلطة الإدارية الالتزام بتطبيق القوانين، تطبيقاً سليماً بعيداً عن ازدواجية والمحاباة، لأن تحقيق التوازن والتوافق بين حق الأشخاص في ممارسة مختلف الأنشطة الاقتصادية، ووظيفة الدولة في حماية البيئة من التلوث والحفاظ على الصحة العامة، لا يقتصر على وجود القانون وحده، وإنما يمتد إلى آليات تطبيقه أيضاً ومدى سريان مبدأ سيادة القانون على الجميع بما فيهم الإدارة نفسها.

الكلمات المفتاحية: الترخيص؛ التصريح؛ الرقابة الإدارية؛ التلوث؛ البيئة

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Introduction:

The environment is of particular importance in administrative law because it is related to the social and economic role of the state, so the legislator attempts to preserve it from any industrial process that is harmful and subjects it to pollution, especially since harm to the environment is different from other harms inflicted on society and individuals because harm to the environment is harming individuals, and what makes it more serious is that it is linked with economic activity based on the use of machinery and chemicals, that may inflict immediate or future harm, direct or indirect, on the environment and society, in most instances a sort of irreversible harm. Since harm to the environment is a by-product of individuals' right to carry out industrial activities, mainly due to the fact that harm can occur without fault on the part of individuals while carrying out such activities, governments try to balance the need to allow individuals to carry out industrial activities and achieve sustainable development on one side and protecting the environment from pollution by industrial activities on the other by relying on administrative control tools that are indicative of prior control of industrial activities that may cause harm to the environment, so the legislator makes industrial activities subject to prior control with differing intensity according to the level of seriousness of the industrial activity, so participating in the conduct of industrial activities.

Therefore, the question that may be raised is: To what extent is tribal administrative control able to balance and reconcile the right of people to work in industry and the right of the state to protect the environment and public health because of the collision between both rights?

This study aims to explain the role of tribal administrative control over polluting industrial activities in bringing about compatibility and harmony between the right of individuals to practice various economic activities, including industrial activities, and the state's role in rescuing the environment from pollution and protecting public health from the dangers resulting there from, and identifying the most serious obstacles and challenges that the administration was facing in protecting the environment from pollution, and the guarantees that are given to individuals in case the administration abuses this control and prevents them from practicing prohibited industrial activities. The tribal administrative regulation of polluting industrial activities is of great relevance in the present time, considering the fact that tribal administrative regulation is the legal means on which the state relies to protect against industrial pollution on one hand, and to permit people to engage in industrial activities and achieve economic progress for the state on the other hand, as tribal administrative regulation enables the state to implement the control function to protect the environment, including public health on one hand.

In order to be in a position to answer the issue posed, it is necessary to first define what tribal administrative control is, then move on to the industrial activities whose practice is conditional on the permission of the administration in advance, and the penalties that follow from practicing them in contravention of the law.

Chapter I: What is tribal administrative control of industrial activities

This is premised on the authorization or licensing process based on the seriousness level of the industrial activity and the impact that the activity can have on the environment in the event that legal procedures and requirements are not considered, whereby carrying out the practice of such activities depends on the applicant presenting a license or permit to the

administrative body charged with regulating the industrial activity, and carrying out industrial activity without approval is tantamount to penal actions even where the procedures and requirements are followed.

Section I: The tribal administrative domination theory of industrial activity

It means that the authority in charge of the industrial practice guarantees that people follow the arrangement and procedures established by law on them before practicing the desired industrial practices, as the administration dictates the extent to which the required conditions are followed before conducting the activity to be practiced, which would minimize industrial pollution harmful to the environment and public health, and sanctions the practice of the industrial practice if the required procedures are followed, and denies practicing it in the event of failure to follow the procedures.

1- Means of exercising tribal administrative control

Given the importance of industrial work in order to achieve economic development on the one hand, and the danger it constitutes to the environment and to the health of individuals on the other hand, in particular because of technological progress and the use of chemical products, and the waste resulting there from which is harmful to the environment as well as to human beings, it was necessary to subject industrial work to preliminary control by the administration through one of two systems, namely: The system of licensing and the system of notification, which are under the control bodies upon which the state relies in order to achieve equilibrium between the right of the persons to conduct industrial work and to protect citizens of society from the dangers of industrial pollution resulting there from.

The legislator requires an industrial activity license where the law requires an impact study or impact summary, which is issued by the environment minister, the relevant minister, the Wali or President of the Municipal People's Assembly, The law does not require an impact study or an impact summary, but a permit may be enough to be submitted to the chief of the Municipal People's Council.

A: Industrial license

It is an administrative process with a preventive function through which the administration is able to preserve the environmental public order, when people exercise their freedom and right and protect society from the dangers that result as a consequence of the exercise of industrial activity, as it is an efficient means in finding a balance between people's rights to exercise various economic activities and the state's authority to achieve environmental security and preserve public health, and therefore; the industrial license is a unilateral administrative decision by the administrative competent authority to regulate the environment, and it is an efficient means in finding a balance between people's rights in exercising various economic activities.

B: Notification of industrial activity

It is the juridical mode of exercising polluting industrial activity, for the aim of evading the damage it would cause to the environment, by enabling the administration, upon being notified of the intention to exercise a specific activity, to refuse it if it does not meet the conditions already established by law, "in a standardized form for the legality of its exercise,

and to restrict the exercise of the imposed activity to the extent that it is in conformity with the public interest.¹, The notification is divided into two types:

- Notification without the option of objection by the administration:

This is where one only needs to inform the concerned administration of the activity to be undertaken but is not expecting its approval, with the need to present a receipt to the notifier. The aim is to enable the administrative authority charged with the responsibility of monitoring the activity to take necessary measures and precautions to reduce the risks that may be brought by the exercise of the authorized activity, and the administrative authority in this type of notification must register the notifier's intention to conduct the activity after verifying that legal procedures are maintained, and to issue him with a receipt to protest and show the legitimacy of his activity.

- Notification with the right of objection by the administration:

It is the notification in which the administration has the right to object to the activity proposed by the notifier during a period already set by the legislator, and the notifier cannot exercise it prior to the expiration of this period, but can do so as soon as it expires, for the administration's silence during this period is not considered to object to the exercise of the activity².

2: Legal aspects of industrial licenses and permits

After the administrative authority verifies the existence of the conditions and procedures prescribed by law in the application for a permit or license to practice an industrial activity according to the danger of the activity, and after verifying that the activity to be practiced does not cause harm to the environment, it issues an explicit or implicit decision by which the applicant can practice the requested activity, and this entails rights and duties on both the decision-making authority and the decision beneficiary, and since the activity aimed at by the licensing system is the one that poses danger to the environment, it is kept under the control of the administrative authority while leaving the licensee free to practice the activity he desires.

- A. Duties of the Industrial Licensing Authority

By way of general rule, granting an industrial license to individuals does not entail any obligations to the beneficiary, other than making it easy for them to carry out the concerned activity or granting particular rights enacted by law in specific industries. To that extent, the obligations of the licensing authority are as listed:

- Facilitating the licensee to carry out the industrial activity described in the application:

The licensing body must remove any administrative obstacles that may hinder the conduct of the planned activity. In other situations, the legislator can insist that a provisional license be issued as a prerequisite to the performance of a required procedure before the actual commencement of the activity. In such a case, the issuing agency which has issued the temporary license is also obligated to provide the ultimate practice license for conducting the activity. Otherwise, the temporary license would not be of any practical value if it is not

¹ Refer to Adel al-Saeed Abu al-Khair, Administrative Policing, Dar al-Fikr University, first edition, Egypt, 2002, p. 220.

² Mohamed Atef Al-Banna, Waseet in Administrative Law, Dar Al-Fikr University, Egypt, 1992, p. 390.

further followed by ultimate approval. One such activity is the activity of production, holding in inventory, and wholesale retailing of lubricants¹, which requires one to procure a preliminary license before the concerned party is entered into the Commercial Register, and to affix a photocopy of such a license to the final authorization request. The preliminary license indicates that the administrative authority issuing it has granted an approval to allow the holder to engage in the activity subject to their completing the legal procedures and requirements as stipulated by law.

-The responsibility to grant the benefits provided for by law:

Law may provide certain benefits to individuals who are involved in certain industrial activities, like in the case of mining activities, which provide the right to the license holder to enjoy the use of land and associated rights. These may encompass the provision of housing for workers to those staff assigned to perform work on the license activities, development of infrastructure needed to supply water and power, and legal easements on access and passage.

B. Powers of the Licensing Authority over the Licensee:

The administrative authority that issues the license to carry out an industrial activity has certain powers and abilities over the licensee. These powers are part of its regulatory function over the activity, not confined to preventive control—that is, checking for compliance with the law before issuing the license—but extending during the period of the license. This continuous control serves to check whether the activity continues to be consistent with the goal for which the system of licensing was created. This control typically comprises the following:

-Requesting production of the license:

The supervisory agency in charge of the licensed industrial activity has a right to demand presentation of the license to determine whether an industrial license is being held. Authorized agents responsible for supervision, including environmental police, may demand presentation of one's license undertaking activities within the ambit of the licensing regime, who by presenting such, is making a representation that legal challenges to the activity have been suspended.

- Monitoring by the administrative authority that issued the license:

The regulation by the administration of the industrial activity licensed is not a right or privilege, but an obligatory duty which it has to perform with the objective of protecting the environment from possible harm by the activity—either due to the licensee's failure to comply with conditions laid down or due to change in circumstances under which the license has been granted. In such a case, the administration must intervene either to compel the licensee to honor their pledge or to take requisite measures if conditions change. These measures can range from the complete cessation of the activity when the public interest calls for it. This control is exercised by means of inspections and visits to the premises performed by the competent administrative authorities and the authorized agents, with a view to checking compliance with the legal and regulatory provisions governing the licensed activity. In the event of proven infringement, the competent administrative authority will adopt the measures

¹ Executive Decree No. 13-176 of April 30, 2013, setting the conditions for exercising the activity of producing, storing, and wholesale distribution of lubricants, as well as the regeneration of used oils, published in Official Gazette No. 25 dated May 12, 2013.

required, such as formal warning, temporary suspension, or even permanent cessation of the activity, depending on the gravity of the infringement.

Supervision further transcends inspection and questioning. As frequently as possible, the legislator adopts the second oversight strategy that compels the licensee to report back periodically to the issuing body. The motivation here is so that the executive or administrative arm has the grounds to take some appropriate measure towards correcting some impending threats arising from the sanctioned activity. It becomes especially overwhelming with such activities of this nature that bear potential negative impacts to individuals or nature.

Section II: Industrial Activities Subject to Prior Administrative Oversight

Given the significance of industrial activity to the development of the national economy on the one hand, and its potential damage to the environment on the other—especially with the introduction of technology and the use of chemical substances, resulting in environmentally undesirable waste—such activities had to be brought under prior administrative control. The extent of this supervision varies according to the level of protection required to avoid causing damage to the environment from the activity: harmful industrial activities to the environment are governed by a system of licensing, whereas less harmful activities are merely governed by a system of notification.

1: Industrial Licensing Activities

It has been deemed necessary to submit industrial activities that pose some degree of environmental risk to a pre-license system, as it is considered the most effective and controlled regulatory system to provide a balance between citizens' rights to carry out industrial activities and safeguarding the environment and public safety from the potential risks of these activities.

A: Licensing for the establishment of Classified Installations

The term referring to secret installations under Algerian legislation refers to¹those commercial or industrial buildings that can bring instant or indirect—instant or postponed—risks to the public health, hygiene, safety, agriculture, ecosystems, natural resources, sites, landmarks, tourist sites, or affect the comfort of the nearby residents.

The operating license is issued, as per the category of classification of the building and the degree of risk to the population and the environment, as follows: By joint ministerial decree by the Minister of Environment and the relevant sectoral minister for Category I graded facilities; By regional Wāli (Governor) decision for Category II graded facilities; By decision by the President of the locally mandated Municipal People's Assembly for Category III graded facilities.

The license to operate should be issued to the applicant within three (3) months from the time of receipt of the application upon completion of the construction process.

B: Licensing for the Management and Handling of Waste

Waste is defined in the legislation as any residue from production, transformation, or use operations, and, more generally, any material, product, or movable item which the holder or owner discards, intends to discard, or is required to discard or dispose of. Treatment and disposal of waste is a subject of utmost significance and sensitivity owing to

¹ Law No. 03-10 of July 19, 2003, relating to environmental protection within the framework of sustainable development, Official Gazette No. 43, issued on July 20, 2003.

its potential for causing serious harm to the environment and public health if not done in a proper way. Thus, the law requires any person who wishes to treat or dispose of waste to obtain prior authorization from the competent authority. These licenses include:

- License for the transportation of hazardous special waste:

This is dangerous waste which, due to its nature and the hostile properties of its substances, has the potential of posing risk to public health or the environment. Its transportation is therefore under the prior permission of the Minister in charge of the environment, following consultation with the Minister in charge of transport. This licence is proof of the transporter's competence to carry hazardous special waste and shall be produced on request at any inspection by the competent supervisory authorities¹.

- Special Waste Export and Transit License:

Special waste refers to all waste from industrial, agricultural, medical, service-related, and other activities, which, due to its nature, composition, and the substances it contains, cannot be collected, carried, or treated under the same conditions as household waste, similar waste, or inert waste.

This type of waste must be exported when it is not feasible to dispose of it in the country of origin due to the country not having appropriate disposal facilities or the treatment being extremely costly.

The Algerian legislator has explicitly prohibited the importation of this type of waste. Its export is, however, subject to prior approval by the Minister in charge of the environment, and only after obtaining a special written agreement of the importing country.

- Authorization for the Discharge of Industrial Liquid Waste:

Industrial liquid waste discharge refers to any direct or indirect flow, spill, release, or accumulation of liquid that is the result of industrial activity. Release of effluents that are not toxic or likely to cause harm to public water property is subject to approval by the Minister in charge of the environment, after consultation with the Minister in charge of water resources.

2: Industrial Activities Covered by the Declaration System

Low-risk industrial activities are under a declaration system for the running of classified establishments. Those who wish to conduct such activities must declare to the relevant authorities, who may object to the operation, provided that the objection is reasonable. The following industrial activities are under the declaration system:

A. Declaration for the Operation of a Classified Installation

Legislation requires individuals operating Category IV facilities to provide a declaration to the President of the relevant Municipal People's Assembly on the operation of the facilities. The declaration is to be submitted within sixty (60) days after the operation starts, and must be attached with a number of documents, particularly those that relate to environmental protection, including:

A report indicating the materials used, especially hazardous materials. Submit report on procedure and conditions for reuse, treatment, and discharge of wastewater and emissions, and removal of waste and residues from operations.

Refusal by the President of the Municipal People's Assembly to make declaration, but the refusal shall be justified and endorsed by the Wāli (Governor)-level Committee for the Supervision of Classified Establishments.

¹ Same reference.

B. Declaration for Hazardous Special Waste

Any natural or legal person whose activity results in the generation of hazardous special waste, or who possesses such waste, shall be required to inform the Minister of Environment information regarding the nature, amount, and properties of the waste. They should also provide periodic reports on the method of such waste treatment and on actions already implemented or taken to be implemented with a view to reducing the volume of hazardous waste generated.

Chapter Two: The Offense of Conducting Polluting Industrial

These crimes comprise taking part in licenced or forbidden activities without the necessary licence or notice, or conducting such activities in a way that violates the conditions of the licence and the relevant laws. Such crimes can be persistent crimes, such as establishing an installation without a licence, or persistent crimes, such as operating an installation in contradiction of the provision of the licence¹, Since the objective of regulating industrial activities through a licensing and notification system is to protect the environment against pollution, it was required to back this regulation with penal provisions to limit violations and offenses by individuals, compelling them to comply with the imposed prohibitions and ensuring environmental safety.

Section One: Authorities Responsible for Monitoring Industrial Activities Against the Law

The authorities responsible for monitoring administrative license-related crimes are judicial police authorities with general jurisdiction, whose members have the power to monitor all crimes, and judicial police authorities with specialized jurisdiction, whose role is limited to monitoring crimes in their respective sectoral jurisdiction.

1: Judicial Police Authorities with General Jurisdiction

Judicial police powers with a general competence include those which are mandated to supervise all crimes established by the Penal Code and related legislation, like crimes caused by industrial activities that are conducted illegally or in silence. The Algerian legislator has classified judicial police powers with a general competence into two kinds:

A. First Category

Judicial police agents, which can be separated into two type²;

- Individuals holding Judicial Police Authority by Law:

These are: Public prosecutors, chairmen of municipal people's assemblies, officers of the National Gendarmerie, staff of specialized inspectorate services, and national police officers and sergeants.

- Individuals holding Judicial Police Authority by Decree

This is the class which includes gendarmerie senior ranks and gendarmerie officers with at least three years of service in the National Gendarmerie, who have been appointed by a joint decree of the Minister of Justice and the Minister of National Defense, upon recommendation of a special committee.

¹ Saeedan Ali, Environmental Protection from Pollution by Radioactive and Chemical Materials in Algerian Law, Dar Al-Khaldouniya, First Edition, Algeria, 2008, p. 312.

² Articles 12 and 15 of Ordinance No. 66-155 dated June 5, 1966, concerning the Code of Criminal Procedure, as amended and supplemented by Ordinance No. 15-02, dated July 23, 2015, Official Gazette No. 40, issued on July 23, 2015.

- Employees of Specialized Inspectorate Services and National Police Officers with a minimum of three years' service in such a position, and who have been appointed by a joint decree signed by the Minister of Justice and the Minister of the Interior and Local Authorities, subject to a special committee's approbation.

- Military security service officers and non-commissioned officers appointed specifically by a joint decree of the Minister of National Defense and the Minister of Justice.

B. Second Category:

Judicial police assistants are characterized by the legislator in Article 19 of the Code of Criminal Procedure, which states:

"Judicial police assistants are employees of the police service, higher ranks of the gendarmerie, gendarmerie troops, and employees of the military security services who are not of judicial police status."

2: Judicial Police Authorities with Specialised Jurisdiction

The Algerian legislator has conferred judicial police status on officials and agents of certain public administrations and services by special laws. These powers are referred to as special administrative police, with the aim of distinguishing them on the one hand from the general administrative police, and on the other hand from the judicial police. Under this system, the organs in charge of monitoring offenses related to the illegal carrying out of industrial operations are as listed below:

A. Environmental Inspectors

The legislator has assigned them the role of investigating and recording offenses that lead to harm to the environment as stipulated under environmental law¹, This includes the conduct of activities that may be detrimental to human health or the environment without obtaining the necessary authorization. In addition, they are empowered to investigate and record violations of environmental-related laws, such as the Law on the Management, Monitoring, and Disposal of Waste. Such violations include the establishment of a waste treatment plant without a permit from the concerned authority.

B. Mining Police

Article 144 of the Law No. 14-05 on Mines states According to the aforesaid provision:² "In addition to judicial police officers and agents, Mining Police officers—established under Article 41 above—are authorized to investigate and record violations of the provisions of this law. Mining Police officers are also authorized, in the course of performing their duties, to call on the aid of public force (police)."

Where prospecting or exploration operations are carried out without licenses, or where the operation is carried out in contravention of the provisions of the law, Mining Police officers must prepare a formal report in which the reporting officer states the facts determined and any statements made. The report must be signed by both the offender and the officer. If the offender refuses to sign, such refusal is recorded in the report. The report must then be forwarded to the territorially competent Public Prosecutor (Procureur de la République) within five days of drafting, as it is this authority that is responsible for initiating public legal proceedings.

¹Article 111 of Law No. 03-10, previous reference.

²Law No. 14-05 of February 24, 2014, including the Mining Code, Official Gazette No. 18, issued on March 30, 2014. Article 102 of Law No. 03-10, op. cit.

It is worth observing that special-jurisdiction judicial police powers' reports have conclusive evidentiary value. Facts, data, and statements contained therein are taken to be true and can only be disputed by means of forgery procedures. Unlike reports of general-jurisdiction judicial police authorities, which are mere pointers and at the discretion of the judge, the reports are held by special-jurisdiction judicial police authorities to have conclusive evidentiary value.

Section tow : Offenses Arising out of the Conduct of Activities Subject to a License and the Sanctions Provided There under

The offense of operating regulated business without obtaining the necessary license or prior authorization is considered an intentional offense. Principal and ancillary penalties are to be inflicted upon the offender. We will, therefore, consider the category of offenses pertaining to illegal practice of industrial activities and subsequently the enacted penalties for infringement thereof.

1: Offences Connected to the Illegal Operation of Industrial Activities

Offenses for the activities of industries that can result in harm to the environment are doing such activities without a previously given permission or without making a declaration before concerned authorities in cases where only notification is required. It also consists of doing industrial activities in a manner that is illegal despite taking a license or making the required declaration.

A.The Crime of Conducting Operations Without a License

The Environmental Protection Law punishes the operation of a classified establishment without previous authorization by the competent authorities. The perpetrator is liable to criminal sanctions, including imprisonment for a period not exceeding one year and a fine not exceeding one million Algerian dinars¹.

B.The Crime of Carrying Out Activities Contrary to the Conditions of the License

As compared to the aforementioned offense, this offense involves a person who obtains advance clearance from the concerned authority governing the activity sought but fails to abide by the requisites of polluting industrial operations as provided under the regulations governing polluting industrial activities. An example is the holder of a mining license failing to comply with the conditions of the license through not submitting requisite regular reports to the relevant administrative authority, such as reports about the work conducted², or those related to their mining activities³. For this purpose, Article 148 of the Mining Code states:

"Any license holder who fails to present the detailed report to the administrative authority competent according to Article 85 above, which includes the works carried out during their mining activities, as well as the activity reports referred to in Article 124 above. shall be fined between 100,000 DZD and 500,000 DZD."

The public prosecution of the crime of practicing an activity without a license or in violation of its terms expires after three years from the last day of exploitation when the act is a misdemeanor, and two years when the act is an infraction, as it cannot be a felony.

2. Penal Penalties Brought About by the Illegal Exercise of Industrial

¹Article 102 of Law No. 03-10, previous reference.

²Article 85, last paragraph of Law No. 14-05, previous reference.

³Article 124, paragraph 6, same reference.

Activities

Felony, misdemeanors, and infractions are considered crimes in the Penal Code¹. Regarding the crime of practicing activities without a license or in violation of the license, it is generally observed that there are no criminal penalties. The penalties imposed by the criminal judge on the offender are based on the general provisions applied to individuals as outlined in the Penal Code. These penalties include both primary penalties and supplementary penalties².

A: Primary Penalties

The primary sanctions are deprivation of liberty and pecuniary sanctions, and both can be applied cumulatively. Therefore, when the crime of practicing industrial activity without a license or contrary to the conditions on which it has been issued, both of these sanctions can be applied cumulatively or either of them independently, depending upon the extent of damage to the environment.

B: Supplementary Sanctions

In addition to the supplementary penalties the criminal judge can impose on the perpetrator of the crime, according to the Penal Code, the legislator has the right to establish supplementary penalties in special legislation that governs activities subject to restriction by the licensing regime. These supplementary penalties are levied on those exercising such activities or liberties without compliance with the procedural requirements. Examples of such penalties are:

- Confiscation or destruction of the tools used in the crime, and prohibition to apply for a license for a certain period of time.

For example, in case of the operation or establishment of a public telecommunication network (wired or wireless) without a license, in addition to the principal penalty, the court can order the seizure of equipment and facilities that constitute the network or support the service provision. The court can also order their destruction at the offender's expense along with an order for not being able to apply for a new license for two years³.

- Temporary or Permanent Closure of the Facility: The temporary or permanent closure of the facility of the offending person, or the prohibition on carrying out the violated professional activity, is a potential penalty. For example, this penalty can be applied to a person who constructs or operates an electrical manufacturing plant, a direct power cable, or a direct gas pipeline without a permit⁴.

Conclusion:

The administrative control as a form of prevention of industrial processes that harm the environment when practiced in a way that is uncontrolled is considered one of the fundamental assurances for protecting the environment and, as such, public health. It is underpinned by two main instruments based on the importance and environmental risk involved in the industrial process. If the activity poses an environmental risk, then the legislator needs to secure a license from the concerned authority to meet the requirements of

¹Article 27 of the June 8, 1966, Order 66-156, which contains the Penal Code, Official Gazette No. 49 of June 11, 1966.

²Articles 5 and 9, same reference.

³Articles 133 and 134 of Law No. 2000-03 of August 5, 2000 establishing the general rules relating to mail and telecommunications. Official Gazette No. 48 of August 6, 2000.

⁴Articles 151 and 153 of Law No. 02-01 of February 5, 2002, relating to electricity and gas distribution by pipelines, Official Gazette No. 08 of February 6, 2002.

environmental protection. The license is granted if all requirements are met and rejected otherwise. On the contrary, where the activity does not pose a great environmental risk but is likely to cause waste that may pollute the environment, a declaration is required to outline the procedures of disposal of waste. The administrative agency may reject the declaration if the steps are deemed insufficient to protect the environment.

We concluded the following findings from this study:

- The preemptive regulation of industrial activity by the administration achieves a balance between the freedom of individuals to conduct industrial activity and the intervention by the state for safeguarding the environment and the health of people. However, in some cases, the administration may abuse its power by arbitrarily refusing to issue final permission for activity.

- Industrial processes harmful to the environment are subjected to the regime of licensing since it is the most limiting form of control of freedoms, while non-environmentally hazardous ones fall under the regime of notification.

- Engaging in industrial processes without a license is illegal and punishable by law irrespective of whether the regulations governing the conducting of those activities are obeyed or not.

Based on these findings, the following recommendations are made:

- The administrative power should, to maintain the balance sought by the preemptive administrative regulation, enforce the legislations of industrial activity in a proper and unbiased manner. Having laws in place is not enough to guarantee balance and protect the environment and public health, but instead the mechanism through which they are applied and the extent to which the rule of law principle guarantees that everyone, including the state, is subject to it. Therefore, administrative power needs to be bound by the parameters of the law while exerting its regulation of industrial activity so as not to intrude inappropriately or be complacent.

- The incidence of crimes related to industrial activities undertaken in violation of the law needs to be met by the state with stern imposition of sanctions.

- We appeal to the legislator to tighten sanctions on those who conduct industrial activities in violation of the law, since such activities will result in environmental degradation that cannot easily be remedied.

References:

1. Legal Texts:

- Law No. 2000-03 of August 5, 2000, to establish general provisions on postal services and telecommunication, Official Gazette No. 48 of August 6, 2000.

- Law No. 02-01 of February 5, 2002, on the distribution of electricity and gas through pipelines, Official Gazette No. 08 of February 6, 2002.

- Law No. 03-10 of July 19, 2003, concerning environmental protection in sustainable development, Official Gazette No. 43 of July 20, 2003.

- Law No. 14-05 of February 24, 2014, on the Mining Law, Official Gazette No. 18, March 30, 2014.

- Order No. 66-155 of June 5, 1966, on the Code of Criminal Procedure, amended and supplemented by Order No. 15-02 of July 23, 2015, Official Gazette No. 40, July 23, 2015.

-Order No. 66-156 of June 8, 1966, concerning the Penal Code, Official Gazette No. 49 of June 11, 1966.

-Executive Decree No. 13-176 of April 30, 2013, establishing the conditions to carry out the activity of lubricant production, storage, wholesale retailing, and used oil regenerating, Official Gazette No. 25, published on May 12, 2013.

2. Books

-Saidan Ali, Environmental Protection against Pollution by Radioactive and Chemical Substances under Algerian Law, Dar Al-Khaldonia, 1st ed., Algeria, 2008.

- Adel Said Abu Khair, Administrative Police, Dar Al-Fikr University, 1st ed., Egypt, 2002.

- Mohamed Atef El-Banna, The Mediator in Administrative Law, Dar Al-Fikr University, Egypt, 1992.