

LEGAL PROTECTION OF THE ENVIRONMENT FROM NOISE POLLUTION



Dr./ KOHIL hayet^{1,2}

¹ University of Blida 2, (Algeria)

² Corresponding Author: kohil.hayet5@gmail.com

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Abstract:

The industrial and technological development has not only achieved the well-being of the human being but has also become a source of inconvenience to the dependence on the machine. The increase of the latter day after day in all aspects of life has led to many issues, one of which is the emergence of the noise pollution problem, which includes noise emanated from nature or man. This pollution has affected all living organisms negatively through the widespread of diseases and disorders, prompting legislation to accelerate the development of legal frameworks to regulate the emission of sound and the criminalization of any violation of the limits of the permissible sound.

Key words: *Noise pollution; technological development; the permissible sound.*

Introduction:

Public tranquility is considered one of the elements of public order that most of the legislation works to protect; it has a great impact on the environment in general and on human life in particular. The studies carried out in this regard have proven that the danger of noise pollution is as immense as that of traditional pollution.

The industrial and technological development has not only achieved the well-being of the human being but has also become a source of inconvenience to the dependence on the machine. The increase of the latter day after day in all aspects of life has led to many issues, one of which is the emergence of the noise pollution problem, which includes noise emanated from nature or man, in factories, homes, schools and even in the streets. The current noise pollution problem harms humans severely and exceeds their ability to endure. This prompted numerous countries to sound the alarm by resorting to laying down legal texts guaranteeing

the regulation of sound levels and noise reduction. The Algerian legislator was a forerunner in this regard, by developing a set of legal texts, the most important of which are Law N°. 10/3 and Executive Decree N°. 93/184.

The question that this research is attempting to answer is:

What extent are the legal texts effective in reducing the risks of noise pollution?

To address and answer this problem, the research is divided into the following axes:

THE FIRST CHAPTER

The concept of noise pollution and its sources

The lack of consistency in the sounds, especially when they overlap with various other sounds from different sources, may pose a threat to health or to public peace.

First requirement: Definition of noise pollution and its characteristics.

First section: Definition of noise pollution

Noise or noise pollution means pollution that affects public tranquility. Tranquility here means the state of calmness and the non-disturbance or harassment of others. Public environmental peace refers to the absence of the harassment of individuals with regard to the common environment. The Algerian legislature has defined, through Environmental Law N°. 03/83, a set of measures to be taken to avoid the production of noise that has the potential to disturb people or harm their health and place the cause of the disturbing event (offender) under criminal liability (Law N°. 03/83, 2003). Furthermore, noise can also be defined as unwanted sounds or a group of irregular sounds that cause distress (Mostapha abd elatif abassi, 2004, p 240), anxiety, or excitement. Noise is the clamor that invades people's ears and fills them against their will with what does not please or satisfy them (Mohamed amine ammer, mostapha mahmoud soliman, 1999, p295). Noise is also defined as every unpleasant or annoying sound sensation that occurs as a result of the confusion between the intensity of the sound and the strength of its various frequencies, and all the sounds that seem unacceptable, disturbing and unwanted. Noise is a form of environmental pollution and is no less dangerous than other pollutants. The most important component of noise pollution cannot be overlooked; sound is an energy released from the vibration of any rapidly moving object, and the energy is in the form of waves that travel in the air or in any other medium (Mostapha abd elatif abassi, 2004, p 240).

If we look at the Algerian legislator's definition of noise pollution, by extrapolating Executive Decree N°. 93/184 of July 27, 1993, (Executive Decree N°. 93/184, 1993), which regulates noise pollution, we find that it did not refer to noise pollution, but rather expressed it by using the term noise and clarifying the permissible limit and times.

According to the text of Article 44/5 of Law N°. 10/03, the Algerian legislature considers noise pollution a form of air pollution. In reference to the hustle and bustle that may lead to the disturbance of public tranquility and the disturbance of the comfort of citizens, the Article says: "Air pollution occurs, as defined by this law, by directly or indirectly entering the air and closed spaces, or articles of such nature, disturbing the population." Therefore, the provisions of noise pollution apply to the provisions of air pollution (Lashhab Saash Jazia, Bousaba Rayma, 2020, p 13).

What should be noted here is that not every sound can be considered noise, sound is characterized by regularity and harmony, as for noise, it is the interference of a group of loud, sharp, and unwanted sounds, which becomes a substance for pollution. It is called noise pollution when the intensity of the noise rises to the point of disturbing a person and distorting his thinking and even affecting his health negatively causing him to suffer from tension and other psychological and physical diseases (Essaadi fares, 2015, p122).

Second section: Characteristics of noise pollution

Noise pollution is characterized by a set of features that confirm and emphasize its danger and the difficulty of controlling this kind of pollution. These features include:

1- Difficulty proving the causal link in noise pollution: that the damage to noise pollution does not appear until after a long period of time has passed.

2- Difficulty in determining the source of noise pollution: due to the overlapping of numerous sources of pollution in creating noise pollution; thus, the offender cannot be fully responsible, even if modern science provides the means and devices through which the source of noise can be identified.

3- Noise pollution has an indirect effect: its damage is indirect on both the natural environment and private or individual interests; thus, it affects the person's health and money as well. (Atta allah saad houasse, p517 ,516 ,514).

4- Noise pollution damages are of a diffuse character: they are damages that move from one place to another where no limits can be set for the disturbing sounds.

Second requirement: Sources of noise pollution and its levels**First section: Sources of noise pollution****First - Natural sources:**

Such noises are caused by natural factors in which humans, or their technologies, have no role, such as thunder, volcanic eruptions, earthquakes, etc.

Second - Sources of human activity:

Noises produced especially from machines that people use, including recording devices, television, and loudspeakers, in addition to transportation, factories and household machines.

A- Means of transportation: Despite the important services these means provide to humans, they affect humans and nature negatively with their movement and the loud sounds they produce. Furthermore, the noise of cars does not always refer to the sound of the alarm machine, but rather to the sound of the engine due to the intermittent explosion of combustible gases. This is in addition to the friction of the tires and the body of the vehicle itself and the strong vibration of the rear trailer of the truck, which usually produces loud noise (Mohamed abdel rahman el chawarebi, 2000, p 244).

B- Factory noise: The noise caused by the factories varies according to the type of industry and the machinery used in this industry. The food and pharmaceutical industries produce lower sounds compared to heavy and metal industries. The loud sounds produced by these factories cause damage to the workers in the factory and harm to the residents who live near it. This prompted many lawmakers to oblige owners of factories that produce loud noise or carry out noisy activities to build sound-proof walls to receive licenses (Hassane ahmed chahatta, 2000, p 103).

C- Home noise: Noise produced from household electrical appliances such as washing machines, brooms, mixers, as well as noise produced during parties held in homes and the use of loudspeakers and musical instruments without a license from the municipality. These noise-inducing behaviors are the result of the individual's wrong behavior; this behavior affects the individual himself and makes him the first victim of noise pollution and the disturbance of public tranquility (Fisel thaki abdel wahed, , p 237 ,236).

D- Loudspeaker noise: Loudspeakers are one of the most prominent sources of noise in our daily life. This type of noise is produced in wedding parties, schools, and by vegetable or equipment vendors who roam the streets between homes trying to advertise and sell their goods. Some of these vendors use car alarms or loudspeakers to broadcast music tunes to achieve this purpose, which increases the noise and level of inconvenience. In addition, the places of worship that use microphones, like mosques to call for prayer, can disturb others. Many fatwas have been issued in this regard stating that using external loudspeakers to

call for prayer, the five obligatory prayers, is permissible; however, using loudspeakers for prayers, reciting the Holy Qur'an, and preaching is disliked whether during Ramadan or any of the other months. This is because the overlapping of sounds and voices produces unclear noise and majority of people cannot or do not listen and pay attention to what is broadcasted through these external loudspeakers. This behavior goes against the provisions of the Qur'an which require that people pay attention, listen carefully, and show respect when Qur'an is recited. In addition, these sounds produced from numerous sources cause harm to workers, patients, students, and children. It should be noted that this fatwa came in response to the requests of citizens living near mosques, and it is based on the ruling of Sharia to use loudspeakers in mosques, which is specified by legal fatwas (Azad chkour salah, youess otmane ali, 2018, p 245).

Second section: levels and degrees of noise pollution

It is difficult to establish precise criteria for determining what is considered noise, because it differs fundamentally according to place, time, duration and other matters needed to perceive the disturbance or prevent noise and mitigate its occurrence. On the other hand, the listener and his desire to listen to the noise or reject it must be taken into consideration, as individuals differ in their tolerance to noise and how it affects them. When someone plays music, it might please some people, yet it might disturb others who are working and need to concentrate, or disturb a sick person who needs rest, or someone who wants to sleep. There are sounds that most people agree are annoying and unwanted, and that is why it is necessary to set limits for the intensity of the sound, i.e. a measure of the degree of noise and how to control it. This is the role of legal regulations trying to combat noise pollution, to determine the permissible intensity of sound or measure permissible noise that places those who bypass it under liability. The standard for determining annoying sounds that cause noise is that of the usual person, a person who is disturbed by what usually annoys people and by virtue of what is customary to bear.

In France, for example, the French Public Health Law specified noise levels, and noise measurements are made based on a decision from the Minister of Health and the Minister of Environment and Population. The French Environmental Law developed noise maps that aim to provide a comprehensive assessment of exposure to environmental noise, which is a set of graphical representations and numerical data. Furthermore, indicators to assess the noise level are specified under specific conditions by decision of the State Council (Dina abdel azize fahmi, 2018, p8).

With regards to the issue of measuring the permissible noise in the Algerian law, we can distinguish between two cases:

-The first case is about noise produced in residential areas and public roads, whether at night or during the day, as stated in Article 2 of Executive Decree No93/184 regulating noise. Noise within the limits of 70 decibels maximum is

allowed at night from 6 am to 10 pm, and noise within the limits of 45 dB maximum is allowed at night from 10 pm to 6 am.

-The second case concerns areas characterized with privacy such as hospitals, educational institutions, entertainment, and rest areas. According to Article 3 of the executive decree regulating noise mentioned above, noise within the limits of 45 decibels maximum is allowed during the day from 6 am to 10 pm, and a maximum of 40 dB at night from 10 pm to 6 am. It is worth noting that in the Decree 93/184 the Algerian legislator did not address the technical issues related to noise by stipulating the specification of technical controls related to noise measuring devices, their location, level and position of installation, which would allow tracking noise and every breach of the permissible limits inside cities or industrial zones. In this regard, the Algerian legislator referred the texts related to the environment to expertise and experts (Sami kebahom, 2019, p 258).

THE SECOND CHAPTER

Noise pollution control mechanisms

Public tranquility means maintaining silence and calmness in roads and public places, and protecting people from noise, annoyance, clamor and auditory harassment, especially during their times of rest. The sources of these noises vary; it includes loudspeakers, alarms in cars, street vendors and loud noises emitted from homes due to the misuse of radio, television, recording devices, or otherwise. It is necessary for the competent authorities to take administrative control and take all necessary measures to prevent the disturbance of the comfort and peace of citizens by prohibiting or restricting individual freedoms that infringe on the rights of others (Boukert rabiaa, 2018, P244).

Administrative control guarantees the protection of the environment by taking all necessary measures to prevent noise and everything that disturbs public tranquility. Environmental protection has become an urgent necessity and a desired goal of the objectives of administrative environmental control. There are numerous preventive and punitive deterrent methods capable of achieving this goal.

The first requirement: Preventive measures to combat noise pollution

The Algerian legislator issued law N^o. 03/10 of July 19, 2003, regarding environmental protection in the context of sustainable development. Article 113 of this law canceled the provisions of Law N^o. 83/03 related to environmental protection. The second paragraph of the same article stipulated that the regulatory texts issued under the previous law remain in effect for a maximum period of twenty-four months, and accordingly, Executive Decree N^o. 93/184 of July 27, 1993, which regulates noise and as a regulatory text of Law N^o. 03/83 is no longer applied.

Law N°. 10/03 on the requirements of protection or limiting the problem of noise includes “Chapter Two” titled “Requirements for protection from hearing damage” and “Chapter Four” titled “Protection from harm, ” specifically from Article 72 to Article 75. According to Article 72 of this law, the requirements of protection from hearing damage aim to prevent, eliminate or limit the emission and spread of sounds or vibrations that may pose a danger that harm an individual’s health and cause excessive disturbance, or harm the environment. These requirements are of a "preventive nature" stemming from the idea that "prevention is better than cure, even if it is curative at the same time" (Medjaji mansour, 2020, p 429-430).

First - Prohibition or prevention: It is a means of controlling and directing individual’s behavior, and it is a way to protect the environment by resorting to the prohibition of some actions that are estimated to be dangerous and harmful to the environment. The intention here is to forbid certain procedures or specific practices and activities, which is the first principle of the embodiment of Preventive legal protection of the environment.

We find that the legislator has prohibited any act that may produce noise and harm the health of people in the neighborhood, including repairing motor cars and motorcycles and controlling their traffic in all public places. This is stipulated in Article 10 of Executive Decree 93/184 in which the regulator provoked the canceled noise. The legislator also prevented all noise made by animals that may disturb the tranquility of the neighborhood, between the hours of 10 pm and 6 am. The owners of these animals were responsible for the noise that could emanate from them (Executive Decree N°. 93/184).

In general, the prohibition in the field of noise is intended to prohibit doing a specific action or practicing a specific activity that causes noise; thus, prohibition here is one of the preventive or noise-blocking methods (Ahmed khorachid hamidi, raida yassine khodr, p 49).

Second - Licensing: It is a permission issued by the administration whose role is to allow a person to practice a specific activity, which cannot be practiced before obtaining prior permission from the administration and in accordance with regulatory rules. These rules specify the conditions for permitting the practice of that activity, the objective, and related personal aspects.

The target of imposing the licensing system lies in enabling the administrative control authority to intervene in advance in individual activities, and to take the necessary precautions to protect society from the damage that may occur due to unsafe practice of such activities. The purpose of licensing is the removal of legal barriers that prevent the practice of a specific activity that the legislator assesses as dangerous to the community and then subject it to the previous licensing or authorization system (Ahmed khorachid hamidi, raida yassine khodr, p 57).

Third - Prior approval: All parties are obligated to obtain prior approval from the administration, especially in projects that affect the environmental balance or disturb the comfort of the population, or institutions that may constitute a source of noise or cause of inconvenience. Prior approval of the classified establishments and an assessment of their impact on the environment mean that the projects are subject to an evaluation of their effects by the competent authority. The development project must be presented with a description of the original condition of the site on the environment and the health of humans. In addition to these solutions that attempt to reduce the severity of the effects of these projects concerned with the comfort of the population, compensation and removal are some of the measures that aim to combat noise pollution (Ben ahmed abdel monaaem, 2008, p 91).

The second requirement: Remedial and punitive means to combat noise pollution

The legislator gave the administration authority to control the environmental balance and granted them means of intervention by using the privileges of the public authority, such as custodial penalties and monetary fines.

First - Notification: If it is proven to the administration that there is a breach of the public tranquility on the part of the project owner, the administration has the right to warn the owner or what is known as excuses his compliance, the administration is obligated to or withdraw his license. The violator must be reminded of the obligation to remedy the situation and take measures to ensure that his activity conforms to the applicable legal standards.

Second - Withdrawing the license: One of the most important manifestations of administrative power decisions in maintaining environmental balance is the withdrawal of the license of the violator for failing to carry out his activity in conformity with environmental legal standards. If the project does not meet the legal conditions that the legislator stipulated, then the continuity of the project is considered a threat to public order, public health, public security, and public tranquility. If work on a project is stopped for more than the specified period, if a court ruling is issued to close or remove the project, or if it appears that the project did not respect the conditions stipulated in Decree N°. 93/184 that regulate the causing noise, such as not respecting the specified noise levels, or not taking the necessary technical precautions to limit noise pollution, the administration has the right to withdraw the license temporarily or permanently.

Third - Stopping the activity: This penalty is intended to prevent the continuation of the project (or any place that may produce noise or cause disturbance) from carrying out its activities that constitute damages to the public tranquility. This penalty is one of the most common administrative penalties in the field of protecting public tranquility, public health in particular, and the environmental field in general. This is because this kind of penalty would quickly

put an end to the dangerous and disturbing practices that harm the comfort and health of others, and it ensures that these violations are not repeated in the future (Ahmed khorachid hamidi, raida yassine khodr, p76).

The adoption of administrative measures help put an end to activities that affect the environmental balance. The suspension of an activity usually focuses on institutions of an industrial nature that have a negative impact on the environment, especially those emitting high-degree noise pollution. The governor must warn the offender or violator based on the report of the environment inspector and take all necessary measures to put an end to the perceived danger and defects and remove them. The operator must take all necessary precautions and shall comply with the deadlines set for this warning. The temporary suspension of the provision of the equipment can be announced in whole or in part based on the suggestion of the environmental inspector and by a decision of the competent regional governor without prejudice to the judicial proceedings.

D- Financial penalties: These are the penalties that directly affect the violator for breaching his financial responsibility without prejudice to his body, freedom, or social status, public order and the environment. Administrative fine and administrative confiscation are among the most important types of penalties stipulated in most environmental legislation because of their role in protecting public tranquility from noise pollution. The administrative fine is an amount of money imposed by the competent administrative authority according to the law on the offender, who must violate the elements of public order. Administrative confiscation, on the other hand, refers to the administration's appropriation of some of the money in violation of the law, forcibly or without compensation (Ahmed khorachid hamidi, raida yassine khodr, p 66).

The Algerian legislator stipulated the fine for noise pollution crimes in the text of Article 442 bis of the Algerian Penal Code: "He shall be punished with a fine of 100 to 1000 DZD... whoever worries the residents' comfort by noise or disturbs them, whoever exploits a facility in contradiction to a procedure that has decided to suspend its operation or close it, and a fine of five hundred thousand dinars (500, 000 Dinars) shall be liable to a fine of one million dinars (100, 000 dinars) whoever continues to exploit a noisy classified facility without complying with the excuse decision according to the text of Article 103 of Law N°. 10/03 (Article N°. 103 of the Law N°. 10/03).

The third branch: The application of liability provisions on the violator. Liability is considered a penalty for damages incurred on private interests, and it is a sufficient measure that aims to oblige the responsible party to compensate for the damages at the request of the concerned party, who is entitled to waive it or reconcile with it. The Algerian legislator has recognized the criminal liability on everyone who causes disturbance to the comfort of the population in Article 442 bis from the Penal Code. Those who disturb the residents' comfort, cause noise, or gather at night, and use resonant devices are punished with a fine from 100 DZD to

1, 000 DZD, and they might also be punished with imprisonment for a period of 10 days (Article N°. 442 Duplicate of Ordinance N°. 156-66 of 1966).

Those who engage in an activity without obtaining license are punished by imprisonment for a period of two years and a fine of two hundred thousand (200, 000) DZD stipulated in Article 73 mentioned above. Activities that cause or produce noise must obtain a license as stated in the text of Article 73 of the same law, which stipulates that noisy activities practiced in institutions, companies, activity centers and public or private establishments are subject to public requirements established temporarily or permanently, which is not included in the list of facilities classified to protect the environment, as well as noisy sports activities and activities that take place in the open air that may cause hearing damage (Article 73 of Law 10/03).

According to the text of Article 74 of Law 10/3, regarding noise inducing activities listed in Article 73 mentioned above, which may harm or disturb others, thus requiring a license as mentioned in Article 72, the granting of the license is subject to the completion of an impact study and public consultation according to specific conditions (Article 74 of Law 10/03).

The criminal liability of the legal person or the natural person for noise pollution may be decided. As for the criminal liability of the legal person, as one of the most noise-causing sources, it is not possible to talk about the penal liability resulting from the breach of the duty or obligation to prevent environmental pollution without addressing the classified establishments that have a legal personality. The latter is one of the most important pollutants of the environment, which in view of criminal and environmental laws constitute a crime requiring criminal liability, and it is equal in the case of facilities owned by public law persons or private law persons.

A good example is the case of Wilsonville Village against a mining company that caused great noise in 1986 in America. The court ruled that the evidence collected by the owners of neighboring lands proved the negative impact of this noise on the health, safety and welfare of those living close to the mine, not to mention, the decrease in the value of the lands and the constant disturbances that occurred to livestock. The court ruled that this noise resulted in a grave danger that deserves compensation, despite the fact that the company had obtained a license from the governmental Environment Agency, Which considered the location of the mining works does not constitute an engineering or geological dange , but the court decided to compensate the owners of those neighboring lands (Lashhab Saash Jazia, Bousaba Rayma, p 24).

As for the French law, the legislator has stipulated the prohibition of noise in Article 1336-5 of the Executive Regulations of the Public Health Law, emphasized in Decree N°. 17/1244 of August 2017 regarding the prevention of noise hazards and the amplification of sounds. The Article states that it is not permissible to

make any noise repeatedly, of any kind or duration, as long as it affects the public tranquility or public health, whether in a public or private place. This includes noise produced or created through a person, machine or animal that is owned by a person. In addition, the French Penal Code criminalized telephone calls that lead to may disturb others or disturb tranquility.

Article 222-16 of the Penal Code stipulates that “Anyone who makes disturbing phone calls shall be punished with imprisonment for a period of one year and a fine of 15 thousand Euros. Law N°. 03-239 44 promulgated on March 18, 2003 And that is confirmed by Law N°. 14-873 of 4 August 2014 adds that those who continue to send messages through electronic communication devices, or making noise that results in disturbing the tranquility of others (Dina abdel azize fahmi, p 30).

In one of the cases regarding noise pollution, the French Criminal Court of Cassation rejected the defendant’s appeal and upheld the verdict issued against him, as the facts of the case concluded that the defendant, a person named Marx, intended to disturb others. The defendant produced drum sounds for two hours, which disturbed his neighbors, including a 77-year-old woman, who stated that the noise affected her health condition. Another neighbor complained about the noise; however, Marx did not stop until after the intervention of the police. It was proven against him that there were several complaints due to repeated disturbances.

Therefore, in its first ruling, Rennes Court of Appeal ruled that the accused be imprisoned for six months with a suspension of execution and placed under surveillance for a period of two years for disturbing others by making noise repeatedly and thus violating Article 222-16 of the Penal Code. This is in addition to his civil liability, the accused must appeal the judgment issued before The Court of Cassation; however, the court rejected his appeal on the grounds that the accused repeated these acts, which reflects his clear intention to harm his neighbors (Dina abdel azize fahmi, p. 31).

Conclusion:

Noise pollution is considered as one of the issues that must be addressed carefully due to its various negative effects. Legislation has worked to reduce noise pollution due to its understanding of its danger and risk. After presenting and analyzing the most important elements of this chapter, the research concluded a set of important results that can be summarized as follows:

-Public tranquility is one of the most important elements of public order and is currently being threatened by the growing problem of noise pollution.

-All legislation agreed on the seriousness of noise pollution and the need to combat it.

-The sources of noise that threaten public tranquility vary, some of which are caused by nature, and some are the result of human activity. The latter is the most dangerous and widespread.

-There are many mechanisms adopted in order to combat noise pollution, which are handled by administrative control,

-The legislator has put in place preventive mechanisms and remedial mechanisms to combat this crime.

-Despite the severity and diversity of the penalties imposed on the person causing noise pollution, they do not rise to the seriousness of this kind of pollution nor are they compatible with it.

-The absence of a clear and well-defined legal text on the prevention of noise pollution.

Based on these results, the following suggestions can be made:

-Reconsidering the legal texts and updating them, by reviewing the permissible noise limit, as well as increasing the penalties

- Setting up a new, stand-alone legal text related to the prevention of noise pollution, which includes effective and tangible legal mechanisms to reduce noise. Examples of these mechanisms include prohibiting the establishment of industrial areas and drilling near residential areas, schools, hospitals or government institutions, prohibiting the use of alarm devices in residential places, pursuing street vendors to organize their activities in a way that does not disturb public tranquility, conducting periodic inspections of all restaurants, cafes and shops that make loud noises or use loudspeakers.

-Spreading awareness of the dangerous and negative effects of noise, encouraging the act of reporting noise, and involving civil society in combating noise pollution.

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