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The Right to Clean Air and Related Sanctions in Iranian and French Law

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ABSTRACT

Air pollution is one of the most important environmental problems affecting urban population with significant global, national and local consequences. Therefore, to guarantee the right of citizens to clean air, criminal fines and penalties have been set forth in order to confront and punish the transgressors. This study aimed to discuss and analyze the penalties for air pollution violations. In this study, the legal conception of air pollution and the right to clean air are discussed first, and then the Iranian and French legislations regarding air pollution control laws are reviewed. This study emphasizes the need for establishing and including civil and administrative penalties in the contemporary environmental law. (Tanaffos 2010; 9(2):7-12)

Key words: Air pollution, Right to clean air, Environmental law, Iranian legislations, French legislations

INTRODUCTION

Air pollution is among the most important environmental problems especially in the metropolitan areas associated with significant health hazards. People and governments are gravely concerned about the impact of environmental pollution on human health. According to a previous report by World Health Organization, one billion people have been exposed to severe air pollution, out of which one million die every year because of it (1).

The question is what legal tools can be used against this obstacle? How can we employ criminal penalties to guarantee the right to clean air? (2) This article aimed to study the law of right to clean air in the Iranian and French legislations by available

literature, original legal documents and resources in both Farsi and French that may be accessed in the two legal systems. We also focused on the domestic laws and regulations in Iran and France regarding air pollution violations.

1- Legal concept of air pollution violation

Defining and understanding the legal notion of air pollution violation are essential for this discussion. Generally speaking, air pollution is defined as the presence of any harmful gas or substance that directly or indirectly pollutes the air or space, damages the environment and affects public health and welfare.(3)

According to Article 2 of the Law on Air and the Rational Use of Energy adopted in December 1996 (Article 200-2 of the French Environment Code), air pollution is defined as emitting harmful substances

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directly or indirectly into the air or closed environments which has detrimental consequences and dangerous effects on human health, biological resources and ecosystems which may result in climate change, damage to properties and objects and excessive smell (4). This article also states: "... When an industrial, commercial or agricultural organization emits polluting substances into the air according to the definition of air pollution violation stated in Article L. 220-2, and violates the rules and regulations pronounced in Article L. 226-8, the person in charge will be sentenced to six months imprisonment and a 7,500 Euro fine. The operator also incurs the additional penalties mentioned in parts 10 and 11 of Article 131-6 of the Penal Code as well as the penalty of public posting or publication of the decision pronounced either in the written press, or in the media in accordance with Article 131-35 of the same Code (*Ibid*). Titles of crimes as classified under the relevant Iranian law are as follows.

Title of crime	Article Number
Not following the rules and regulations	28
Pollution from factories	12, 15 and 29
Breaching of standard sets for factory owners	29,16
Not cooperating with the inspectors (Environmental Protection Agency)	30
Fail to provide documents and information regarding the pollutant unit required by the officials	30
Noise pollution	32,27
Pollution by motor vehicles	28

2 - The right to clean air

The right to clean air is an important aspect of right to a healthy environment. Every person has the right to breathe clean air and governments are obliged to establish strategies to guarantee it.

This right has been both explicitly and implicitly recognized by the constitutions of nations in recent

years, for instance France is the most recent nation amending its Constitution in the early 2005 and 2008 to explicitly acknowledge the right to a healthy environment. In a number of countries whose constitutions do not explicitly recognize environmental rights, (e.g. India) the courts have interpreted other constitutionally protected human rights (such as the right to life, liberty, and security of the person) including the right to a healthy environment and the right to clean air and water.

In some laws the "right to breathe clean air" has been recognized to some extent. It appears to be a new one but it is an extension of existing traditional rights and values already protected by criminal law and now it has a discernible existence. It also includes the quality of life, and stewardship of the natural environment. At the same time, traditional values have simply expanded and evolved to include the environment as a matter of direct and primary concern.

Among these values fundamental for the protection of criminal law, are the sanctity of life, the inviolability and integrity of individuals, and the protection of human life and health. It is increasingly understood that certain forms and degrees of environmental pollution can directly or indirectly, sooner or later, seriously harm or endanger human life and human health.

In French law, Article 1 of the Law on Air and the Rational Use of Energy adopted in December 1996 (Article 200-2, French Environmental Law code) recognized the "right of everyone to breathe air that is not harmful to the health" according to this Article: the government and its public institutions, local authorities and their public institutions as well as private individuals, all contribute, each within its field of competence and within the limits of its responsibility, to a policy the objective of which is the implementation of the recognized right of all to breathe air which is not harmful to the health. This

action of public interest includes preventing, monitoring, reducing or removing atmospheric pollution, preserving air quality and saving and using energy in a rational manner. " However, citizens as the main characters have an important part in polluting the air (by using motor vehicles) according to the French legislation. Moreover, the "right to have information about the air quality" has been emphasized in this provision. When air quality objectives are not reached or when the alert thresholds and limit values mentioned in Article L.221-1 are exceeded or are likely to be exceeded, the public is to be immediately informed by the administrative authority. Part of Article 4 of the 1996 Law on Air and the Rational Use of Energy states: "... the results of epidemiological studies on atmospheric pollution, the results of studies on the environment linked to atmospheric pollution, as well as information and forecasts regarding the monitoring of air quality, emissions into the atmosphere and energy consumption are subjects of a periodic publication which may be entrusted to the approved organizations mentioned in Article L. 221-3, chosen based on their field of competence". Each year, the government publishes an inventory of the emissions of pollutant substances and an inventory of energy consumption. It also publishes a report on air quality, its possible evolution and its effects on health and the environment. The inventory of emissions of pollutant substances and the report on air quality, its possible evolution and its effects on health and the environment are subject to an opinion expressed by the French Agency for Environmental Safety (FAES).

However, a group of authors have criticized this right, especially because of problems encountered during its execution. (5)

3- Anti-tobacco legislations

Tobacco consumption is the most significant act

violating the right to clean air in France. This type of air pollution (local air pollution) represents a new emerging environmental problem (6). The French National Committee against Tuberculosis and Lung Diseases has been involved in this matter for many years. First, in 1976, the "Simone Weil" Law was passed for restriction and prohibition of advertising tobacco products in certain parts of public places. In November 1988, the first European conference on smoking was held in Madrid, Spain. In this conference the basic law of "Europe without Tobacco" or "Une Europe sans tabac" was ratified. According to this law:

"Clean air, pure and free from tobacco smoke, is one of the main elements of the fundamental rights of every individual to live in a healthy environment free from contamination."

In this document the rights of children, adults and all citizens to clean air were highlighted (7). The most important strategies proposed in this conference were: to ban smoking advertisements, increased pricing and taxation, public awareness and prohibition of smoking in public places. Hence, in French legal system according to the Public Health Code No. 28-355 (Code de la santé publique): "Smoking is prohibited in public places, especially in schools and public transportation vehicles, unless special places for smoking are available."

Other laws and regulations in this respect may also be cited as follows:

- *Loi n° 76-616 du 9 juillet 1976 Relative a la lutte contre le tabagisme*
- *Loi n° 91-32 du 10 janvier 1991 Relative a la lutte contre le tabagisme et L'alcoolisme*
- *Décret n° 92-478 du 29 mai 1992 fixant les conditions d'applications de l'interdiction de fumer.*

In Iranian legal system, a Comprehensive National Tobacco Control Law adopted in 1385

(2006) should be mentioned. The most significant sanctions are found in Article 13 of this Act. According to this article, "Smoking in public places or public transportation vehicles may be punished with fines of up to 150,000 Rials (~ 15\$)."

4 – Right to clean air in Iranian legal system

In Islamic teachings air is one of the most important elements of human life. According to Imam Sadiq (a religious leader) "the environment is not worthwhile without three factors: clean air, safe water and fertile soil" (8). There are several types of penalties for air pollution violations including fines, imprisonment and preventing the pollutant units from functioning.

1-4 – Fines

Fines are a common punishment in Iranian law. According to the Air Pollution Act (2006), penalties include:

- 50,000 Rials (~5\$) (Article 28) fine for heavily pollutant and unauthorized vehicles
- 25,000 to 100,000 Rials (~2.30-10\$) (Article 28) fine for those who do not obey the provisional laws established during the emergency state of air pollution mentioned in Article 7
- 2,000,000 to 4,000,000 Rials (~200-400\$) (Article 29) fine for the owners of air pollutant factories, workshops, units and industrial complexes.
- 100,000 to 1,000,000 Rials (~10-100\$) (Article 32) fine for noise pollution.

2 -4 - Imprisonment

Criminal policy in the Islamic Republic of Iran now attempts to use penalties of imprisonment less in the environmental field. Relevant imprisonment penalties include:

- from two to six months imprisonment for repeated violations as mentioned in Articles 14, 16 and 18 by the owners of factories and workshops.
- from one to three months imprisonment for repeated violations mentioned in Article 30 of

resisting or refusing to provide documents and information required by Protection Agency officials for inspection.

3-4- Ban polluting vehicles from running

Vehicles are considered as the most important source of air pollution in Iran. Therefore imposing this punishment, unlike levying fines, has a direct effect. According to Article 28 of the Air Pollution Law of Iran, it can be imposed on heavily polluting motor vehicles.

5- Right to clean air in French legal system

1-5- Sanctions

Currently, the law on Air and the Rational Use of Energy ratified in Dec.30 1996 is the most important legal text in the field of air pollution (9). In French legal system, we can find fines and other types of punishments similar to what was mentioned above. For example, not cooperating with the officials in the course of their duties mentioned in Article L. 226-2 of the Environmental Code is punishable by six months imprisonment and a fine of 7,500 Euros. When an industrial, commercial or agricultural service emits polluting substances into the air, as defined in Article L. 220-2, in violation of an official notification as required under Article L. 226-8, the operator is punished by six months imprisonment and a fine of 7,500 Euros.(10)

The operator also incurs additional penalties mentioned in parts 10 and 11 of Article 131-6 of the Penal Code as well as the penalty of public posting or publication of the decision as pronounced either by written press, or by the media in accordance with Article 131-35 of the same Code.

According to Article L226-10:

I. Legal entities may be declared criminally liable under the conditions set out in Article 121-2 of the Penal Code for infringements of the provisions of the present title and of those for their application.

II. - The penalties incurred by legal entities are:

1° A fine, in accordance with the terms and conditions set out in Article 131-38 of the Penal Code;

2° The penalties mentioned in parts 2, 3, 4, 5, 6, 8 and 9 of Article 131-39 of the same Code.

III. - The prohibition mentioned in part 2 of Article 131-39 of the Penal Code is applicable to the activity during which, or at the time of which, the offence was committed.

When an individual or a legal entity is declared guilty of the offence set out in the second paragraph of Article L.226-9, the court may, in application of Articles 132-66 to 132-70 of the Penal Code, require this person or the legal entity to carry out the works or operations necessary to bring the property into compliance prescribed by the authorities in application of Article L. 226-8 (Art. 226-11).

2-5 – Duty of public institutions

Under French law (Art.1-220, Environmental Code) the government and its public institutions, local authorities and their public institutions as well as individuals, all contribute, each within its field of competence and within the limits of its responsibility, to a policy the objective of which is the implementation of the recognized right of all to breathe air which is not harmful to the health.

This action of general public interest consists of preventing, monitoring, reducing or removing atmospheric pollution, preserving air quality and saving and using energy in a rational manner.

According to Act no. 2001-398 of May 2001(11) the government must ensure, with the help of local authorities, while respecting free administration and principles of decentralization, the monitoring of air quality considering its effects on health and environment. It entrusts the Environment and Energy Management Agency with the technical coordination of the monitoring of air quality.

Air quality objectives, alert thresholds and limit values are determined, further to an opinion

expressed by the French Agency for Safety in the Environment and the Workplace, in accordance with those defined by the European Union, or in their absence, by the World Health Organization. These objectives, threshold alerts and limit values are regularly re-assessed to take into account the results of medical and epidemiological studies.

3-5- Emergency state of air pollution

According to Article L223-1 (Environmental Code) of French law and in order to reach the goals defined by the atmosphere protection plan, the appropriate supervisory authorities must decide upon the preventive measures to be applied temporarily or permanently, intended to reduce the emissions of sources of atmospheric pollution. When the alert thresholds are reached or are likely to be reached, the authorities should immediately inform the public and take measures to limit the scale and the effects of peak pollution levels on the population. These measures include restriction or suspension of activities contributing to peak pollution levels including, where appropriate, the use of vehicles in order to reduce emissions from fixed and mobile sources.

CONCLUSION

Everyone has the right to life, liberty and security and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Hence, we must immediately change our legal policies with regard to air pollution law. Especially the government should adopt practical ways to stop rising air pollution and help clear it. Environmental law in Iran and France must employ alternative punishments. At the same time, the level and methods of criminal policy must evolve further. To this end, the "principle of minimum punishment through criminal law" and use of preventive approaches through alternative punishments such as

"welfare services," "corrective work," "deprivation of social rights, "delayed sentencing," "strengthened supervision, like home detention," "revoking driver's license" and other approaches should be used (12). It is especially necessary to develop civil and administrative sanctions.

REFERENCES

1. Bonefo, Advardo, *Reconciliation of Human Nature*, translated by Salah-o din-e Mahalati, Tehran, University Centre Publication, 1996, 202.
2. Faure, Michael and Gunter Heine, *Criminal Enforcement of Environmental Law in the European Union*, Kluwer Law International, 2005, 87-112.
3. Aline, Grenier, *Tous les problèmes juridiques des pollutions et nuisances industrielles*, Paris, Encyclopédie Delmas pour la vie des Affaires, 1973, 77.
4. Chantal Cnsde *et al*, *Code de l'environnement*, Dalloz, 11^e édition, 2008,226-9.
5. V, Blachere, Marco, *Le droit al'air pur, principe sans effet?*, *Journal l'Humanité*, 1996, 14 juin, 3(1-19).
6. Institut français de l'environnement, *l'environnement en France*, *Ifen*, 2006, 18.
7. Bonefo, Advardo, *Reconciliation of Human Nature*, translated by Salah-o din-e Mahalati, Tehran, University Centre Publication, 1996, 200.
8. Majlisi, Mohammad Bagher, *Bihar al-Anwar*, Al-Matba'at-ul-Islamiyyah, Tehran, 1387 AH. Vol 75, Chapter 23, at 233.
9. Roche, Catherine, *Droit de l'environnement*, Gualino Editeur, Paris, 2001,182.
10. Order no. 2000-916 of September 19, 2000, Article 3; *French Official Journal* of September 22, 2000, (enforced on January 1, 2002).
11. Act n° 2001-398 of May 9, 2001, Article 6, *French Official Journal* of May 10, 2001.
12. Pour Qahramani, Babak, *Alternative penalties of imprisonment*, *Soroush-e-Edalat Journal*, spring 1384; 1, 44: 40-57.