

Environmental Administrative Sanctions: Between the Effectiveness of Deterrence and the Limits of Legality

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Abstract

This research paper addresses administrative sanctions in general and environmental administrative sanctions in particular, examining them in terms of their definition and the main stages of their development since the emergence of administrative law in France. It also examines the fundamental characteristics of environmental administrative sanctions and their common features with other administrative sanctions, particularly in terms of their issuance by a public authority, their general nature, and their deterrent character. The paper then identifies the scope of administrative sanctions and their relationship to the environment, which leads to defining the concept of the environment, its components, and the scope of its protection.

This led us to formulate the following research question: To what extent has the Algerian legislator succeeded in granting the administration the power to impose administrative sanctions for environmental violations?

The purpose of raising this question is to achieve several objectives, namely: determining the effectiveness of environmental administrative sanctions and identifying the various stages through which they are implemented. To this end, the study adopts a methodological approach combining description and analysis of the various doctrinal views and legislative provisions relevant to the subject.

Keywords: Environment; Pollution; Administrative Sanctions; Environmental Protection.

Introduction

In view of the powers granted to the administration with regard to issuing and enforcing administrative decisions, it has the authority to impose administrative sanctions in cases of violations of regulations and non-compliance with the law, provided that such action is carried out within the framework of legality and under the supervision of the judicial authorities. The latter have the power to review and examine administrative decisions when they are challenged through an action for annulment, based on the principle that the State is subject to the law within the framework of legality.

With the expansion of activities that have a direct or indirect impact on the environment, it became necessary for the Algerian legislator, like other legislators, to recognize the administration's sanctioning

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power in order to facilitate transactions, serve the public interest, alleviate the burden on the judiciary in dealing with environmental offenses, and prevent individual interests from prevailing over the public interest. This is achieved either through the enactment of laws or through legislative delegation to the executive authority, provided that decisions imposing sanctions are issued within the framework of the established legal provisions and rules; otherwise, they would constitute an excess of authority and an infringement upon the jurisdiction of the judiciary. In this regard, the substantive, procedural, and formal requirements governing such decisions must be taken into consideration.

Given the nature of environmental issues, the legislator has recognized the right to establish committees and independent administrative authorities whose primary basis is specialization in addressing specific and particular types of issues. These bodies are directly affiliated with the State and are responsible for enforcing the law through periodic or unannounced inspections, and they often serve as auxiliary bodies to the administration.

The legal regulation of environmental issues has been established within administrative law through environmental regulation, which consists of a set of measures and restrictions imposed by the administration on individuals in order to preserve the environment and prevent harm to it.

Accordingly, based on the foregoing, the significance of this topic lies, from a theoretical perspective, in defining and conceptualizing it, and from a practical perspective, in its application and enforcement, as well as in the difficulties encountered in this regard, particularly those relating to individuals' freedoms and rights, and the extent of its effectiveness in light of the diverse legal framework governing this field.

There are numerous legal provisions in various fields that are closely connected to individuals' daily activities. Nevertheless, there remains a shortage of research specifically addressing environmental administrative sanctions, as many studies have dealt with them only in general terms within the broader context of administrative policing. This has prompted us to seek to clarify the various aspects of this subject by raising the following research question:

To what extent has the Algerian legislator succeeded in granting the administration the authority to impose administrative sanctions in the field of environmental violations?

This central issue raises a number of important questions and subsidiary issues, which may be summarized as follows:

To what extent are environmental administrative sanctions effective in the field of environmental protection?

What safeguards has the legislator established to regulate this authority?

Accordingly, relying on the legislation enacted in the field of environmental protection, as well as the various opinions of academics, legal scholars, and the judiciary concerning administrative sanctions in general and environmental administrative sanctions in particular, this research paper examines this administrative phenomenon by collecting and organizing the relevant information. The descriptive method was adopted, together with its analytical, comparative, and deductive tools, in order to address the various aspects of the subject. The study first provides a general description of environmental administrative sanctions and then undertakes a legal analysis, beginning with the identification of environmental administrative sanctions and proceeding to their imposition through the legal mechanisms established for this purpose, while ensuring the right to judicial challenge. The study also presents the findings derived from legislation and the views of legal scholars and researchers concerning the existing framework governing administrative sanctions, together with a number of proposals in this regard.

We also sought to identify a number of objectives for this research, namely:

To determine the effectiveness of environmental administrative sanctions.

To identify the various stages through which environmental administrative sanctions proceed, from their determination to their imposition and subsequent judicial challenge.

With regard to previous studies, this subject was addressed in the doctoral dissertation entitled “Administrative Protection of the Environment within the Framework of Sustainable Development,” submitted in 2012 at the University of Mohamed Khider, Biskra, by Abd al-Ghani Hassouna. However, the subject was examined as part of the broader issue of environmental protection, without addressing in detail the aspects surrounding environmental administrative sanctions, such as their determination, imposition, and safeguards; rather, the dissertation merely referred to the various forms of sanctions in general. The same applies to the master’s thesis entitled “Legal Means for Environmental Protection: A Study in Light of Algerian Legislation,” prepared by Jamila Hamida, Department of Law, University of Blida, 2015–2016.

Based on the research problem formulated for this paper, we have divided the study into two main sections. The first addresses the concept of the environment and the scope of its protection, while the second examines the environmental elements that are subject to administrative sanctions.

I.1. Concept of the Environment:

There are numerous concepts and definitions of the notion of the environment, ranging from legal to doctrinal definitions. Accordingly, the meaning of the environment varies linguistically, legally, and terminologically. It was therefore necessary, on the basis of these definitions, to determine the scope of the protection afforded to the environment, which has been confined to the issues of pollution and depletion.

Definition of the Environment:

The term “environment” is used in many different sciences and fields, and its meaning varies according to the subject matter and the field of study, such as the cultural environment, social environment, natural environment, political environment, and so forth. Therefore, it is not surprising that many authors and researchers in environmental studies have devoted particular attention to this purpose, either by allocating sections to defining and clarifying these concepts or by conducting independent studies on environmental terminology. (Gharabia, 1998)

I.1-1-1 Definition of the Environment in Linguistic Terms:

The word “environment” is a proper Arabic term that has its own connotations in the Qur’an and the Sunnah. Its root), derived from the verb *bā’a*, *yabū’u*. This verb appears in the Holy Qur’an in verse 74 of Surat Al-A’raf, where Allah, the Exalted, says: “And remember when He made you successors after the ‘Ād and settled you in the land, where you take its plains as palaces and carve houses into the mountains.”

The term is also mentioned in the Prophetic Sunnah, as the Prophet Muhammad (peace and blessings be upon him) said: “Whoever deliberately lies about me, let him take his seat in Hell.”

Accordingly, *tabawwu’* refers to settling, dwelling, and taking up residence. From this meaning, it can be inferred that the environment refers to a place, abode, or dwelling.

The term “environment” is also commonly used, with its meaning being associated with the nature of the relationship between the environment and its users. Thus, the first environment of a human being is the mother’s womb, followed by the home and then the school. (Al-Sughayri, 1994, p. 17)

The Larousse Dictionary defines the environment as a set of physical, chemical, and biological elements, whether natural or artificial, in which humans, animals, and plants live.

I.1-1-2 Definition of the Environment in Terminological Terms:

There is considerable variation among scholars and researchers regarding the terminological definition of the environment, which has made it particularly difficult to establish and determine a precise and universally accepted meaning and definition of the environment. This is due to differences in the nature of the relationship between humans and the environment. Consequently, numerous definitions have been proposed, including the following:

The environment is a set of external conditions and factors in which living organisms exist and which influence the vital processes they perform. **(Al-Hilu, 2008, p. 39)**

The environment is considered the living medium through which an organism carries out its activities and from which it derives the requirements necessary for its survival. It both affects and is affected by the ecosystem, which includes, in addition to living organisms such as humans, plants, and animals, non-living components such as water and soil, as well as all the interactions taking place among them within a dynamic and mutually interconnected system. **(Raddaf, 2008, p. 25)**

The Stockholm Conference defined the environment in a broad sense as referring to the stock of material and social resources available at a given time and in a given place to satisfy human needs and aspirations. **(Hassouna, 2012, p. 14)**

The environment is also defined as the medium and spatial domain in which human beings live, encompassing all the elements and conditions contained within this spatial domain. These may be natural elements, such as rocks and the minerals they contain, energy resources, soil, water resources, and climatic elements including temperature, atmospheric pressure, winds, and rainfall, as well as natural vegetation and marine and terrestrial animals. They may also include human-made elements resulting from human activity, such as urban development, roads and transportation networks, farms, factories, and dams. **(Maqsoud, 1998, p. 17)**

consisting of water, air, space, soil, living organisms, and facilities established by humans to satisfy their needs **(Al-Halou, 2008, p. 21)**

In light of these two latter definitions, it can be observed that, unlike the previous definitions, they introduce a new element alongside living and non-living components, namely the various facilities established by humans as an important part of the components of environmental resources.

I.1-1-3. Legal Definition of the Environment

Despite the numerous international and national legal provisions that have addressed environmental issues through regulation and protection, they have remained unable to provide a unified definition of the environment or of its constituent elements. This has led to differences of opinion regarding the environmental elements intended to be protected, namely whether protection should be limited to natural elements or whether it should also include elements created through human intervention.

French legislation adopted a definition of the term "environment" for the first time in Law No. 76-629 of 10 July 1976 on the Protection of Nature. Article 1 thereof provides that:

"The environment consists of all natural elements, animal and plant species, air and soil, mineral resources, and various natural features."

Human-made elements were excluded from this definition, unlike the approach adopted by the Egyptian legislator, which incorporated elements created through human intervention. This is reflected in the Egyptian Environmental Law, which defines the environment as:

"The surrounding environment that encompasses living organisms, the materials contained therein, and the air, water, and soil surrounding them, as well as the facilities established by humans." **(Al-Halou, 2008, p. 44)**

Position of the Algerian Legislator

The Algerian legislator has not provided a precise definition of the environment. Instead, its definition can be inferred from the objectives set forth in Article 2 of Law No. 03-10 relating to the Protection of the Environment within the Framework of Sustainable Development, namely:

Establishing the fundamental principles and rules governing environmental management.

Promoting sustainable national development by improving living conditions.

Ensuring a healthy living environment.

Preventing all forms of pollution and environmental damage.

Promoting the ecologically sound use of natural resources.

Strengthening information, awareness-raising, public participation, and the participation of various stakeholders in environmental protection measures.

Article 3 of the same law addresses the general principles governing environmental protection, while Article 4 provides a definition of the environment through its constituent elements. Paragraph 7 thereof stipulates that:

"The environment consists of abiotic and biotic natural resources, such as air, the atmosphere, water, land, the subsoil, plants, and animals, including cultural heritage and the forms of interaction between these resources, as well as places, landscapes, and natural monuments."

Accordingly, it may be argued that the Algerian legislator followed the approach of the French legislator in determining the scope of the concept of the environment, as it excluded elements created through human intervention. These elements are addressed through Law No. 90-29 relating to Planning and Urban Development, as amended and supplemented, as well as Law No. 98-04 relating to the Protection of Cultural Heritage, alongside the existence of a general law, namely Law No. 03-10 relating to Environmental Protection, which is intended to constitute a comprehensive legal framework for environmental protection.

Environmental Protection Scope

I.1-1-2 Scope of Environmental Protection:

The environment suffers from several problems as a result of irrational and irresponsible human activities. Although these problems are diverse and multifaceted, they can be broadly classified into two main areas that constitute grounds for intervention through the imposition of sanctions, namely pollution and depletion.

I.1-1-2-1 Pollution:

There are several definitions of pollution (**Farah, 1998, p. 46**):

It is any distinctive physical, chemical, or biological change that results in a harmful external impact on air, water, or land, thereby endangering human health and that of other living organisms, as well as impairing the production process as a result of its impact on the condition of renewable resources.

It is the destruction and alteration of the natural environment of living organisms or inanimate objects as a result of external factors transmitted through the air, water, or soil.

It is any quantitative or qualitative change in the components of the living or non-living environment that ecosystems are unable to absorb without disturbing their balance.

It is the introduction of any unfamiliar substance into any environmental medium, where such foreign substance, upon reaching a certain concentration, causes a change in the quality and characteristics of that medium.

Pollution is also defined as a set of undesirable changes surrounding human beings through the occurrence of direct or indirect effects that alter the natural, chemical, and biological components of the environment, thereby affecting human beings and their quality of life (**Abdel-Thawab, 1968, p. 10**)

The 1956 report of the United Nations Economic and Social Council on environmental pollution and the measures taken to combat it defined pollution as: "A change resulting from the direct or indirect effects of human activities on the composition or condition of the environment in a manner that interferes with certain uses or activities that could otherwise have been carried out under the natural conditions of that environment" (**Salama, 2000, p. 127**)

The Algerian legislator, for its part, defined pollution through Law No. 03-10 on the Protection of the Environment within the Framework of Sustainable Development, in Article 4, as: “Any direct or indirect alteration of the environment caused by any act that creates or may create a situation harmful to human health and safety, as well as to plants, animals, air, atmosphere, soil, and collective and individual property.”

Accordingly, the Algerian legislator has incorporated all the elements referred to in the aforementioned definitions of pollution, considering that pollution encompasses both the element of alteration of the environmental condition and the resulting harm, without specifying the causes of such alteration or the party responsible for the act. This is attributable to the broad scope of the environmental domain, as pollution may be classified into air pollution, soil pollution, and water pollution.

The legislator has also sought to protect environmental media from pollution. Article 43 of Law No. 05-12 relating to Water, as amended and supplemented by Ordinance No. 09-02 of 22 July 2009, provides that: “Water bodies and aquatic ecosystems must be protected from all forms of pollution likely to affect water quality and harm its various uses.”

I-1-1-2-2 Depletion:

Resource depletion, in general, means reducing the value of a resource or causing it to disappear to the extent that it can no longer perform its normal function.

Within the web of life and the food chain, the danger posed by a resource does not lie solely in its disappearance or the reduction of its value. Rather, the most serious danger lies in the impact of resource depletion on the balance of the ecosystem, which may result in highly serious indirect risks. The depletion of one resource may extend its effects to other resources, thereby broadening the scope of the problem and causing it to become interconnected at the local or global level **(Maqsoud, 1998, p. 159)**

Accordingly, environmental resources vulnerable to depletion can be classified into three categories:

✓ Depletion of permanent resources:

These resources include the basic natural elements, namely air, water, and soil, which may be affected in various ways. For example, deforestation leads to a reduction in oxygen; excessive and wasteful consumption of water contributes to water depletion; pesticides pollute the soil; and the continuous cultivation of a single crop leads to soil depletion.

✓ Depletion of renewable resources:

Renewable resources are those that are continuously replenished; however, they may be subject to depletion when the rules governing their use are not respected. Examples include illegal fishing and fishing during prohibited seasons, particularly breeding seasons, which may lead to a decline in species populations and even their extinction. Despite their capacity for renewal, the use and exploitation of such resources must take place within a legal framework.

Nevertheless, human beings have made considerable efforts to exploit and deplete whatever renewable environmental resources they could obtain, whether animal, plant, or soil resources. With regard to wild and marine fauna, a considerable number of animal species have been affected. Studies indicate that approximately one million living organisms became extinct by the end of the twentieth century **(Al-Saud, 2007, p. 120)**

✓ Depletion of non-renewable resources:

Non-renewable environmental resources have limited reserves and are subject to depletion and exhaustion because their rate of consumption exceeds their rate of replenishment, or because the process of replacing them is extremely slow. These resources include oil, natural gas, coal, and minerals **(Al-Saud, 2007, p. 122)**

Accordingly, efforts have been undertaken to rationalize the consumption of these resources in order to preserve them for a longer period and ensure that they do not disappear. Numerous laws have also been enacted to protect them.

With reference to Law No. 03-02 of 17 February 2003, establishing the general rules governing the use and tourist exploitation of beaches, the Algerian legislator emphasized the need to prevent the uncontrolled exploitation of beaches and any activity that may adversely affect public health, cause deterioration in the quality of seawater, or impair its beneficial value.

I.2. Environmental Elements Subject to Administrative Sanctions

Based on the foregoing definitions, it can be concluded that the concept of the environment encompasses a set of elements that the legislator has sought to protect. These elements can be classified into two categories: natural elements and elements created or developed by human beings over time.

I.2.1. Natural Elements

These elements are those whose existence has not resulted from human intervention, as they predate human existence itself. They constitute the foundation upon which human civilization has been built. The Algerian legislator addressed these elements in Law No. 03-10, particularly in Article 4 thereof, and they can be classified as follows

I.2-1-1 Soil:

Soil is the layer covering the rocks of the Earth's crust. Its thickness ranges from a few centimeters to several meters. It consists of a mixture of mineral and organic materials, water, and air. It is considered one of the most important sources of renewable natural resources and one of the essential components supporting living organisms (Younes, 2008, p. 28)

I.2-1-1 Air:

Air is considered one of the most valuable components of the environment and is essential for life; it is absolutely indispensable. It constitutes the atmospheric envelope surrounding the Earth and is scientifically referred to as the gaseous envelope. It consists of gases that are essential for the continuity of life of living organisms. Any change occurring in its composition may lead to negative consequences affecting the lives of living organisms (Makhlaf, 2007, p. 42)

I.2-1-2 Water:

Water is the basis of life, as stated in the Holy Qur'an: "And We made from water every living thing." Water is a chemical compound resulting from the reaction between hydrogen and oxygen. It possesses chemical, physical, and biological properties that make it one of the essential components of life on Earth. Water follows a constant cycle in nature and covers 71% of the Earth's surface (Hassouna, 2012, p. 16)

No changes can be introduced into this vital element without consequences, as the introduction of any substance into the aquatic environment may alter its physical, chemical, and biological properties and cause risks to human, animal, and plant health

The Algerian legislator has granted water legal protection through Law No. 05-12 of 4 August 2005 relating to water, as amended and supplemented by Ordinance No. 09-02 of 22 July 2009.

I.2-3 Biodiversity:

Biodiversity refers to the variability among living organisms from all sources, including terrestrial, marine, and other aquatic ecosystems, as well as the ecological complexes of which they are part. This includes diversity within species, between species, and among ecosystems .

Biodiversity, or biological diversity, in a particular area or a specific ecosystem is measured by the number and variety of living organisms present therein. The importance of biodiversity stems from the fact that each species of living organism performs a specific function within an ecosystem. Therefore,

the disappearance of any species may lead to an imbalance in the ecosystem and result in numerous environmental damages.

The threat to biodiversity can be illustrated, for example, by the extinction of certain plant or animal species, which leads to numerous losses, most notably:

The loss of sources of scientific knowledge, given that most innovations are inspired by the living world.

The loss of significant sources of medicines that help save human beings from diseases and epidemics. The discharge of chemical substances and the dumping of waste into the seas lead to a decline in fish stocks and the extinction of certain species, thereby threatening the marine environment.

Accordingly, the Algerian legislator has enacted legislation to protect biodiversity through Law No. 04-07 of 4 August 2004 relating to hunting, and Ordinance No. 06-05 of 15 July 2006 relating to the protection and conservation of certain animal species, thereby embodying the principle of environmental protection.

I.2-1-2 Artificial Elements

In order to satisfy his basic needs and requirements, human beings have, over time, introduced a range of means and tools that enable them to make greater use of the natural elements of the environment.

The artificial environment encompasses the use of land for agriculture, the establishment of natural areas, and the exploration and extraction of natural resources. There is an integrated relationship between the artificial and natural environments, as artificial elements have been developed to adapt and facilitate the use of natural elements for the benefit of human beings. This has led the Egyptian legislator, in particular, to consider them as forms and elements of the environment.

II. Conclusion and Findings

At the conclusion of this research paper, it can be stated that environmental administrative sanctions derive from the concept of administrative regulation in general, just as other administrative sanctions do. Accordingly, the legislator has granted the administration the authority to impose environmental administrative sanctions in order to relieve the judiciary of the burden of adjudicating violations that do not warrant judicial intervention, while allowing certain cases to be addressed administratively and judicially at the same time.

Such sanctions are issued in the form of an administrative decision imposed by the administration in its capacity as a public authority in the course of performing its duties. They are characterized by their general nature, unlike disciplinary sanctions, which are characterized by their individual nature. They are also deterrent in nature and may take the form of financial or non-financial sanctions. They are imposed in pursuit of the public interest, represented by the protection of the environment, particularly within the framework of combating pollution and the depletion of environmental resources.

The legislator determines these sanctions through various laws covering numerous sectors. They may also be determined by the executive authority, given that the latter possesses sufficient knowledge and expertise concerning activities related to its respective sector. These sanctions are subsequently imposed by the administration in accordance with the rules established by law.

Within the framework of the rule of law and the principle of the legality of administrative decisions, the legislator has established a number of safeguards for both the administration and the violator, in order to prevent the administration from exceeding the powers assigned to it and to ensure that the violator does not act arbitrarily without oversight by the administrative authorities. These safeguards apply from the identification of the violation and the determination of the sanction, through its imposition, and ultimately to challenging its legality.

Accordingly, it can be stated that the study has reached a number of findings, which can be summarized as follows:

Environmental administrative sanctions are necessary for preserving the natural and artificial assets of the environment and for reinforcing the authority of the State in this field.

An administrative sanction is issued in the form of a decision following the commission of a violation, after investigation and verification, which constitutes a safeguard for the legality of the sanction.

Environmental administrative sanctions constitute a necessary means of restricting citizens' freedom in the environmental field.

Deterrence requires the application of administrative sanctions in the environmental field, given the simplicity and speed of their procedures compared with judicial procedures, which may be protracted. Such delays may contribute to environmental degradation or even the extinction of a species due to the lengthy nature of judicial proceedings.

The laws concerned with environmental protection, particularly with regard to the deterrent administrative sanctions they provide, are relatively old. Therefore, an administrative sanction that was applicable in an earlier period may no longer be consistent with present-day circumstances. For instance, some fines stipulated under the forestry legislation amounted to 50 Algerian dinars (DZD) in 1991. At present, such an amount is in no way commensurate with the environmental damage caused, which is inconsistent with the principle of proportionality between the sanction and the violation.

The judiciary restricts environmental administrative sanctions, as is the case with other types of sanctions, whenever one of the principles governing them is violated.

The legislator has left the determination of sanctions to the executive authority through legislative delegation. This constitutes a major advantage, given that the administration is more knowledgeable about the various activities related to its respective sector.

Accordingly, based on the foregoing, it can be concluded that the Algerian legislator has, to a considerable extent, succeeded in activating the role of central and local authorities in environmental protection by granting them the power to impose sanctions in the environmental field, according to the specialization of each administration across various sectors, pursuant to the laws governing them, such as the Law on the Protection of the Environment within the Framework of Sustainable Development, as well as the laws relating to municipalities and wilayas, among others.

Nevertheless, many of these sanctions currently lack effectiveness due to the outdated nature of the relevant legislation and the failure to amend it in accordance with contemporary circumstances. This does not, however, preclude the existence of legislation that has been revised on several occasions, such as the Urban Planning Law.

II. Recommendations

In this regard, the following recommendations may be proposed:

Simplifying the procedures for imposing environmental administrative sanctions, such as the procedures carried out between the Directorate of the Environment and the Wali, without compromising the safeguards established for administrative sanctions, given the serious risks facing the environment, which require rapid intervention and the use of all available means for its protection.

Activating the mechanisms for imposing administrative sanctions in the environmental field and strengthening penalties to the maximum extent in cases of non-compliance.

State intervention to address the problems faced by industrial facilities, rather than resorting directly to sanctions, since many factory owners lack the financial capacity to acquire equipment and technologies that ensure environmental protection. Imposing a sanction that may result in the closure of an industrial facility or factory could adversely affect the national economy. Therefore, such facilities should be supported in this area.

Reviewing environmental legislation, particularly the provisions relating to administrative sanctions, since the current legal framework is not proportionate to the scale and value of the damage that may be caused to the environment.

Strengthening the role of independent administrative authorities and other bodies, such as the Directorate of the Environment, by granting them the authority to impose administrative sanctions in the environmental field. This would alleviate the burden on central authorities in dealing with environmental issues, particularly given the vast geographical area, rather than limiting their role to inspecting and identifying violations.

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