

The Effect Study as a Mechanism for Environment Protection in the Algerian Law

Radia Boudia¹, Benkhadra Zahira²

¹Degree: lecturer A, Institution: University of Lounici Ali, Blida 02 (Algeria).

²Degree: lecturer A, Institution: University of Lounici Ali, Blida 02 (Algeria).

The Author's E-mail: r.boudia@univ-blida2.dz ¹, z.benkhadra@univ-blida2.dz ²

Received: 07/2023

Published: 02/2024

Abstract:

This study aims at showing the importance of the effect study in the Algerian law as a preventive technical tool for the protection of the environment. Its importance manifests in preserving the environmental elements and predicting the environmental damages and risks that may result of a developmental project or program. It is a priori study that helps evaluate the direct and indirect effects that may affect the environment to reduce their negative effects and maximize the positive ones in an advanced phase before starting the project. This achieves a balance in the economic interests of the individuals and the public interest of the society and the future generations.

Key words: evaluating the environmental effect; the effect study; environment; environment protection; environmental regulation.

Tob Regul Sci.™ 2024;10(1): 1372 – 1382

DOI: doi.org/10.18001/TRS.10.1.88

Introduction:

The authorities of the administrative regulation, regardless their levels, use different tools to maintain the public policy in general, and the environmental goals in particular. In addition to the specificities of the environmental law, the Algerian legislator supported it with various preventive mechanisms and measures to protect its various aspects; this is known as the environmental regulation. However, our reading to the nature of the latter that is provided for in the laws of the environmental legislation puts us in front of 02 types. The 1st is the purely administrative mechanisms of the environmental regulation while the 2nd is purely technical, mainly the study of the effect on the environment. This study is one of the most important measures of evaluating the environmental effect, as it includes the potential positive and negative effects of a given project on the environment before granting it license.

The effect study has developed to cover all the projects and coincided with the orientation of the national developmental projects towards sustainability. Thus, the effect study is very important in putting the development projects in their good frame. Based on what was said, we decided to study this priori legal tool that is enshrined by the Algerian legislator in the environmental law. In so doing, we raise the following problematic, “what is meant by the study of the effect on the environment? What are its importance and procedures?” To answer these questions, we used the analytical method by analyzing the laws that regulate this mechanism, and the descriptive method. Besides, we divided the study into two chapters; the first is entitled “the concept of the

study of the effect on the environment” while the second is “the projects subject to the study effect and its procedures”.

Chapter 01: the concept of the study of the effect on the environment

The administrative studies are no more enough to manage the economic activities. Therefore, the state looked for other tools for the exact scientific evaluation of the risks of the activities on the exploited site, and of the resulting outcomes. Thus, the environmentalists look for more efficient techniques for the evaluation of the environmental effect¹. The first law that decided to study the effect appeared in USA in 1969. It obliged the private agencies to make the study effect of all the federal activities that may harm the human environment². In Algeria, this measure was adopted by the law of the environment protection in 1983. Despite the importance of the study, it is not much incarnated in reality³.

Section 01: definition of the study of the effect on the environment:

Many definitions were given to the concept such as that of Clarck that states that it is a measure to encourage the stakeholders to consider the potential effects of the developmental projects on the quality of the environment and the productivity of the natural resources. Besides, it is a tool for data collection so that the planners design sustainable developmental projects that respect the environment. In general, the study of the effect on the environment supports the policies for the rational, sustainable, and good use of the resources while implementing the economic development⁴.

Besides, Michem Prieur defines it as the scientific study and integration or establishment of a whole project in a specific environmental milieu, with the examination of the current and future, individual and collective, and direct and indirect effects⁵. In addition, it is defined as making the study to predict the environmental effects or yield of the developmental projects (beneficial and harmful, direct and indirect) and their results, and the potential of harms on the society of the project or the surrounding local, regional, or international regions to handle or avoid these harms⁶. Moreover, it is a predictive study of developmental projects and activities that have negative and positive environmental effects to identify the available alternatives, evaluate their environmental effect, choose the best alternatives that have less environmental effects, and suggest tools to reduce the negative effects⁷.

Legally speaking, there is no exact definition to the study effect in the laws and regulations. In this regard, the Algerian legislator adopted the effect study in law 83-03 on the protection of the environment⁸. Its Article 130 provides that the study of the environmental effect is a basic tool to protect the environment by knowing and evaluating the direct and indirect effects on the environmental balance and the living standards. Despite the Algerian legislator provided for this measure, its law was late and was issued in 1990 by the executive decree 9-78 on the study of the effect on the environment. It defined it in Article 02 saying that it is the priori procedure of the study of the effect of all the activities of development and the big facilities that may, due to their importance and dimensions, directly or indirectly harm the environment, mainly the public health, the agriculture, the green spaces, the animals, the plans, the places, the ruins, and the good neighborhood.

After 20 years of issuing law 83-03 on the protection of the environment, and due to the different developments and changes globally, the international society moved to limit the deterioration through organizing meetings, namely that of Rio De Janeiro. This pushed the Algerian legislator to cope with the development and issue law 03-10 on the protection of the environment in the light of the sustainable development⁹. Article 15 of the law provided for the effect study saying that the development projects, the fixed facilities, the factories, the other technical works, and all the works of development and construction that directly or indirectly and immediately or lately affect the environment must be studied before their start. The study covers their effects on the natural species, resources, milieus, and spaces, the ecological balance, and the living standards.

The Mines Law 01-10 of 03/2001 (abolished by law 14-05)¹⁰ defined it as the analysis of the effects of exploiting any mine site on the components of the environment, including the water resources, the air quality, the weather, the soil, the underground, the nature, the animals and the plants, and the human gatherings near the mine sites due to noise, dust, odors, vibrations, and their effects on the public health of the neighbors. In addition, Article 04 of law 14-05 of 24/02/2014 on the mines defines it as a document made according to the conditions of the legislative provisions on the protection of the environment in the light of the sustainable development¹¹.

The legislator determined the field of applying and ratifying the study of the effect, or the briefing of the effect, in the supplemented and complemented executive decree 07-145 of 19/05/2007¹². Its second Article states that the study or briefing aims at identifying the suitability of introducing the project in its environment, with the direct or indirect effects of the project, and the verification of all the actions of protecting the environment in the light of the concerned project. We must point here that the expression “study of the effect on the environment” differs from one law to another. Some laws use the expression “study of the environmental yield”. Besides, the Kuwaiti law of the environmental protection No° 42 of 2014, amended by law 99 of 2015, defines it as the comprehensive scientific studies to evaluate the effects of the projects and activities on the environment before their execution or when integrating amendments or enlargements on the ongoing project according to the decisions issued by the competent party.

These studies cover the identification, prediction, measurement, and interpretation of the potential effects, and the identification of the methods of their control or mitigation of their negative effects during the various phases of the project. Thus, we can deduce a definition saying that it is a prior and evaluative study of the economic and developmental projects and the dangerous facilities that cause, or may cause, harms to the environment or its components. Besides, it covers the reflection of this harm on the human to predict all the negative effects and chose the alternative tools to limit them and help improve the positive effects of the project on the environment.

Section two: the characteristics of the effect study:

From the previous definition, we can deduce the following characteristics:

Part one: legal administrative procedure:

The effect study is legally enshrined. It is an administrative procedure made by the administrative bodies in collaboration with other parties including the human. Thus, it is not purely administrative; rather, it is part of the path of making the administrative decision to get the license of the project¹³.

Part two: prior preventive procedure:

The effect study is an incarnation of the principles of prevention, information, and participation. It basically aims at preventing pollution before it happens, and at taking the measures to mitigate or substitute it¹⁴.

Part three: technical scientific study:

The effect study is characterized with technical scientific characteristic because it is a scientific or quasi-scientific tool to measure the various negative effects of the project on the environment. It is not a conformity document; rather, an estimation and evaluation of what shall be the situation when starting the human activity¹⁵.

Section three: the aims of the study of the effect on the environment:

We said that the effect study is a prior technical study. In fact, it has great importance in examining the projects before their beginning. Besides, it includes the exact identification of the legally binding measures to prevent the negative effects of the projects. In addition, it protects the environmental elements and predicts the environmental damages and risks coming from the exploitation. Furthermore, it is a preventive mechanism to alleviate the damages. In this context, Article 02 of the decree 07-145 shows the aims of the study as follows:

- Identifying the conformity of the project to its environment.
- Identifying and evaluating the direct and indirect effects of the project.
- Checking the application of the measures that protect the environment.

In addition, we can mention other important aims, as follows¹⁶:

- Guaranteeing the acceptance of the project by the competent authorities.
- Achieving the interest of the investor, mainly in the light of the absence of funding from international parties because many developmental funding institutions require the evaluation of the industrial investment projects.
- Excluding the choice of specific sites for projects due to the potential pollution and irreversible damages.
- The end of the environmental disputes between the project owners and those who have interest, mainly the neighboring people because these disputes may lead to asking for huge compensations or the suspension of the activity.

Chapter two: the projects subject to the effect study and its procedures:

The developmental and economic projects lead to many undesired environmental effects. Therefore, it is necessary to carry out the effect study of any project prior to its beginning to know the potential negative environmental effects and make the required steps to prevent or limit these effects. However, the Algerian legislator distinguished two types of projects in the

effect study without showing the difference. In this regard, some projects require the effect study while others require the effect briefing. Thus, we shall focus on the projects subject to the effect study because it is our focal point.

Section one: the projects subject to the effect study and its content:

The Algerian legislator identified the fields of the evaluation of the environmental effect through the effect study of the developmental projects and the classified facilities. In all cases, the legislator identified an exclusive list of the projects and structures subject to the effect study, including the classified facilities. We must point that what distinguishes the legal system of the classified facilities than the system of evaluating the environmental effect of the developmental and economic projects in the Algerian law is that the classified facilities are subject to a prior administrative control through legal tools, mainly the administrative license. In this regard, the legislator divided these facilities into 04 categories according to their risks. On the other hand, the system of evaluating the environmental effect of the developmental and economic projects does not condition a prior license; rather, it just needs the approval of the effect study or briefing by the competent authorities¹⁷.

Part one: the nature of the projects:

The Algerian legislator relies on law 83-3 (abolished), the size, and implications on the natural milieu to determine the activities subject to the study effect, except the projects exempted from the effect study¹⁸ identified in the list annexed in the executive decree 90-78¹⁹. Article 15 of law 03-10 shows that the Algerian legislator set a new classification by relying on the dual list system. In this regard, he distinguished the projects subject to the effect study and those subject to the effect briefing. The last paragraph of Article 16 states that the organization identifies:

- The list of the works that are subject to the effect study due to their important effect on the environment.
- The list of the works that are subject to the effect briefing due to their low effect on the environment.

We notice that the Algerian legislator took two systems:

1) The size of the project and the importance of the expected effects on the environment²⁰. Here, he relied on the system of the list of works subject to the effect study. The list of the projects subject to the effect study was positively identified unlike in the executive decree 90-78. Besides, the list was regulated by the supplemented and complemented executive decree 07-145 that includes an annex that exclusively identifies the list of the projects subject to the effect study²¹. It was amended for the first time by the decree 18-255 that integrated new 06 projects and amended 02²². Besides, the executive decree 19-241 amended the list to 18 projects after they had been 35²³.

2) A system on the classified facilities, defined by Article 118 of law 03-10. Besides, these facilities were identified in an exact list showing the facilities that need license. As for the procedures of getting license, the effect study is in the top²⁴.

Part two: the content of the study of the effect on the environment:

Article 16 of law 03-10 included an exact description of the study of the effect on the environment. Besides, it made reference to the executive decree. It includes:

- A presentation of the target activity.
- A description of the original state of the site and its environment, as they may be affected by the activity.
- A description of the potential effect on the environment and the human health due to the activity, and the suggested alternative solutions.
- A presentation of the effects of the target activity on the cultural heritage and the socioeconomic circumstances.
- A presentation of the measures of mitigation that allow limiting, removing, or substituting the effects that harm the environment and the health.

In addition, the executive decree 07-145 on the application, content, and methods of ratifying the effect study and briefings, amended by the decree 18-255, shows the content of the study or briefing according to the size and potential effects of the project, namely:

- The project owner must provide his name, company headquarters, company, and potential experience in the project and other fields²⁵.
- The study office must be presented with a copy of its registration in the environment ministry.
- The potential alternatives of the project must be analyzed and accompanied by explanation and justification of the technological, environmental, and economic choices.
- The region of the study must be determined according to the borders shown in the advertisement.
- There must be an exact description of the original situation of the project and its environment, mainly the natural resources, the biological diversity, the air quality, and the land and maritime spaces, and the potential effects on them.
- The various phases of the project must be described, mainly the construction, exploitation, and post-exploitation (decomposition of the facilities and restitution of the site) phases.
- The types and quantities of the residuals and emissions, and the effects that may result during the various phases of the project must be estimated (mainly the garbage, the heat, the noise, the radiation, the vibrations, the odors, and the smokes).
- The direct and indirect short, middle, and long term effects of the project on the environment must be evaluated (air, water, soil, health, biological milieu, etc) all along with the method used to evaluate the effects.
- The accumulating effects that may be generated during the various phases of the project must be shown.
- It is necessary to describe the potential measures to be taken by the project owner to end, reduce, or substitute the damages coming from the project.
- There must be a detailed plan for the environment management, which is considered a program for monitoring the measures of mitigation or substitution taken by the project owner in due time.

- The financial effects granted for the execution of the recommended measures must be identified.
- Any other work, information, document, or study provided by the study offices to support or found the content or briefing of the study must be shown.
- The effect study must be accompanied by a descriptive report on the project, made by the study office, to be put at the reach of the audience during the public investigation.

Section two: the procedures of the study of the effect on the environment:

The executive decree 07-145 that is complemented and supplemented by decree 18-255 included all the procedures related to the examination and evaluation of the studies, as follows:

1. It is necessary for the project owner to submit 14 paper copies of the effect study to the regionally competent Wali, and 02 electronic copies by the studies office²⁶.
2. The documents are examined by the regionally competent environmental authorities under order of the Wali within one month of the date of notification. The authorities may require other necessary complementary studies or information from the project owner. In this case, he is given a deadline of 02 months²⁷.
3. The Wali declares by a decision the beginning of a public investigation after the primary examination and acceptance of the study to call any natural or moral person residing in the study region to give opinion about the project and its effects on the environment. The declaration is published in the city hall, Wilaya, the project sites, and in two national newspapers. It includes the subject of the public investigation in detail, its deadline that must not exceed 15 days since the publication of the document, and the times and places where the audience can show their remarks about the project²⁸.
4. Then, the requests of examination and evaluation of the project are sent to the regionally competent Wali who appoints an investigator to monitor the respect of the measures of Article 10²⁹. Besides, he is assigned with making the necessary investigation and collecting the necessary complementary information that show exactly the effects of the project on the environment. Moreover, the investigator issues a report including the details of what he did and other complementary information³⁰. In the end, the Wali issues a copy of the various views he got, including the deductions of the investigator when needed. Then, he calls the project owner within 10 days to provide an answer³¹.
5. When ending the previous measures, the Wali sends the file of the study that includes the views of the technical departments and the outcomes of the public investigation, accompanied by the report of the investigator and the answer of the project owner to the minister of environment³². In this case, he can call the ministerial sectors to seek their experiences.
6. The study may be refused or approved by the minister of environment³³. When refused, a justification must be submitted. In this case, with consideration of the judicial contests, the project owner may submit an administrative contest to the minister of environment supported by complementary justifications and information that clarify the technological and environmental choices to reconsider the study³⁴.

From our focus on the various procedures of the effect study, we notice that each phase generates legal effects, either regarding the deadline of sending the files, evaluating the project, and refusing or approving them, or regarding the application of the principles of information and

participation, which allow the citizens to know all the information about the effect of the project and the exposure of the local citizens to risks. Besides, advertising the study in two national newspapers and in the municipalities and Wilayas that hold the project may contribute to the principle of public participation. Thus, the effect study increases the environmental awareness of the citizens. Besides, the public participation manifests in the public investigation, as the audience remarks may be a support and reference for the administration in taking decisions towards the project. Moreover, we notice that the Algerian legislator did not turn a blind eye towards the right of the project owner in case of refusing his study by the competent authorities, as he has the right to the legal and administrative contests in accordance with the legal texts and provisions that protect the rights and interests of the individuals with respect to the environmental resources that are a common element for all the parties and the future generations.

Conclusion:

The increasing interest in the environmental issues in general, and the issues accompanying the development actions in particular, led to calls for making effect studies on the developmental and environmental projects to know the environmental effects and identify the suitable method to deal with them since the beginning. This study aims at the safety of the environment through encouraging the comprehensive and interdisciplinary investigations. It is a necessary tool for the administrative regulation to guarantee the correct granting of the licenses and balance between the development and environment protection.

Our findings show that:

1. The effect study is one of the developed and efficient preventive methods to examine the potential effects of the projects on the environment.
2. The effect study enshrines many principles of environment protection, including the prevention principle, as it aims at preventing or reducing the damages, and the principle of carefulness that pushes the state to take the necessary measures to make up for the environment deterioration in the light of the lack of the scientific certainty about the effects of the activities.
3. The environmental legislator adopted this mechanism in the various environmental laws, including law 83-03 on the environment and law 03-10. He subjected the mechanism to many decrees, namely the supplemented and complemented executive decree 07-145. Nevertheless, he neglected the institutional aspect of the study, as he assigned the certified study offices with making the effect study by decision of the environment minister.
4. The Algerian legislator recognized the necessity of the study; as it is a condition for granting the license, mainly in the classified facilities.
5. The legislator positively identified the list of the projects subject to the effect study. This means that the activities and projects not mentioned in the list are exempted of the procedure. Besides, he amended the list for two successive years, the first by the decree 18-255 that increased the projects to 35 while the second is by the executive decree 19-241 that reduced them to 18. This raises many issues, starting from the research for the criterion used in identifying the projects subject to the effect study or briefing. In this regard, there is no clear criterion by the legislator that determines the projects that undergo the effect study or briefing; in addition to the exceptions that are provided to some economic institutions to upgrade the national economy.

The study of the legal aspects of the effect study leads us to recommend that:

1. It is necessary to assign specialized bodies and offices with making the environmental effect study of the projects, not study offices certified by the ministry, so that the costs be paid by the project owner.
2. It is necessary to consider the audience view in taking decisions about the effect study because they know more about the conditions of the project site.
3. The state must establish a body that controls the application of the effect study by the project owners.
4. It is necessary to raise awareness of the project owners about the environment protection and to work hard to achieve this using the available tools.
5. The civil society bodies, including the environmental associations, must be integrated in promoting the principles of the environment protection.
6. The specialized administrative bodies must be strict in enforcing the preventive measures, mainly regarding the effect study, and not exclude any economic project under pretext of economic growth.

Bibliography:

Books:

- Al Alouani Nadhir, the procedures of evaluating the environmental effect of the economic and developmental projects as a mechanism to protect the environment in the Algerian and Moroccan experiences: comparative study, the book of the 1st international congress on the mechanisms of protecting the environment, held on 26-26/03/2017, Tripoli- Lebanon.
- Kamal Maifi, the administrative regulation and the protection of the environment, analytical study in the light of the Algerian law, new university house, 2016.
- Yahya Abd al Gahni Abu al Fetouh, the bases and measures of the study of the efficiency of the projects, Alexandria, department of the general financial studies, 1990.

Theses:

- Ben Salah Mohamed al Hadi Aissa, the legal mechanisms to protect the coast from pollution, PhD thesis, Faculty of Laws, University of Algiers 1, 2015-2016.
- Chetouane Hakim, the study of the effect as a mechanism for environment protection, PhD thesis, Faculty of Laws, University of Algiers 01, 2018-2019.
- Ben Mouhoub Fouzi, the effect study as a mechanism to protect the environment, Magister thesis, Faculty of Laws and Political Sciences, University of Bejaia, April 2012 .

Papers:

- The Arab institute for planning in Kuwait, the environmental evaluation of the projects, development bridges journal, No° 43, July, 2005, year 04.
- Safia Iklouli & Safia Zayd al Mal, the effect studies, a mechanism to integrate the environmental dimension in the investment projects, administration journal, No° 51, n.d.

- Abdi Kara & Mabtouche al Hadj, the study of the environmental effect of the classified facilities in the Algerian law in the light of the executive decree 07/145, supplemented and complemented, journal of the jurisprudence Vol. 13, special issue, January, 2021.

Legislative and organizational texts:

Laws:

- Law 83-03 of 05/02/1983, official gazette 6 (abolished).
- Law 01-10 of 03/07/2001 on the law of mines, official gazette 35 of 04/07/2001.
- Law 03-10 on the protection of the environment in the light of the sustainable development, official gazette 43.
- Law 14-05 of 24/02/2014 on the law of mines, official gazette 18 of 30/03/2014.

Decrees:

- The executive decree 90-78 of 27/02/1990, official gazette 10 (abolished).
- The executive decree 06-198 of 31/05/2006 regulates the organization applied on the classified institutions to protect the environment, official gazette No° 37.
- The decree 07-145 of 19/05/2007 on the field of applying the field of applying, content, and methods of ratifying the effect study or briefing, official gazette 34.
- The executive decree No° 18-255 of 17/410/2018, official gazette 62.
- The executive decree 19-241 of 08/09/2019, Official gazette 54.

¹ Yahya Abd al Gahni Abu al Fetouh, the bases and measures of the study of the efficiency of the projects, Alexandria, department of the general financial studies, 1990, p. 09.

² Kamal Maifi, the administrative regulation and the protection of the environment, analytical study in the light of the Algerian law, new university house, 2016, p. 127.

³ The decree on the study of the effect on the environment was issued in 1990 by the executive decree 90-78 of 27/02/1990, official gazette 10 (abolished).

⁴ Ben Salah Mohamed al Hadi Aissa, the legal mechanisms to protect the coast from pollution, PhD thesis, Faculty of Laws, University of Algiers 1, 2015-2016, p. 198.

⁵ Abdi Kara & Mabtouche al Hadj, the study of the environmental effect of the classified facilities in the Algerian law in the light of the executive decree 07/145, supplemented and complemented, journal of the jurisprudence Vol. 13, special issue, January, 2021, p. 848.

⁶ The Arab institute for planning in Kuwait, the environmental evaluation of the projects, development bridges journal, No° 43, July, 2005, year 04, p. 08.

⁷ Chetouane Hakim, the study of the effect as a mechanism for environment protection, PhD thesis, Faculty of Laws, University of Algiers 01, 2018-2019, p. 77.

⁸ Law 83-03 of 05/02/1983, official gazette 6 (abolished).

⁹ Law 03-10 on the protection of the environment in the light of the sustainable development, official gazette.

¹⁰ Official gazette 35 of 04/07/2001.

¹¹ Official gazette 18 of 30/03/2014.

¹² Official gazette 34, amended and complemented by the executive decree No° 18-255 of 17/410/2018.

Official gazette 62 and the executive decree 19-241 of 08/09/2019, Official gazette 54.

¹³ Chetouane Hakim, op. cit, p. 83.

¹⁴ Ben Mouhoub Fouzi, the effect study as a mechanism to protect the environment, Magister thesis, Faculty of Laws and Political Sciences, University of Bejaia, April 2012, p. 22.

¹⁵ Ben Mouhoub Fouiz, op. cit., p. 18.

¹⁶ Kamal Maifi, op. cit., p. 129.

¹⁷ Al Alouani Nadhir, the procedures of evaluating the environmental effect of the economic and developmental projects as a mechanism to protect the environment in the Algerian and Moroccan experiences: comparative study, the book of the 1st international congress on the mechanisms of protecting the environment, held on 26-26/03/2017, Tripoli- Lebanon, p. 87.

¹⁸ Article 13 of law 83-03 (abolished).

¹⁹ Safia Iklouli & Safia Zayd al Mal, the effect studies, a mechanism to integrate the environmental dimension in the investment projects, administration journal, No° 51, n.d., p. 65.

²⁰ Article 06 of the supplemented and complemented executive decree 07-145

²¹ Article 103 of the supplemented and complemented executive decree 07-145

²² Article 10 of the executive decree 18-255.

²³ Article 02 of the executive decree 19-241.

²⁴ Article 05 of the executive decree 06-198 of 31/05/2006 regulates the organization applied on the classified institutions to protect the environment, official gazette No° 37.

²⁵ Article 06 of the executive decree 07-145, amended by Article 03 of the decree 18-255.

²⁶ Article 04 of the executive decree 18-255.

²⁷ Article 05 of the executive decree 18-255.

²⁸ Article 07 of the executive decree 18-255 and Article 10 of the decree 07-145.

²⁹ Articles 11 and 12 of the decree 07-145.

³⁰ Articles 13 and 14 of the decree 07-145.

³¹ Article 08 of the decree 18-255.

³² Article 06 of the decree 07-145.

³³ Article 18 of the decree 07-145.

³⁴ Article 19 of the decree 07-145.