



ALTERNATIVE METHODS FOR PUBLIC PROSECUTION IN CRIMES OF ASSAULT ON MARINE ENVIRONMENT

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Abstract

The responsibility for environmental damage presents a unique challenge to traditional legal frameworks, necessitating specialized approaches to address its specificity. This study explores alternative methods, such as reconciliation and criminal mediation, within the Algerian legal context to resolve disputes related to assaults on the marine environment. These methods, while offering potential advantages such as time-saving and amicable resolutions, must be carefully implemented and complemented by traditional judicial intervention where necessary. The study delves into the scope and application of reconciliation and criminal mediation, highlighting their potential roles and limitations in addressing environmental offenses. Furthermore, it examines the legislative framework governing penalties for crimes against the marine environment, including fines, imprisonment, and confiscation measures. By evaluating the effectiveness and efficiency of these alternative methods alongside traditional legal approaches, the study provides insights into enhancing environmental protection and ensuring justice in the face of environmental harm.

Keywords: environmental damage, marine environment, alternative dispute resolution, reconciliation, Algerian law.

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Introduction:

It is said that "the responsibility arising from environmental damage is one of the most types of responsibility that rebels against traditional rules, to the extent that those rules seem inadequate for it, considering the specificity of the responsibility for such damage. (1)" Therefore, it was necessary to adapt it to align with the specificity of this type of emerging damage. The actual adaptation requires, first, the establishment of specialized chambers within the courts, specialized in environmental disputes and the recycling of their judges, by training them in accordance with the environmental texts introduced by the Algerian legislator at the domestic level, as well as those implemented to fulfill international obligations, and reinforcing them with technical mechanisms and devices, such as studies offices and technical experts. Then, after acquiring experience in the field of assaults on marine environment, they can, through judicial interpretations, adapt the classical rules of liability and develop their provisions, in accordance with the new dimensions of protecting the latter.

The Algerian legislator, for various reasons, some of which have been mentioned before and others related to the development of criminal policies, and in response to calls from contemporary criminal jurisprudence and to alleviate the burdens on



judges and litigants, resorted, through a general provision, namely the amended version of the Criminal Procedure Law, to establish alternative systems for public prosecution.

The same procedure can be found in a specific provision, namely the Consumer Protection and Anti-Counterfeiting Law, which includes references to these alternatives, represented by reconciliation and criminal mediation (2).

One might ask, what role does this latter law play in protecting the marine environment? The reality is that it contributes significantly to achieving this protection, albeit indirectly, through protecting consumers from sea products. Consumer protection associations are more involved in protecting the consumer than those concerned with environmental protection.

In fact, these systems existed previously in the Civil and Administrative Procedure Law, where the latter placed in the first section of the fifth book thereof "Alternative Methods for Dispute Resolution" and mentioned reconciliation and mediation (3).

First Axis: Reconciliation in Crimes of Assault on Marine Environment

Talking about "reconciliation" in crimes of assault on the marine environment seems to trivialize the importance of the latter and its role in maintaining natural balance, deviating from the purpose for which the rules of criminal law were established, which is to protect the public order in society, and thus there is no room for individual discretion in them.

1- Scope of Reconciliation in Crimes Affecting Marine Environment:

"Reconciliation is the satisfaction of the accused by offering compensation for the criminal dispute, and the dismissal of the public prosecution before it, thus serving as a deterrent at minimal cost. (4)" Therefore, it can be argued that the evolution of criminal disputes towards contracting or negotiation seems plausible. It seems to me that the application of the reconciliation system, in practice, is suitable to be resorted to in cases of rebound damage, namely damage that initially affects the marine environment and then its effects turn against humans. This can be precisely applied to the provisions of the Consumer Protection and Anti-Counterfeiting Law (5).

2- Imposition of Reconciliation Fine in Crimes Affecting Marine Environment:

Article 86 of this law introduced the possibility of imposing a "reconciliation fine" on the offender punishable under Article 10 of the same law, which obliges every party to respect the safety requirements of the product intended for consumption, especially regarding its characteristics, composition, and maintenance conditions. This judgment applies entirely to marine products. If these products become contaminated in their composition, either by polluting marine organisms' tissues with chemical substances, whether petroleum-based or non-petroleum-based, or due to the lack of maintenance and preservation conditions, especially since they are among the fastest deteriorating materials, the intervener becomes criminally liable, punishable by a fine ranging from 200,000 to 500,000 Algerian dinars. However, if both parties, namely the injured party and the intervener, conclude a reconciliation



agreement between them, the amount of the reconciliation fine is set at 300,000 Algerian dinars. This system has been strongly criticized on the basis that its role is limited to resolving disputes by requiring the accused to pay a certain percentage of the fine prescribed by law, without achieving the modern purposes of punishment, the most important of which is the rehabilitation of the accused.

And here we wonder, does the assailant of the marine environment cease his criminal behavior after paying this amount, especially since it is a very small sum if he is the owner of classified establishments? On the other hand, we can imagine another scenario, which is pure environmental damage, meaning damage that affects the marine environment without transferring to humans, such as the extinction of a certain species of marine life or the death of coastal coral reefs due to coastal pollution, which serve as habitats for a vast number of marine organisms. In this case, would an environmental protection association accept to reconcile with the environmental criminal?

Therefore, I believe that the reconciliation system does not serve the purpose in most cases of marine environmental damage because the damages suffered by the latter, usually caused by classified establishments, are much greater than the reconciliation amount. Thus, specialized chambers should be established at the judicial level to resolve environmental disputes, rather than leaving it to ordinary chambers, especially since environmental texts are usually formulated in open-ended terms, requiring specialized judges and technical expertise. Indeed, the destruction of a marine species or the death of coral reefs cannot be determined by the judge without relying on technical expertise.

Second Axis: Criminal Mediation as an Alternative to Public Prosecution in Crimes of Assault on Marine Environment

Criminal mediation is a system aimed at reaching an agreement, reconciliation, or compromise between the parties to the dispute with the assistance of a third party in the hope of reaching a satisfactory solution through amicable means. It is thus considered a new form of criminal justice, based on resolving disputes away from the judiciary but under its supervision. In this new relationship, the task of mediation is entrusted to a mediator, represented by the public prosecutor, whose function is to bring the parties to the lawsuit together and attempt to reach consensus and a solution to end the dispute (6).

The Algerian legislator introduced this system into criminal procedures through Article 37 bis (7) of Order No. 15-02 dated July 23, 2015 (8), amending the Criminal Procedure Code, which made this pathway optional for the public prosecutor, empowering them to resort to criminal mediation and deviate from the ordinary litigation process of initiating public prosecution.

Thus, here also appears the policy of flexibility adopted by the Algerian legislator in resolving some environmental disputes and granting discretionary authority and wide



latitude to the public prosecutor in this field. Previously, the classical rules of the principle of litigation in criminal matters required adherence to the text's scope, the prescribed punishment, and the required procedure, which is initiating public prosecution. Therefore, courts often avoid imprisonment in violations of assaults on the marine environment, as mentioned above.

It is worth noting that this article has been criticized by Algerian criminal jurisprudence for excluding the investigating judge from the entire process "considering him as a fundamental and neutral pillar in criminal disputes. (9)"

1- Application of the Mediation System in Violations of Assault on the Marine Environment

The second paragraph of Article 37 bis 2 of the Penal Code explicitly allows for the application of the mediation system in violations. Moreover, the Penal Code, in its fourth book, contains numerous and varied environmental provisions. Crimes classified as assaults on the marine environment are generally punishable by imprisonment ranging from one day to two months and fines ranging from 2,000 to 20,000 Algerian dinars. However, in specific texts, during my research, I did not find imprisonment ranging from one day to two months; rather, the environmental legislator settled for fines alone, which is insufficient to achieve deterrence, as it does not correspond to the gravity of the offense of assaulting the marine environment, regardless of its proportion to this punishment.

Regarding fines alone, they are applied in accordance with Article 52 of Law No. 03-02 dated February 17, 2003, which specifies the general rules for the use and exploitation of tourist beaches. Anyone who carries out activities or places facilities contrary to beach development is fined between 60,000 and 100,000 Algerian dinars. Similarly, within the same law, a fine ranging from 20,000 to 50,000 Algerian dinars is imposed on anyone engaged in underwater diving fishing near beaches during the summer season.

This penalty is also found in Article 98 of the Environmental Protection Law within the framework of sustainable development, where individuals violating Article 57 of the same law, which requires informing the captain of a vessel carrying hazardous and polluting goods passing near waters under national jurisdiction about any maritime accident that may cause pollution or damage to the marine environment, are fined between 100,000 and 1,000,000 Algerian dinars. Additionally, Article 97 of the mentioned law imposes the same penalty on captains who cause pollution and misconduct in the flow of materials polluting waters under Algerian jurisdiction.

Article 84 of the Environmental Protection Law within the framework of sustainable development includes a provision for punishing anyone who violates the regulations



for protecting the air environment, as stipulated in Article 47 of the same law, with a fine ranging from 5,000 to 15,000 Algerian dinars.

The Waste Management Law also includes a penalty of fines alone in Article 58, where a financial penalty ranging from 50,000 to 100,000 Algerian dinars is imposed on any producer or holder of hazardous private waste who fails to declare it to the Minister responsible for the environment, specifying its nature and characteristics.

Similarly, we find this penalty in Article 42 of the Coastal Protection and Valuation Law, which imposes a fine of 2,000 Algerian dinars on anyone who passes with their vehicle and stops on the natural shore area, which is covered or uncovered by high water and includes dunes, coastal bands, and rocky coasts.

If we were to comment on these penalties, we could say that they are symbolic compared to the damage and especially the threats posed by the actions associated with them. How can one relinquish this minimal punishment if criminal mediation is applied to them? However, the answer may lie in the fact that these violations threaten to cause harm, which has not yet occurred, prompting the legislator to be somewhat cautious in increasing the penalty. Furthermore, it even allows for the resolution of their disputes through mediation.

2. Exclusion of Felonies and Misdemeanors of Assault on the Marine Environment from the Mediation System

The Algerian legislator, in the legal texts related to the protection of the marine environment, relied on the same criminal descriptions previously established in the Penal Code, which include felonies, misdemeanors, and violations. Thus, it followed a traditional approach in this regard and did not adopt an innovative criminal policy in criminalizing assaults on environmental elements, which are characterized by their particularity and uniqueness as victims (11).

It's worth noting that this division is part of old legal traditions dating back to the orders issued by King Louis XIV concerning forests and marine waters in August 1669 and maritime matters in 1681. Herein, the king defined the descriptions of crimes and stated the punishments, which were not only deterrent but also corrective (12).

Primarily, it can be said that the criminal legislator excluded the mediation system for crimes characterized by their severity as they touch upon the highest values of the Algerian state. Consequently, the procedures taken regarding these crimes follow the traditional steps of initiating public prosecution, and thus, the criminal mediation system is not utilized. Consequently, the public prosecution and the parties involved lose the authority to apply it.



These types of crimes, which "fall under the description of felonies in the Penal Code," entail original penalties ranging from execution, life imprisonment to temporary imprisonment ranging from 5 to 20 years (13).

Regarding the death penalty for assaults on the marine environment, it is rarely found in Algerian law due to its severity, being the harshest form of punishment that deprives a person of their most valuable possession, life.

However, in exceptional cases, this punishment becomes inevitable due to the seriousness of both the perpetrator and the committed act. Thus, anyone who dares to target the ocean or introduce, leak, or dispose of substances in the air, in the ground, or in territorial waters, causing harm to human health, animals, or the natural environment, is deemed to have committed an act described as "terrorist" according to paragraph 5 of Article 87 bis of the Penal Code, as mentioned earlier.

The legislator also reaffirmed the same ruling in Article 500 of the Maritime Law due to the danger posed by the act and the actor to the entire community on one hand and the natural balances on the other hand, where it imposed penalties, including the death penalty, on the captain of an Algerian or foreign ship who disposes of radioactive waste in waters under national jurisdiction.

Furthermore, the death penalty is considered one of the most severe and dangerous punishments, as it extinguishes human life (14). Therefore, leaking and thus reflecting the danger of deliberately introducing radioactive materials into the sea or on land jeopardizes the lives of many humans and other creatures on earth by disrupting the vital ecological systems they inhabit.

It's no secret that the death penalty has sparked significant debate among supporters and opponents alike. Before the emergence of the terrorism scourge, it was rare in Algerian law, and its execution was very limited. However, since 1992, this type of sentence has seen a noticeable increase.

Yet, the new law regarding prison organization and the reintegration of detainees issued on February 26, 2005, did not specify how the death penalty is executed, unlike its predecessor concerning prison organization and prisoner rehabilitation dated February 10, 1992, which detailed the execution method through firing squad.

As for life imprisonment, it is the second penalty acknowledged by the Algerian legislator after the death penalty, and its scope is to confine the freedom of the perpetrator for life. In the context of assaults on the marine environment, Article 396 bis of the Penal Code can be mentioned, which applies this penalty to those who intentionally set fire to ships or vessels belonging to state property, local communities, institutions, or entities subject to public law. Such state property



incurs significant costs to the public treasury, besides being considered a symbol of national sovereignty.

The Maritime Law, in turn, applies it in Article 499/2, targeting the captain of an Algerian or foreign ship carrying radioactive materials or nuclear-powered items that enter territorial waters without notifying the competent authorities and providing information about their entry time, speed, and cargo nature, especially if such a ship experiences a maritime accident. This is due to the dangerous effects of nuclear radiation on marine ecosystems, which may take decades to dissipate.

On the other hand, temporary imprisonment, ranging from 5 to 20 years, is applied in the field of protecting the marine environment through various provisions. For instance, Law No. 01-19 dated December 12, 2001, regarding waste management and monitoring, stipulates that those who import, export, or facilitate the transit of hazardous waste face temporary imprisonment for a period ranging from 5 to 8 years.

This penalty first appeared in French law in 1960, replacing the temporary hard labor penalty of 10 to 20 years, which was applicable at that time and was less severe than life imprisonment with all its legal consequences.

Regardless, "the Penal Code remains stricter and more stringent than specialized laws" in the field of protecting the marine environment. The application of temporary imprisonment follows the same procedures as life imprisonment regarding the place of execution, albeit differing in terms of the collective detention system (15).

The legislator also excluded various misdemeanors related to infringing upon the regulations protecting the marine environment from the scope of mediation, due to their seriousness. Therefore, strictness must be observed in enforcing the prescribed penalties for these offenses in various texts, whether in the Penal Code or specialized laws.

Upon examining various legal texts, I noticed the content of Law No. 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development and other environmental texts. Through this, we observe that the legislator included numerous provisions categorized as misdemeanors, where the punishment ranges from two months to five years, except in cases where the law sets other limits, in addition to fines.

Regarding fines, it can be observed through these texts that they are usually specified within a range, which is one of the prominent methods relied upon by the legislator in the environmental field. This means that the judge has discretion when



determining this penalty, demonstrating again the flexibility with which the criminal legislator deals with environmental issues.

As for the fine in the misdemeanor article, as approved by paragraph 2 of Article 5 of the Penal Code and set at more than 20,000 DZD, it is one of the most important penalties imposed by most laws as embraced by the Algerian legislator. It is included in crimes infringing upon the regulations protecting the marine environment, all to deter the aggressor and deprive them of their unjust gains due to their violation of marine environmental protection provisions, and their enrichment without cause resulting from endangering its safety.

Therefore, a ship's captain is obliged to comply with the provisions of international texts ratified by Algeria. If they exceed those related to the prohibition of oil dumping at sea, they face a misdemeanor punishable by imprisonment from one year to five years and a fine ranging from one million to ten million dinars or one of these penalties according to Article 93 of the same law.

On the other hand, every captain of an Algerian ship, aircraft commander, or anyone supervising diving or dumping operations at sea is punished with imprisonment from six months to two years and a fine ranging from one hundred thousand to one million dinars.

Similarly, a fine ranging from one hundred thousand to one million dinars is imposed on any captain whose negligence and recklessness cause a maritime accident resulting in the spillage of pollutants into waters under national jurisdiction.

It is also worth mentioning in this regard some of the international texts to which Algeria has committed and translated into domestic law and concerned with these provisions, including Decree No. 88-108 dated May 31, 1988, concerning Algeria's accession to the International Convention for the Prevention of Pollution from Ships of 1973 and its 1978 Protocol, known as the MARPOL Convention. Additionally, Decree No. 88-228 dated November 5, 1988, which specifies the conditions and methods for dumping waste by ships and aircraft that may pollute the sea (Article 6), Executive Decree No. 02-149 dated May 9, 2002, which sets out the rules for ship inspection, and Executive Decree 17-126 dated March 27, 2017, which includes measures for preventing the hazards of nuclear radiation and combating this scourge.

Furthermore, extracting materials from the beach, especially mud, without obtaining a permit exposes the perpetrator to imprisonment ranging from six months to two years and a fine ranging from two hundred thousand to two million dinars or one of these penalties, according to the provisions of Article 40 of Law No. 02-02 dated February 5, 2002, concerning the protection and valorization of the coast.



Among the penalties included in this type of crime, we also find the fine mentioned in Article 56 of the law related to waste management, where anyone who violates the waste collection system prepared by municipal authorities is liable to a fine ranging from 10,000 DZD to 50,000 DZD.

Moreover, anyone establishing a new industrial activity on the coast is subject to imprisonment from three months to one year and a fine ranging from one hundred thousand dinars to three hundred thousand dinars, or one of these penalties, according to Article 93 of the aforementioned law.

In the field of major hazard prevention, the penalty for facilities classified as failing to prepare an internal intervention plan ranges from two months to one year of imprisonment and a fine ranging from 300,000 to 600,000 DZD, or one of these penalties.

It is worth mentioning that some laws refer to other legal texts regarding the application of the penalty prescribed in the misdemeanor article. This was deduced from the study of Article 48 of Law No. 03-02 dated February 17, 2003, which sets out general rules for the tourist use and exploitation of beaches (16). It applied the penalty stipulated in Article 64 of Law No. 01-19 dated December 12, 2001, related to waste management, which is one to three years of imprisonment and a fine ranging from 600,000 to 900,000 DZD, for those who dispose of household, industrial, or agricultural waste on beaches or adjacent areas.

Although these penalties are small compared to the environmental damage they cause, which is often difficult, if not impossible, to erase, applying the penalty remains much better than resorting to mediation. The environmental offender feels the guilt of their actions and the harm they have caused to the marine environment and society as a whole, which is severely affected by any harm inflicted on it. This is achieved through the enforcement of criminal penalties.

Therefore, if the violation of regulations protecting the marine environment is classified as an environmental misdemeanor, it falls outside the framework of criminal mediation, as environmental damage affects society as a whole and not specific individuals (17).

And in conclusion regarding the penalties prescribed in Algerian law, it is worth mentioning the penalty of confiscation, which involves the forfeiture to the state of specific property or its equivalent value when necessary (18). Thus, the ownership of the offender is forcibly seized and added to the state's property without compensation (19). This measure constitutes a form of financial penalty that targets specific assets and falls under the category of supplementary or complementary penalties applied in most legislations concerning the protection of the marine environment. The state seizes materials or tools that constitute a source of harm,



such as confiscating radioactive materials or prohibited fishing gear. When imposed as a supplementary penalty, it is pronounced alongside the primary penalty, and if it is complementary, it is imposed in addition to another penalty (20).

The report of confiscation is mentioned in the Penal Code (21) and in some specific texts. Examples of this include Article 40 of the Coastal Protection and Valorization Law mentioned above, which confirmed, after determining a penalty of imprisonment from six months to two years and a fine ranging from two hundred thousand to two million dinars, or one of these penalties, for anyone who violates the provisions of Article 20 of the same law. This article prohibits the extraction of materials, especially mud, from coastal areas. The legislator allowed the competent judicial authority, in paragraph 3 of the aforementioned article, to confiscate the machinery, equipment, and devices used in committing the violation.

In the field of maritime fishing, if a fishing vessel flying a foreign flag enters waters under national jurisdiction without prior permission obtained from the competent maritime fishing authority, the competent judicial authority may order the confiscation of the machinery on board the vessel or any prohibited fishing gear and the destruction of prohibited machinery, in addition to legal proceedings if necessary (22).

It is worth noting that the new concept of confiscation in environmental matters has taken on a new form known as "the confiscation of profits and benefits derived from criminal acts," considering the motive behind their commission, which is to achieve unlawful gains. The European Council called for the application of this system in Recommendation 18 of 1988, thereby broadening "the confiscation system to include financial benefits" directly resulting from crimes against the marine environment (23).

The effectiveness and efficiency of objective and procedural criminal rules, as established by legislators, are the focus of my study in the field of criminal liability.

Conclusion:

In conclusion of this study, it can be inferred that there are effective alternative methods for public prosecution in crimes against the marine environment. These methods include reconciliation and criminal mediation, where efforts are made to reconcile and settle disputes between the affected parties and the accused with the assistance of a neutral third party. This approach aims to achieve a peaceful and satisfactory resolution of disputes related to crimes against the marine environment, instead of following the traditional judicial path. Additionally, these alternative methods offer numerous advantages, such as saving time and providing suitable solutions for the involved parties.



However, it should be noted that these alternative methods are not suitable for all cases, and some serious disputes may require formal judicial intervention. Therefore, it is important to establish an appropriate legal framework and provide clear guidelines for the effective and balanced implementation of these alternative methods.

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