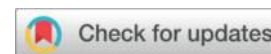




## **Punitive Sanctions for the Protection of Natural Resources under the Algerian Environmental Protection Law**



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### **Abstract**

Algeria, like other developing countries striving to reach the level of industrialized nations, has adopted a set of economic sanctions, development programs, and strategic technological plans to achieve comprehensive economic development. However, it did not take into account the sustainable development of its natural resources, which have become threatened with depletion. Yet, given the ecological danger that has begun to threaten it, Algeria shifted its purely economic development orientation toward creating a balance between economic development and environmental development. Algeria has established a set of sanctions with future prospects aiming to develop strategic programs and studies through the preparation of long-, short-, and medium-term plans specifically dedicated to protecting natural resources. To implement these programs and plans, institutions and bodies responsible for managing and safeguarding this sector were created, demonstrating the state's desire to organize and protect its resources in a way that ensures their sustainability.

### **Keywords:**

\_ Sustainable development. \_ Environmental protection.\_ Protection of natural resources. \_ Rational and sound management of natural resources.

### **Introduction**

It has become necessary in our era—which is witnessing a revolution or qualitative leap in industrial and technological development, especially at the expense of the limited available natural resources—to recognize that the depletion of natural resources in Algeria is a dangerous indicator warning of the imminent exhaustion or disappearance of some natural resources in the near future. For example, the decline in water levels, desertification, tree die-off in forests, depletion of oil wells, and other underground natural resources all indicate that natural resources are at risk and require concerted efforts to preserve them from depletion and the serious

encroachments threatening the environment and its natural resources. They also require searching for legal sanctions and adequate means to protect natural resources. The Algerian legislator has adopted and approved a set of legal sanctions to protect the environment and its natural resources, which can be divided into preventive administrative mechanisms and deterrent judicial financial mechanisms. What concerns us in this study are the legal and financial deterrent sanctions and the extent of their effectiveness in reducing environmental crimes. These crimes are threatening the limited natural resources, prompting the Algerian legislator to intervene with a set of legislations and legal texts to limit such crimes and punish anyone who violates the environment and its natural resources. This will be clarified in detail in the following two sections:

### **Chapter One: Legal sanctions for the protection of natural resources**

### **Chapter Two: Financial sanctions established for the protection of natural resources**

#### **ChapterOne: Legal Sanctions for the Protection of Natural Resources**

To create a form of integration between the general and specific legal tools and mechanisms related to the protection of natural resources—which themselves have proven insufficient to achieve the desired objective as preventive sanctions against environmental harm—it became necessary to introduce deterrent mechanisms to intimidate and discourage violators of natural resources and to demonstrate the importance the legislator assigns to protecting these resources. Given the repeated assaults on the environment and its natural resources despite existing preventive legal mechanisms, whether general or specific, the legislator has adopted a set of deterrent judicial tools intended to punish anyone who violates the environment or its natural resources. This gives these resources a form of authority and special status among the ruling bodies of the state and civil society, encouraging everyone to contribute to preserving the sustainability of natural resources. This is reflected in judicial sessions, where courts increasingly address cases related to the protection of natural resources.

For this purpose, the Algerian legislator has defined a set of offenses and crimes, and has prescribed a series of preventive sanctions to reduce harm to natural resources. These are explained in the following subsections:

#### **Section One: Preventive Judicial Sanctions**

To prevent perpetrators from committing crimes that harm natural resources, the legislator granted judicial bodies a set of powers and mechanisms to complement the deterrent system, which alone is insufficient to ensure comprehensive protection of natural resources.

To restrain and sanction offenders, a group of preventive measures has been adopted to avoid environmental harm that threatens the stability and continuity of natural resources. Among

these preventive judicial tools aimed at addressing natural resource–related crimes, the law provides the following:

### **First: Prohibition from Practicing an Activity**

Given the danger posed by certain activities carried out by their operators, which harm the environment and natural resources by polluting them, the legislator, wishing to limit such harmful activities, provided in various laws for the prohibition of such activities. This constitutes a preventive measure designed to prevent offenders from engaging in harmful practices.

For example, the Environmental Protection Law within the framework of sustainable development grants courts the authority to prohibit the use of a facility until a proper license is obtained from the competent authority.

The Coastal Protection Law also provides for the withdrawal of a beach exploitation license in case the offender fails to comply with contractual obligations related to beach use, in order to ensure rational management of coastal natural resources.

Additionally, the authority responsible for granting licenses to operate classified facilities may prohibit applicants from operating facilities that do not comply with legal procedures.

### **Second: Confiscation and Seizure of Prohibited Equipment**

To protect natural resources, the legislator has prescribed the confiscation of the offender's assets used in committing crimes against natural resources. This preventive sanction helps prevent environmental harm.

For example, the law on maritime fishing provides for the seizure of prohibited fishing equipment to prevent unauthorized individuals from engaging in illegal fishing. The law also mandates the confiscation of prohibited items used in environmental crimes, such as weapons, ammunition, fishing nets, and illegally caught fish, as well as prohibited hunting tools and hunted animals, which must be handed over to a designated public authority. This system of confiscation and seizure has significantly contributed to reducing natural resource–related crimes.

### **Third: Restoring the Situation to Its Original State**

In Algeria, restoring the environment to the state it was in prior to the occurrence of environmental harm is considered a preventive judicial sanction aimed at preventing harm or repairing environmental damage. This measure is imposed by the judge when it is possible to restore the situation.

The Environmental Protection Law within the framework of sustainable development allows courts to order the restoration of areas to their original condition within a specified timeframe in cases where facilities operate without a legal permit.

Similarly, the Water Law authorizes the water resources administration to order restoration when an operator lacks a valid exploitation or concession license.

The Coastal Protection Law also requires restoration when contractual obligations are violated. Despite difficulties in implementation—given that this measure seeks to repair what the offender damaged—this mechanism has contributed significantly to restoring the environment and its natural resources.

## **Section Two: Deterrent Judicial Sanctions**

After discussing preventive legal sanctions, it becomes evident that additional complementary mechanisms must be adopted to ensure the protection and sustainability of natural resources. These complementary mechanisms take the form of punitive and deterrent sanctions imposed on anyone who commits crimes against natural resources or the environment.

Deterrence is one of the methods adopted by the legislator, granting courts the authority to impose punitive measures to elevate the status of natural resources and protect them. Accordingly, the legislator has introduced a set of specific penalties for environmental crimes that harm natural resources. These include:

### **First: The Death Penalty**

Given the importance assigned to natural resources, the Algerian legislator classified environmental crimes that severely harm natural resources as felonies (*jinaayat*). Therefore, the legislator has imposed the most severe penalties, including the death penalty. Despite this, the death penalty remains rare in laws pertaining to natural resources, as these laws aim to protect human life by ensuring the sustainability of natural resources. However, the Algerian Penal Code provides for the death penalty in cases involving actions that harm the environment—such as introducing or leaking substances into the air, soil, or waters (including territorial waters)—that endanger human, animal, or natural life. The Maritime Law also imposes the death penalty in cases where Algerian or foreign vessels intentionally dump radioactive waste in Algerian waters.

### **Second: Imprisonment**

The Algerian legislator classified certain environmental acts as felonies punishable by imprisonment.

For example, the Penal Code prescribes imprisonment from 10 to 20 years for intentionally setting fire to forests, cultivated fields, or trees.

Environmental laws also impose imprisonment. The Waste Management and Removal Law punishes with 5 to 8 years of imprisonment and a fine ranging from one million to five million dinars—or one of the two penalties—anyone who imports, exports, or transports hazardous waste in violation of the law regulating waste management, control, and removal, which represents a major obstacle to sustainable development in natural resource management.

### Third – The Penalty of Imprisonment

A number of laws concerned with the protection of natural resources have stipulated various environmental violations and misdemeanors and have established specific penalties for these environmental crimes, including imprisonment. Among these laws are the following: The Law on Environmental Protection within the Framework of Sustainable Development stipulates a penalty of two years' imprisonment and a fine of 500,000 DZD for anyone who disposes of, discharges, or allows leakage of substances into surface waters or seawater that lead to the reduced use of coastal areas, or who leaves large quantities of waste in surface or groundwater or on beaches.

The Mining Law also stipulates imprisonment ranging from two months to two years and a fine from 20,000 DZD to 50,000 DZD for anyone who carries out exploration work without a permit.

As for forest protection, the law stipulates imprisonment from one month to six months for clearing land without a permit, in order to preserve vegetation cover and green spaces so that nature does not lose its balance.

Regarding the protection of animals, the Penal Code stipulates imprisonment of no less than ten days and no more than two months, and a fine from 100 DZD to 1,000 DZD, or one of the two penalties, for anyone who, without justification and anywhere, kills draft, riding, or pack animals, horned cattle, sheep, goats, or any other animal, or guard dogs, or fish found in ponds, basins, or reservoirs, or who kills without justification a domesticated animal in a place owned, rented, or cultivated by the owner of the killed animal.

Despite the existence of these deterrent penalties within legal texts, they still need to be implemented on the ground, because if they were implemented, they would prove their effectiveness in protecting natural resources.

## **Chapter Two: Financial Penalties Prescribed for the Protection of Natural Resources**

After the previously mentioned legal penalties—represented by deterrence through judicial means—proved insufficient, and after the definitive failure of administrative control policies to protect natural resources and ensure their sustainable development in a way that guarantees current and future generations the enjoyment of the blessings and resources of this generous

and resource-rich nature, the Algerian legislator, wishing to reinforce these previous penalties to ensure their effectiveness, began searching for other means that would complement the aforementioned protective penalties by both preserving natural resources and managing them rationally and efficiently. To this end, a new mechanism was adopted and introduced, consisting of financial penalties and systems designed to support the projects, programs, and plans established for advancing the environment and natural resources sector. Among the financial tools and mechanisms adopted by the legislator are environmental fees and environmental taxes. Like other fees and taxes enacted and implemented by the financial authorities responsible for establishing and collecting them, this type of fee and tax is specifically dedicated to environmental protection and the safeguarding of natural resources. Although Algeria was late in doing so, beginning only in the early 1990s, it established financial mechanisms consisting of various fees and taxes aimed at placing the responsibility for pollution on the polluting actors and involving them in financing and bearing the costs required for the protection and sustainable development of natural resources so that everyone may participate in the preservation and protection of the environment.

A set of legal texts regarding the taxation related to natural resources was issued, such as Law 91-25 containing the Finance Law for 1992, considered one of the first laws to allocate special taxation for environmental protection.

The adoption of these financial penalties in Algeria contributes significantly to providing financial resources allocated to protecting and preserving natural resources and ensuring their rational and efficient management by spending these resources on environmental development programs and plans.

The Algerian legislator stipulated the application of the tax system through a set of incentives that contribute significantly to protecting natural resources from the serious degradation and pollution that now threaten their future. This will be explained in detail, with the first section clarifying the role of environmental taxation in protecting natural resources, and the second addressing the role of tax collection in protecting natural resources.

### **Section One: The Role of Environmental Taxation in Protecting Natural Resources**

The “polluter pays” principle is one of the legal principles introduced to reinforce the financial system dedicated to protecting natural resources. Environmental Protection Law 03-10 adopted this principle to provide financial resources that contribute to the protection of the environment and its natural resources and to support projects and programs related to this matter. Environmental Protection Law 03-10 defines the polluter pays principle as: “Every person

whose activity causes or may cause harm to the environment shall bear the costs of all measures of pollution prevention and reduction.”

From the text of this article, it is understood that the definition provided by the legislator means that anyone who causes harm to the environment or to any natural resource is legally required to pay financial costs to compensate for the damage caused to natural resources. These financial costs take the form of taxes and fees.

To encourage industrial establishments that cause pollution, the legislator introduced a set of ecological tax incentives aimed at providing greater environmental protection by ensuring the availability of financial funds and resources to implement environmental programs and plans. This is reflected in the Environmental Protection Law within the framework of Sustainable Development (03-10), which grants institutions financial and customs incentives determined in the Finance Law, and provides incentives to industrial institutions that import equipment that contributes, in their processes or products, to eliminating greenhouse gas emissions and reducing pollution in all its forms.

Furthermore, to protect natural resources, Environmental Protection Law 03-10 grants any natural or legal person engaging in activities that promote the environment a reduction in taxable profit to allow all parties to participate in preserving natural environmental resources. As for classified establishments requiring declaration, Executive Decree 98-339 sets the fee at 9,000 DZD annually, reduced to 2,000 DZD for establishments employing no more than two workers. For classified establishments requiring authorization from the municipal popular assembly, the base fee was set at 20,000 DZD, reduced to 3,000 DZD annually for establishments employing no more than two workers.

For establishments requiring authorization from the wali, the decree set the fee at 90,000 DZD, reduced to 18,000 DZD annually for establishments employing no more than two workers. As for establishments requiring authorization from the minister in charge of the environment, the fee was set at 120,000 DZD, reduced to 24,000 DZD annually for establishments employing no more than two workers.

Among the financial laws that provide for financial incentives for the protection of natural resources is the Finance Law of 2003, which established an additional fee on industrial wastewater, linked to both the volume of water produced and the type of pollution. The Finance Law of 2000 also stipulated the doubling of fees imposed on activities that are polluting and dangerous to the environment and reaffirmed the application of the polluter pays principle.

Other laws related to natural resources also include fiscal incentives. For example, the Water

Law applies multiple systems and mechanisms to provide greater protection for water resources through financial resources allocated to quantitative protection, water shortage mitigation plans, pollution prevention, and flood prevention measures that threaten soil erosion and the destruction of green areas.

The purpose of adopting these financial penalties by the Algerian legislator was to encourage establishments to participate in environmental protection and, at the same time, to make the protection of natural resources a necessity for them, so that establishment owners take all the necessary and required precautions to preserve natural resources.

## **Section Two: The Role of Tax Collection in Protecting Natural Resources**

By enacting a large legal framework for tax collection through ecological fees and taxes—reflected in the Finance Laws of recent years—the legislator sought to enforce the polluter pays principle. Through this approach, anyone causing environmental harm is obligated to pay financial compensation for repairing and compensating for the damage caused by their activities.

However, the financial tax system for natural resources suffers from certain flaws and shortcomings, mainly due to the lack of clarity concerning the objectives the legislator seeks to achieve through environmental taxation, as well as the failure to define the criteria and foundations on which such taxation is based. These should have been developed by qualified economic experts capable of preparing reports that the legislator could adopt when establishing natural resource taxation, with the goal of maximizing tax collection and encouraging compliance.

Additionally, the state's policy for allocating the financial resources collected from environmental taxation is ineffective and irrational. The state dedicates 75% of the financial resources obtained from environmental taxation to the National Fund for the Environment and Pollution Control to finance environmental programs and projects related to sustainable environmental development. The remaining 25% is allocated to municipalities and the public treasury.

This reduction in the proportion of funds allocated solely to the environment is considered ineffective and unsound because the financial resources collected through environmental taxation should remain exclusively dedicated to supporting environmental protection and the sustainable development of natural resources.

Environmental taxation also has economic disadvantages: it increases production costs, leading to higher prices, which affects citizens' purchasing power and the competitiveness of businesses. This, in turn, reduces the willingness of businesses to comply with natural resource



taxation and to contribute to environmental protection, undermining a basic pillar of sustainable development—social justice in bearing environmental damage costs—and disrupting the balance between generations in their access to natural resources.

Despite these disadvantages concerning the effectiveness of ecological fees, tax collection has achieved positive results in protecting the environment and natural resources through the substantial financial resources collected. These contributed to saving natural resources that were on the verge of depletion or disappearance due to severe environmental pollution. This was done through supporting state environmental programs and projects aimed at protecting and managing natural resources effectively, thus ensuring their sustainable development.

## **Conclusion**

Through addressing this topic, we were able to discuss the most important deterrent legal sanctions adopted by the legislator, whether judicial mechanisms or financial mechanisms. As for the deterrent sanctions, they were divided into preventive judicial mechanisms—called preventive because they prevent the occurrence of environmental harm—and these preventive sanctions are represented in the rule of restoring the situation to its original state, the confiscation and seizure of prohibited equipment, and the prohibition from practicing the activity.

The second type consists of punitive deterrent sanctions, which in turn include the death penalty, imprisonment, and jail sentences. These deterrent sanctions, in general, played an important role in providing a type of protection and preservation for natural resources, as they reduced the rate of crimes committed against the environment and its natural resources.

Despite all these sanctions, they are not sufficient on their own. It is therefore necessary to adopt and establish financial sanctions that support these judicial deterrent sanctions. We find that the Algerian legislator has adopted a set of financial deterrent sanctions represented in the “polluter pays principle,” which refers to environmental taxation in the form of environmental fees and taxes, and which in turn has greatly contributed to preserving the environment and its natural resources. This allowed the public treasury to secure financial allocations to be spent on environmental programs set by the state.

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