

Environmental Protection in Algeria between the Constitution and Legal Texts

Azzedine Mihoubi

Faculty of Law and Political Science, Mohamed Lamine Debaghine University Sétif 2,
Algeria

Laboratory of Studies and Research on Human Rights

azzedine.ahed@gmail.com

Lilia Kellou

Faculty of Law and Political Science, Mohamed Lamine Debaghine University Sétif 2,
Algeria

Laboratory of Studies and Research on Human Rights

liliakellou06@gmail.com

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Abstract:

Algeria has sought to protect the environment through both constitutional and legal provisions, which led to the constitutional recognition of the right to a healthy environment for the first time in the 2016 constitutional amendment. This was followed by the 2020 constitutional amendment, which further reinforced environmental protection in both its preamble and substantive provisions. Algeria also possesses a body of legal texts and executive decrees that pursue the same objective. To ensure the effective implementation of this protection, the State established institutions and bodies responsible for safeguarding the environment. In addition to providing constitutional and legal guarantees, issuing executive decrees, and establishing institutional mechanisms to support environmental protection, Algeria has imposed sanctions on those who violate environmental protection measures, with the aim of creating a comprehensive and integrated system for environmental protection.

Keywords: environmental protection, constitutional amendment, laws, executive decrees, protection bodies, sanctions.

Introduction

Algeria has constitutionalized environmental protection by incorporating it into the chapter on fundamental rights and freedoms of the Constitution. Environmental protection was constitutionally recognized for the first time in the 2016 constitutional amendment, followed by the 2020 constitutional amendment, which further reinforced the protection and preservation of the environment, both in its preamble and in the substantive provisions addressing this right. The recognition of environmental protection did not stop at the constitutional level. The Algerian legislature also addressed this right through laws and executive decrees, all aimed at strengthening its implementation and fostering collective public awareness. It subsequently developed an integrated environmental protection system by establishing institutions

responsible for environmental protection and imposing sanctions for violations of environmental protection regulations, ranging from administrative to criminal penalties.

Accordingly, this paper examines the various dimensions of environmental protection in Algeria, including its constitutional foundations, legal texts, executive decrees, institutional protection mechanisms, and applicable sanctions, through addressing the following research question: **What efforts has the Algerian State undertaken to protect the environment through its legal framework, the establishment of specialized institutions, and the enforcement of sanctions against violators?**

To answer this question, the study is divided into two main sections. The first examines environmental protection in legal texts and the institutions responsible for its protection, while the second discusses the sanctions resulting from violations of environmental protection provisions.

Section One: Environmental Protection in Legal Texts and the Institutions Responsible for Its Protection

Environmental protection is founded upon a set of principles that provide the basis for the application of the various legal rules governing this field and ensure their effectiveness. Among the most important of these principles in Algeria are the constitutional rules, which constitute the primary reference and occupy the highest position within the legal system.

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Accordingly, Algeria has sought to ensure environmental protection through its Constitution as well as through laws and executive decrees, reflecting the importance it attaches to environmental preservation. From this perspective, this section is divided into two subsections. The first addresses environmental protection in the Algerian Constitution, while the second examines environmental protection in laws and executive decrees, as well as the institutions responsible for its protection.

Subsection One: Environmental Protection in the Constitution

Although environmental protection was incorporated into the Algerian Constitution relatively late, this shortcoming was remedied through the country's two most recent constitutional amendments, namely those of 2016 and 2020. Accordingly, this subsection is divided into three parts. The first examines the explicit constitutional recognition of environmental protection under the 2016 constitutional amendment; the second presents the developments introduced by the 2020 constitutional amendment concerning environmental protection; and the third discusses the incorporation of the environmental dimension into the functions of the Economic and Social Council.

Part One: The Explicit Constitutional Recognition of Environmental Protection under the 2016 Constitutional Amendment

Any process of constitutionalizing a right or a fundamental public freedom must encompass a number of dimensions. This also applies to the constitutionalization of environmental protection, whose primary dimension lies in bringing together all environmental provisions within a single constitutional text.²

Although Algeria, since the restoration of its national sovereignty, has enacted numerous laws and decrees and ratified various conventions and protocols aimed at protecting the environment

and natural resources and combating different forms of pollution, as well as issuing technical and regulatory directives concerning the preservation of natural balances and the fight against desertification, environmental protection was not incorporated into the Algerian Constitutions until the 2016 constitutional amendment, which devoted Articles 19 and 68 to environmental protection.³

Environmental protection was explicitly recognized in the Preamble to the 2016 constitutional amendment, which provides that: "The Algerian people remain committed to their choices aimed at reducing social disparities and eliminating regional inequalities, and strive to build a productive and competitive economy within the framework of sustainable development and environmental protection."

Environmental protection was also expressly enshrined in the substantive provisions of the 2016 constitutional amendment, marking its first explicit constitutional recognition in the Algerian Constitution. This was achieved through the acknowledgment of the right to a healthy environment as a human right, included in the chapter devoted to rights and freedoms. Article 68 provides as follows: "Citizens have the right to a healthy environment. The State shall ensure the protection of the environment. The law shall determine the obligations of natural and legal persons with regard to environmental protection."

Part Two: Developments in Environmental Protection under the 2020 Constitutional Amendment

Since constitutionalization signifies the constitutional recognition, entrenchment, and consolidation of rights a view consistently upheld in legal scholarship, which also employs terms such as "incorporation", "integration", and "adoption" to explain the linguistic meaning of constitutionalization⁴. the Algerian constituent authority, through the 2020 constitutional amendment, sought to further strengthen environmental protection by referring to climate change, environmental resources, and the need for their rational use in order to achieve the objectives of sustainable development.⁵

The environmental provisions introduced by the 2020 constitutional amendment were not limited to reaffirming the right to a healthy environment and its protection within the framework of sustainable development. They also emphasized the need to raise public awareness of global environmental risks, particularly climate change. These amendments were incorporated into both the Preamble and the substantive provisions of the Constitution.

It should be noted that the Preamble has the same constitutional value and legal force as the Constitution itself, in accordance with the final paragraph of the Preamble to the 2020 constitutional amendment, which states: "This Preamble shall constitute an integral part of this Constitution."

The 2020 constitutional amendment introduced significant developments concerning environmental protection in its Preamble. The constituent authority added a paragraph of considerable importance, reflecting its determination to address contemporary challenges, raise public awareness of the emerging risks associated with climate change, and promote the rational use of natural resources in order to safeguard the rights of future generations. The Preamble provides: "...The people also remain concerned about environmental degradation and the adverse consequences of climate change, and are committed to ensuring the protection of the

natural environment, the rational use of resources, and their preservation for the benefit of future generations."

The constituent authority introduced a number of amendments in the substantive provisions of the 2020 constitutional amendment. Among them is Article 21, which expressly provides for environmental protection through the protection of agricultural land, the guarantee of a healthy environment to protect individuals and promote their well-being, the continuous raising of awareness regarding environmental risks, the rational use of water, fossil fuels, and other natural resources, the protection of the environment in its terrestrial, marine, and atmospheric dimensions, and the adoption of all appropriate measures to sanction polluters.

Article 64 further provides that: "Citizens have the right to a healthy environment within the framework of sustainable development..." Thus, environmental protection becomes a developmental issue incorporated into the State's public policy agenda, development projects, and future-oriented investments.

In light of these developments, environmental constitutionalization may be understood as the constitutional recognition, entrenchment, and incorporation of environmental protection and the right to a healthy environment into the Constitution. As a result, this right acquires a set of characteristics that reinforce the effectiveness of constitutionalization, particularly those associated with the principles of constitutional supremacy, legality, and the hierarchy of legal norms.⁶

Part Three: Incorporating the Environmental Dimension into the Functions of the National Economic, Social and Environmental Council

The 2020 constitutional amendment attached considerable importance to environmental protection by incorporating the environmental dimension into the functions of the National Economic, Social and Environmental Council. The Council serves as a framework for dialogue, consultation, proposals, foresight, and analysis in the economic, social, and environmental fields under the authority of the President of the Republic. This orientation was effectively reflected through the integration of the environmental dimension into the Council's powers under Article 210 of the Constitution, which highlights its new role in promoting the three dimensions of sustainable development by providing that: "The Economic, Social and Environmental Council shall, in particular, be entrusted with the following tasks:

- Providing a framework for the participation of civil society in national consultations on economic, social, and environmental development policies within the framework of sustainable development;
- Assessing and examining matters of national interest in the economic, social, environmental, educational, vocational training, and higher education fields."

Pursuant to Articles 209 and 210 of the 2020 constitutional amendment, Presidential Decree No. 21-37 was issued to determine the composition and operating procedures of the Economic, Social and Environmental Council.⁷

As a result, the Economic, Social and Environmental Council is entrusted, in particular, with providing a framework for the participation of civil society in national consultations on economic, social, and environmental development policies within the framework of sustainable development. It also ensures the continuity of dialogue and consultation among national

economic and social partners, evaluates and examines issues of national interest in the economic, social, environmental, educational, vocational training, and higher education sectors, and submits proposals and recommendations to the Government.

Subsection Two: Environmental Protection in Laws, Executive Decrees, and the Institutions Responsible for Its Protection

The Algerian legislature has sought to protect the environment through the enactment of laws and executive decrees, while also establishing institutions responsible for environmental protection with the aim of creating a comprehensive environmental protection framework. Accordingly, this subsection is divided into two parts. The first examines environmental protection in laws and executive decrees, while the second addresses the institutions responsible for environmental protection.

Part One: Environmental Protection in Laws and Executive Decrees

Algeria has attached great importance to environmental protection and has therefore enacted laws and executive decrees that define the obligations of both natural and legal persons with respect to environmental protection.⁸

First: Environmental Protection in Legislation

Algeria has enacted numerous laws to protect and preserve the environment, foremost among them Law No. 03-10 on Environmental Protection within the Framework of Sustainable Development.⁹ This law was preceded by several legislative texts pursuing the same objective, including Law No. 83-03 on Environmental Protection,¹⁰ Law No. 01-19 on Waste Management, Control, and Disposal,¹¹ and Law No. 02-02 on the Protection and Enhancement of the Coastline.¹²

Following the enactment of Law No. 03-10, several additional laws were adopted to strengthen environmental protection, including Law No. 04-03 on the Protection of Mountainous Areas within the Framework of Sustainable Development,¹³ Law No. 04-20 on the Prevention of Major Risks and Disaster Management within the Framework of Sustainable Development¹⁴, Law No. 07-06 on the Management, Protection, and Development of Green Spaces,¹⁵ and Law No. 11-02 on Protected Areas within the Framework of Sustainable Development.¹⁶

Second: Environmental Protection through Executive Decrees

The environmental laws were followed by a series of executive decrees aimed at strengthening environmental protection. These include Executive Decree No. 06-104, which establishes the list of waste, including hazardous special waste¹⁷; Executive Decree No. 06-138, regulating the emission of gases, smoke, vapors, and liquid or solid particles into the atmosphere, as well as the conditions governing their monitoring¹⁸; Executive Decree No. 06-141, which sets the maximum permissible limits for industrial liquid discharges¹⁹; Executive Decree No. 09-336, concerning the tax imposed on activities that are polluting or hazardous to the environment;²⁰ and Executive Decree No. 13-110, regulating the use of ozone-depleting substances and their mixtures.²¹

This body of legislation clearly demonstrates that the Algerian legislature has established a comprehensive legal framework for environmental protection through both legislative enactments and executive decrees.

Part Two: Institutions Responsible for Environmental Protection

In addition to incorporating environmental protection into its legislation and executive decrees, and subsequently elevating it to constitutional status, Algeria has sought to establish institutions responsible for safeguarding the environment. These institutions include agencies, centers, observatories, parks, and institutes. Some of the most prominent of these are presented below.

First: Agencies

These include:

- The National Agency for Nature Conservation: Established in 1991 and governed by Executive Decree No. 91-33, as amended and supplemented by Executive Decree No. 98-352²². It is responsible for preparing inventories of wildlife, plant resources, and natural areas, and ensuring their conservation. The Agency is entrusted with conducting studies, research, surveillance, monitoring, and follow-up activities related to nature conservation and hunting. It also collects and compiles information necessary for the identification, assessment, and development of plant and animal species, as well as the advancement of horticultural science.
- The National Waste Agency: Established in 2002 and governed by Executive Decree No. 02-175²³. It is responsible for promoting waste sorting, treatment, and recovery activities, processing waste-related data and information, establishing and updating a national waste information database, and initiating as well as participating in studies, research, and pilot projects.
- The National Climate Change Agency: Established in 2005 and governed by Executive Decree No. 05-375²⁴. It aims to promote the integration of climate change considerations into all development plans and to contribute to environmental protection.

Second: Centers

These include:

- The National Center for Cleaner Production Technologies: Established in 2002 and governed by Executive Decree No. 02-262²⁵. It is responsible for promoting, disseminating, and raising awareness of cleaner production technologies, as well as supporting investment projects related to clean production technologies.
- The Biological Resources Development Center: Established in 2002 and governed by Executive Decree No. 02-371²⁶. It coordinates with the relevant sectors on activities related to the identification, conservation, and enhancement of biodiversity. It is responsible for inventorying, promoting, and protecting the national biological heritage and aims to develop sustainable development strategies.

Third: Observatories

These include:

- The National Observatory for the Environment and Sustainable Development: Established in 2002 and governed by Executive Decree No. 02-115²⁷. It coordinates with national institutions in collecting, processing, and preparing environmental information at the scientific, technical, and statistical levels. Among its principal

functions are the establishment of monitoring networks, the measurement of pollution levels, and the surveillance of natural environments.

- The National Observatory for the Promotion of Renewable Energy: Established in 2004 and governed by an executive decree. It is responsible for promoting renewable energy within the framework of sustainable development and serves as a national body dedicated to the promotion, development, and use of renewable energy.
- The National Urban Observatory: Established in 2007 and governed by Executive Decree No. 07-05²⁸, as supplemented by Executive Decree No. 17-94. Its principal responsibilities include monitoring the implementation of the national urban policy, preparing studies on urban development within the framework of the national spatial planning policy, compiling the national urban register, and proposing measures to the Government for the advancement of the national urban policy.

Fourth: National Parks and Institutes

These include:

- National Parks²⁹: They are responsible for the conservation of wildlife and plant life, preserving natural ecosystems, and protecting them from all forms of artificial intervention.
- The National Institute for Environmental Training: Established in 2002 and governed by Executive Decree No. 02-263³⁰. Its mission is to provide training, promote environmental education, and raise environmental awareness.

The establishment of these institutions demonstrates the Algerian State's commitment to protecting and preserving the environment. It reflects the State's efforts to improve environmental quality and address environmental challenges, particularly in light of the issues facing Algeria, including desertification, pollution, the depletion of natural resources, and climate change.

Section Two: Sanctions for Violations of Environmental Protection Laws

The Algerian legislature has established administrative sanctions applicable to both natural and legal persons who violate environmental protection rules. It has also prescribed criminal penalties for violations of the laws governing environmental protection. Accordingly, this section examines the sanctions resulting from breaches of environmental protection through two subsections. The first addresses administrative sanctions, while the second is devoted to criminal sanctions.

Subsection One: Administrative Sanctions for Violations of Environmental Protection Laws

Administrative sanctions are imposed on any natural or legal person who fails to comply with environmental protection obligations. These sanctions take several forms, namely: formal warning, administrative fines and environmental levies, suspension of activities, and the revocation or withdrawal of licenses. These forms are discussed successively in the following parts.

Part One: Formal Warning

A formal warning consists of notifying the violator to rectify the environmental situation before more severe measures are taken. This measure is provided for under Law No. 03-10 on Environmental Protection within the Framework of Sustainable Development. Article 25 stipulates: "Where the operation of a facility not included in the list of classified installations gives rise to risks or harm affecting the interests referred to in Article 18 above, and on the basis of a report issued by the environmental authorities, the governor shall issue a formal warning to the operator and grant a specified period within which the necessary measures must be taken to eliminate the identified risks or damage."

In the same context, Article 48 of Executive Decree No. 06-198, establishing the regulatory framework applicable to classified installations for environmental protection³¹, provides that the territorially competent governor may, in the circumstances referred to in Articles 44 and 47 of the same Decree namely, where an operating license has not been obtained or where the operating license does not comply with the categories specified in Article 3 issue a formal warning requiring the operator of the classified installation to submit the required declaration or application for authorization, together with an environmental review or a risk assessment study. If the operator fails to regularize the situation within the prescribed legal period, the governor may order the closure of the establishment.

Accordingly, a formal warning constitutes a preventive administrative measure through which the competent administrative authority notifies the violator of the need to take the necessary measures to bring the activity into compliance with the applicable legal standards. It should be noted that the Algerian legislature has not prescribed any specific form for the validity of a formal warning; therefore, it may be communicated by any means that effectively informs the operator of the classified installation of the action required or intended by the administration.

Part Two: Administrative Fines and Environmental Taxation

- An administrative fine consists of a monetary penalty imposed by the competent administrative authority on any person who violates the provisions of environmental protection laws. It is among the most commonly applied administrative sanctions in cases of environmental pollution, owing to the ease with which it can be imposed and the speed of its collection.³²
- Environmental taxation is regarded as one of the most important administrative instruments for mitigating the effects of pollution. It may be defined as one of the most effective national policy tools for correcting environmental externalities through the imposition of charges, fees, or taxes on pollution. Commonly referred to as green taxes or ecological taxes, these are compulsory monetary levies paid into the public treasury without any direct consideration in return.
- Paragraph 7 of Article 3 of Law No. 03-10 addresses environmental taxation by providing for the polluter pays principle, stating: "The polluter pays principle, whereby any person whose activity causes, or is likely to cause, damage to the environment shall bear the costs of all measures for the prevention and reduction of pollution, as well as the restoration of sites and their environment to their original condition."

This principle has been incorporated into the Finance Law with the objective of requiring those responsible for environmental damage to contribute to covering the costs of remedying such damage.

The objectives of environmental taxation may be summarized as follows:

- To encourage both producers and consumers to refrain from engaging in practices that are harmful to the environment.
- To serve as an effective instrument for addressing environmental problems, particularly those related to pollution control.
- To generate significant public revenue that may be used to improve environmental conditions.
- To integrate economic, fiscal, and environmental policies within a unified regulatory framework.

Part Three: Suspension of Activity

The suspension of activity is an administrative measure resorted to by the administration when industrial activities pose a risk of causing environmental harm. This sanction is intended to prevent environmental damage, as it authorizes the administration to intervene immediately upon establishing the existence of pollution, without waiting for the outcome of judicial proceedings should the matter be brought before the courts. It may also be defined as a sanction aimed at penalizing the perpetrator of an environmental violation by ordering the closure of the establishment, either permanently or until the activity has been brought into compliance with environmental protection requirements.

A review of Law No. 03-10 on Environmental Protection within the Framework of Sustainable Development shows that it expressly recognizes the suspension of activity as a legal sanction. This measure is provided for in the second paragraph of Article 25. Likewise, Article 48 of the Water Law stipulates that the authority responsible for water resources must take all necessary enforcement measures to halt the discharge of effluents or the disposal of harmful substances whenever water pollution threatens public health. It is also empowered to order the suspension of the operations of the establishment responsible for the pollution until the pollution has been eliminated.

The suspension of activity is also reflected in Executive Decree No. 93-160 concerning industrial liquid waste³³, which provides that, where the owner of the equipment fails to comply upon the expiry of the prescribed period, the governor may order the temporary suspension of the operation of the equipment causing the pollution.

It should be noted that, in most cases, the suspension of activity is preceded by a formal warning issued to the person concerned. This approach seeks to strike a balance between the requirements of sustainable development projects and the necessity of environmental protection, whereby the activity is suspended only after the operator has been alerted and reminded of the obligations relating to environmental protection.

Part Four: Revocation or Withdrawal of a License

The revocation or administrative withdrawal of a license is considered one of the most severe administrative sanctions granted by the legislature to the administration, owing to its significant

impact on acquired rights. At the same time, it is regarded as one of the most effective environmental administrative sanctions because of its substantial deterrent effect on operators of projects that are harmful to the environment.

One application of this sanction is the authority vested in the Minister responsible for the Environment to withdraw a discharge permit. This sanction is also reflected in Executive Decree No. 97-254 concerning prior authorizations for the production and importation of toxic substances posing a particular hazard, which regulates the procedures for withdrawing licenses for the production of such toxic substances.³⁴

It should be noted that the revocation or withdrawal of a license is generally imposed in the following circumstances:

- Where the continued operation of the project poses a threat to public order in one of its essential components.
- Where the project fails to satisfy the legal requirements prescribed by the legislature.
- Where the operation of the project has ceased for a period exceeding the duration specified by law.
- Where a judicial decision has been issued ordering the closure or removal of the project.

Subsection Two: Criminal Sanctions for Violations of Environmental Protection Laws

Nearly all of the environmental protection laws referred to above contain criminal provisions prescribing penalties for violations of their respective provisions.

The criminal sanctions established for environmental protection include monetary fines, confiscation, custodial penalties of varying degrees, and supplementary penalties. These sanctions are discussed in the following four parts.

Part One: Criminal Monetary Fines

Criminal monetary fines are among the most frequently imposed criminal sanctions in the field of environmental pollution, owing to their ease of enforcement and effectiveness in deterring pollution and environmental damage caused by both natural and legal persons.

A criminal fine is a monetary penalty imposed by the competent judicial authority, in accordance with the law, on the perpetrator of an act of environmental pollution. The offender is required to pay the prescribed amount to the public treasury.

Law No. 03-10 provides for criminal fines in relation to environmental offences. In certain cases, the fine constitutes the sole principal penalty. For example, the first paragraph of Article 84 provides: "Any person who violates the provisions of Article 47 of this Law and causes air pollution shall be punished by a fine ranging from five thousand Algerian dinars (DZD 5,000) to fifteen thousand Algerian dinars (DZD 15,000)."

Similarly, Article 98 of the same Law provides: "Any person who violates the provisions of Article 57 of this Law shall be punished by a fine of one hundred thousand Algerian dinars (DZD 100,000)."³⁵

Criminal monetary fines may also be imposed as a principal penalty in addition to a custodial sentence. Law No. 03-10 contains several examples in this regard. The first paragraph of Article 100 provides: "Any person who directly or indirectly discharges, releases, or permits the leakage into surface water, groundwater, or marine waters under Algerian jurisdiction of one or

more substances whose effects or interaction cause, even temporarily, harm to human health, plants, or animals, or result in restricting the use of bathing areas, shall be punished by imprisonment for two (2) years and a fine of five hundred thousand Algerian dinars (DZD 500,000)."

The law may also grant the judge discretionary authority to impose either imprisonment or a fine. This is reflected in several provisions of Law No. 03-10, including the first paragraph of Article 93, which provides: "Any shipmaster subject to the provisions of the International Convention for the Prevention of Pollution of the Sea by Oil, concluded in London on 12 May 1954, as amended, who violates the provisions prohibiting the discharge of oil or oily mixtures into the sea shall be punished by imprisonment for a term ranging from one (1) to five (5) years and a fine ranging from one million Algerian dinars (DZD 1,000,000) to ten million Algerian dinars (DZD 10,000,000), or by either one of these penalties only."

Part Two: Confiscation

Confiscation is both a pecuniary and an in rem sanction directed against specific property. It is generally regarded as a supplementary penalty, the imposition of which may be either mandatory or discretionary³⁶. The Algerian legislature defines confiscation as the permanent transfer to the State of specific property or a group of assets, or, where appropriate, their equivalent value, while excluding certain categories of property that may not legally be confiscated.

Among the confiscatory measures capable of playing an important role in combating environmental offences is the confiscation of part of the property of the perpetrator of an environmentally harmful act. However, this measure may not be imposed in cases of environmental misdemeanors or contraventions unless expressly provided for by law. Examples include Article 98 of Law No. 98-11 containing the Maritime Code³⁷, Article 89 of Law No. 84-12 establishing the General Forest Regime³⁸, Article 170 of Law No. 05-12 relating to Water³⁹, and Article 90 of the Hunting Law⁴⁰.

Part Three: Custodial Penalties

Custodial penalties include imprisonment, penal servitude, and the death penalty. In the field of environmental protection, however, the most common custodial sanction is imprisonment, the duration of which may range from a few days to several years. In certain cases, the judge is granted discretionary authority to impose either imprisonment or a fine. This is the case under Article 81 of Law No. 03-10, previously referred to, which provides: "Any person who, without necessity, abandons, mistreats, or subjects a domestic, tame, or confined animal, whether publicly or privately, to acts of cruelty shall be punished by imprisonment for a period ranging from ten (10) days to three (3) months and a fine ranging from five thousand Algerian dinars (DZD 5,000) to fifty thousand Algerian dinars (DZD 50,000), or by either one of these penalties only."

A similar approach is adopted in Articles 78, 79, 80, and 81 of Law No. 01-11, under which the judge may choose between imposing imprisonment for a period ranging from three to six months or a monetary fine. Likewise, Article 82 of the same Law grants the judge discretion to impose either imprisonment for a term ranging from two to five years or a fine ranging from DZD 200,000 to DZD 500,000.

In other instances, the judge is required to impose imprisonment as a mandatory sanction. This is the case under Article 99 of Law No. 03-10, which provides: "...Any person who violates the provisions of Article 57 of this Law, resulting in the discharge of oil or oily mixtures into waters under Algerian jurisdiction, shall be punished by imprisonment for a term ranging from one (1) to five (5) years and a fine ranging from two million Algerian dinars (DZD 2,000,000) to ten million Algerian dinars (DZD 10,000,000)."

Similarly, Article 145 of Law No. 23-21 on Forests and Forest Resources⁴¹ provides: "Any person who constructs a building on public forest property, other than the structures authorized under this Law, shall be punished by imprisonment for a term ranging from seven (7) to twelve (12) years and a fine ranging from seven hundred thousand Algerian dinars (DZD 700,000) to one million two hundred thousand Algerian dinars (DZD 1,200,000). In addition, the competent judicial authority shall order the demolition of the structures at the expense of the convicted person."

It should be noted that, where the legal conditions are satisfied, the judge may substitute the imposed term of imprisonment with community service or electronic monitoring, in accordance with the applicable legal provisions.⁴²

The Algerian legislature has provided for the penalty of penal servitude in environmental offences, although only in limited circumstances. For example, neither Law No. 03-10, Law No. 05-12, nor Law No. 01-11, referred to above, provides for penalties of penal servitude, limiting their sanctions to fines and imprisonment.

Penal servitude may be imposed as a fixed-term principal penalty, as provided in the first paragraph of Article 137 of Law No. 23-21 on Forests and Forest Resources, which states: "Any person who intentionally sets fire to forests, woodlands, tree stands, or timber stacked in piles or cubic formations located within forests, where such property does not belong to him or her, shall be punished by fixed-term penal servitude for a period ranging from five (5) to ten (10) years and a fine ranging from five hundred thousand Algerian dinars (DZD 500,000) to one million Algerian dinars (DZD 1,000,000)."

Fixed-term penal servitude may also be imposed as an aggravated penalty, as provided in the second paragraph of Article 137 of the Forests and Forest Resources Law, which states: "Where the act of setting fire results in damage to public property or to the property of others, the offender shall be punished by fixed-term penal servitude for a period ranging from twelve (12) to fifteen (15) years and a fine ranging from one million five hundred thousand Algerian dinars (DZD 1,500,000) to two million one hundred thousand Algerian dinars (DZD 2,100,000)."

The law may also prescribe life imprisonment, although this sanction is rarely provided for by the Algerian legislature in the field of environmental protection. One example is Article 138 of Law No. 23-21, which provides: "Any person who intentionally sets fire to forest property belonging to the State, local authorities, public institutions, or entities governed by public law, with the intent of harming the environment or its surroundings, destroying forest or wildlife resources, or for any other unlawful purpose, shall be punished by life imprisonment."

Similarly, the death penalty is exceptionally rare in legislation relating to environmental protection. One example is Article 481 of Law No. 98-05 containing the Maritime Code, which

provides: "Any person who intentionally causes the grounding, sinking, or destruction of any vessel by any means whatsoever with criminal intent shall be punished by death."

Part Four: Supplementary Penalties

Supplementary penalties are secondary sanctions whose imposition falls within the discretion of the criminal court that renders the judgment imposing the principal penalty. They are not imposed independently by the judge but rather complement the principal penalty. Supplementary penalties may be either mandatory or discretionary, and some apply to natural persons while others apply to legal persons.⁴³

In addition to the supplementary penalties provided for in the Penal Code, which the judge may apply to perpetrators of environmental offences in accordance with the law, environmental protection legislation itself also prescribes supplementary penalties. For instance, the second paragraph of Article 86 of Law No. 03-10, referred to above, authorizes the judge, in addition to imposing the principal penalty, to order the prohibition of the use of the facility responsible for the pollution until the required works, rehabilitation measures, or prescribed obligations have been completed

Similarly, the third paragraph of Article 100 of the same Law provides that, in addition to the principal penalty, the court may order the convicted person to restore the aquatic environment. Furthermore, Article 174 of Law No. 14-05 containing the Mining Law provides that, where mining exploration or exploitation activities are carried out within Algerian maritime areas without a mining authorization, the court may impose a supplementary penalty by ordering, where appropriate, either the removal of the installations or equipment located at the unauthorized exploration or exploitation site or their modification so as to comply with the legally prescribed requirements.

Conclusion

In conclusion, this paper demonstrates that the right to a healthy environment belongs to the third generation of human rights. Accordingly, both the Algerian constituent authority and the Algerian legislature have sought to enshrine this right, whether through its constitutional recognition in the 2016 Constitution and its further reinforcement in the 2020 Constitution, or through the enactment of laws and executive decrees governing this right, foremost among them Law No. 03-10 of 19 July 2003 on Environmental Protection within the Framework of Sustainable Development. Collectively, these legal instruments constitute a genuine safeguard for the environment by affirming that the right to a healthy environment is both a constitutional and a legal right that cannot be compromised. Furthermore, the penalties prescribed for violations of environmental protection provisions serve as an effective deterrent against offenders. Equally significant is the role played by the institutions entrusted with ensuring environmental protection.

Based on the findings of this study, several positive conclusions may be drawn regarding the efforts undertaken by the Algerian State to protect the environment, the most important of which are:

- The constitutional recognition of the right to a healthy environment and its protection within the framework of sustainable development constitutes a significant step in the right direction, reflecting the constituent authority's commitment to providing

constitutional protection for both the environment and the right to a healthy environment.

- The incorporation of the environmental dimension into the functions of the Economic, Social and Environmental Council likewise represents a positive development, given the Council's important role in environmental protection.
- The establishment of institutional structures and specialized bodies responsible for safeguarding the environment, together with the provision of sanctions against violators, constitutes one of the principal mechanisms through which efforts to preserve a healthy environment may be sustained.

Finally, this study proposes the following recommendations:

- Giving priority to the oversight mechanisms and regulatory instruments established by the Constitution to ensure environmental protection and the achievement of sustainable development.
- Strengthening environmental legislation through the introduction of new legal provisions that ensure comprehensive environmental protection and further consolidate the right to a healthy environment.
- Promoting the role of associations and encouraging civil society to play an active part in environmental protection in order to foster greater public participation in safeguarding the environment.
- Enhancing the role of oversight institutions by providing them with the necessary resources and all the requirements needed to facilitate and strengthen the performance of their functions.

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³⁵ Article 57 of Law No. 03-10 provides:

"The master of every vessel carrying dangerous, toxic, or polluting cargo and navigating through or near waters under Algerian jurisdiction shall report any maritime incident occurring on board that is likely to result in pollution or degradation of the marine environment, waters, or national coastlines."

³⁶ See Article 15 bis 1 of the Penal Code, as amended by Law No. 24-06 of 28 April 2024.

³⁷ Article 98 of Law No. 01-11 provides:

"The master of a foreign-flagged fishing vessel and, where appropriate, the person responsible for navigation, found guilty of engaging in marine fishing in waters under national jurisdiction without the prior authorization required by the authority responsible for marine fisheries, shall be punished by a fine ranging from DZD 3,000,000 to DZD 5,000,000. The competent authority shall order the confiscation of the equipment on board the vessel, including prohibited gear, and the fishery products, and may order the destruction of the prohibited equipment where necessary."

³⁸ Article 89 of Law No. 84-12 establishing the General Forest Regime provides:

"In all cases of offences, the forest products constituting the subject matter of the offence shall be confiscated."

³⁹ Article 170 of Law No. 05-12 relating to Water provides:

"Any person who violates the provisions of Article 32 of this Law shall be punished by imprisonment for a term ranging from six (6) months to three (3) years and a fine ranging from fifty thousand Algerian dinars (DZD 50,000) to one million Algerian dinars (DZD 1,000,000). The equipment and machinery used in committing the offence may also be confiscated."

⁴⁰ Article 90(2) of the Hunting Law provides for mandatory confiscation as follows:

"In all cases, the means used, the hunted or killed game, as well as the eggs, hatchlings, animals, and their young, shall be confiscated."

⁴¹ Law No. 23-21 of 23 December 2023 relating to Forests and Forest Resources, Official Gazette of the People's Democratic Republic of Algeria, No. 83, 2023.

⁴² See Articles 5 bis 1 to 5 bis 12 of the Penal Code, as amended by Law No. 24-06.

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