

1-9-1993

The State Accountability for Harmful Impacts on Health Caused by Industrial Pollution in Egypt

Ahmed Shawky

Follow this and additional works at: <http://scholar.valpo.edu/twls>

Recommended Citation

Shawky, Ahmed (1993) "The State Accountability for Harmful Impacts on Health Caused by Industrial Pollution in Egypt," *Third World Legal Studies*: Vol. 12, Article 9.

Available at: <http://scholar.valpo.edu/twls/vol12/iss1/9>

This Article is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Third World Legal Studies by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

THE STATE ACCOUNTABILITY FOR HARMFUL IMPACTS ON HEALTH CAUSED BY INDUSTRIAL POLLUTION IN EGYPT

Ahmed Shawky*

Introduction

Industrial development in Egypt has contributed significantly to the problem of pollution which has harmful effects on public health. Even though this represents a violation of the fundamental "Human Rights to Life," Egyptian Law has failed to identify the body that should be accountable for compensating victims. Nor has it defined the state's accountability in this respect as the owner of a large percentage of industrial undertakings, as the body charged with responsibility for the maintenance of public health.

Nevertheless, the victims of pollution have not taken any steps in asking for judicial recognition of the state's liability to pay indemnities for the health damages that they have suffered as a result of pollution. Hence, the Egyptian judiciary has not yet developed definite policies as regards the state's ability in this respect. As a matter of fact, the state is no doubt responsible for protecting public health vis a vis pollution caused by industrial undertakings.

However, the imposition of strict measures on industrial projects, binding them to prevent the spread of harmful pollutants on the one hand, and taking administrative measures against pollution-causing industrial projects on the other hand, contradict the state's commitment to encourage industrialization, for this might precipitate the discontinuance of business in some of the industrial projects causing pollution.

Accordingly, in this article I have tried to discuss the state's liability as regards compensating the victims of industrial pollution; as the owner of a large percentage of industrial projects; and as the administrative authority whose duty is the maintenance of public

* Faculty of Law, Cairo University (Khartoum Branch).

health. In effect, this requires a balance between the state's duty toward public health and its commitment toward the country's economy and the related social, political and security situations.

Part I

The problem of pollution is caused by industrial establishments and their harmful impact on public health in Egypt.

A. *The Dimensions of the Problem*

Egypt has recently witnessed a large expansion in industry and industrial projects. However, this expansion has been accompanied by the serious problem of environmental pollution caused by such projects. This, in turn, has caused major health hazards for both the citizens and the workers within the projects themselves. This pollution manifests itself in several ways, causing the wide-ranging harmful impacts which we can briefly review below:

I. Air Pollution

The industrial suburbs of Helwan and Northern Cairo are two of the most unequivocal models representing the areas that suffer air pollution caused by the industrial establishments existing there.¹

According to recent measurements, the amount of cement dust and tiny fragments of industrial waste falling over these two areas ranges between 290 tons and 390 tons every square mile per annum. Such a rate surpasses the internationally agreed figure by twenty-five times. Similarly, the smog density levels in these areas have reached more than 1200 micrograms/square meter, compared to the allowed international levels of 150 micrograms/square meter.

1. M.M. Nassr Allah, *Some specifications of the air in Cairo*, Conference on Protecting Environment in Cairo, Cairo 1986, pp. 97-100.

Studies have also shown that major health problems have resulted from air pollution: cement dust, for example, causes different types of cancer, heart disease, and pulmonary calcinosis. Similarly, factory dust causes eye allergy, skin rash, atherosclerosis, and destruction of the nervous and respiratory systems. Such health problems affect those who are living in the air-polluted stricken areas in general, and the industrial workers in particular. Indeed, research by industrial medicine specialists from the Egyptian National Research Centre revealed that a high rate of Helwan cement factory workers have caught pulmonary calcinosis, and that the battery factory workers, exposed to lead vapour, have suffered impairment to the nervous system, which could result in complete paralysis.²

II. Water Pollution

Industry in Egypt causes major water pollution, whereby drinking water, lake water, underground water and a large part of the River Nile are all affected. A large number of factories established along the Nile dispose of their waste in the river without having it treated in any way. The quantity of fluid industrial waste disposed of in the Nile — from Asswan to Cairo — is estimated at 312 million cubic meters per annum.³ Industrial establishments also cause water pollution by disposing of industrial waste in the Mediterranean and the Red Sea territorial waters. For instance, the quantity of such waste in Alexandria is estimated at around a million cubic metres per day. This waste contains such pollutants as phosphorus, azote, zinc, copper,

2. A. Abd Elrasek, *Mechanism of Environmental Pollution, its Effects and Treatment*, First National Conference for Environmental Studies and Researches, Cairo 1988, pp. 414, 415; at the same Conference, see A.T. Kandil and A.H. El Kateb, *Air Pollution in the Helwan Community*; M.H. Hammam and A.E. Masoud, *Silicosis Among Workers in Superphosphate Industry*, pp. 442-450; 824-830.

3. F. Elgohary, *Problems of Water Pollution in Egypt*; Y. SH. Yosseph, *Observation of River Nile Pollution*, Conference on Protecting Environment in Cairo, Cairo, 1986, pp. 223-225; 231-235; M.S. Elnagar, *Environment Pollution and its Effects on National Security*, Paper presented to Nasser Military Academy, Cairo, 1989, pp. 56, 60.

lead and manganese compounds.⁴ Also, pollution due to oil exploration affects the Mediterranean and Red Sea waters.⁵ Water pollution in Egypt causes such diseases as cholera, eye and ear inflammations, epidemic infectious hepatitis and renal failures.⁶

III. Soil Pollution

Studies in Egypt have indicated that industrial waste and pollutants cause major damage to the soil when either disposed of untreated or when airborne waste falls onto the soil.⁷ Soil pollution, in turn, affects plants as well as underground potable water, and thus man's health is affected.

B. The State Confronting the Problem

Advanced countries have tended to set regulations that might make industrial establishments take the necessary steps to avert pollution and thus prevent public health hazards. Simultaneously, scientific developments have made it possible to restrict industrial pollution by means of modern industrial methods (pollutant-free industries), whereby waste is confined to the minimum levels possible, and new methods for the disposal and treatment of wastes and the extraction of the useful elements for reuse for agricultural and industrial purposes are created. Studies in this area have shown that the total economic returns resulting from the use of such methods exceed the implementation costs. In addition, the application of such methods

4. A.M. Ashry, *Competence of Protecting Maritime Environment Against Pollution*, Ph.D. Thesis, Zagazig University, 1989, pp. 76, 406, 407.

5. *Ibid.*, pp. 425-438.

6. *Ibid.*, p. 86, M.S. Elnagar, *ibid.*, p. 61.

7. T.M. Labib and B.H. Nagib, *Soil and Environmental Pollution Around Some Industrial Complexes in Egypt*; T.M. Labib and A.A. Elfalaky, *Soil, Water and Plant Pollution in Helwan District*, the First National Conference on Environmental Studies and Researches, 1988, pp. 472-79; 463-471.

protects public health and consequently raises performance levels and saves on the cost of medical treatment.⁸

The Government of Egypt has recently made a number of attempts to counter the problem of pollution emanating from industrial establishments.

I. Workers' Protection Against Pollution

In an attempt to protect industrial workers against the harmful effects of pollution on health, Resolution No. 48 of 1967 — issued by the Minister of Labour — concerned itself with the necessary protective precautions for workers against any harmful effects on health, including mechanical dangers, to which they might be exposed.⁹ The most important aspect of this resolution is included in article 2, which stipulates that industrial projects should screen harmful radiation and dispose of waste generated during industrial operations provided that they should not, in any way, exceed the safety limits. It also stipulates that operations which are harmful to health should be carried out in closed devices, so that workers may not touch the harmful materials, and also to prevent gas and vapour leaks or the spread of smog in quantities that could cause harm to the workers' health. This Article also stipulates that industrial projects should dispose of harmful dust, gases, and fibres immediately at or near the source that generates them, by means of vacuum suckers, by developing a ventilation system or by any other suitable form of disposal. The same Article states that, if the preventive procedures are impractical or inadequate for securing the workers' safety, the industrial establishment in which they work must provide them with preventive masks and clothes and train them on the proper use and maintenance of such tools, and offer them the necessary means of

8. K.M. Fahmy, *The Relation Between Economic Development and Natural Environment*; A.I. Amin, *Strategy for Reducing Industrial Pollution and its Plans*, Conference on Protecting Environment in Cairo, Cairo, 1986, pp. 49-86, 287-90.

9. Published at *Elwaka'i Almessria*, 15 August 1967, Vol. 151, amended by order No. 76, 1972 published at *Elwaka'i Almessria*, 15 November 1972, No. 261.

decontaminating themselves when exposed to dangerous poisonous materials.¹⁰

II. The Protection of Individuals Outside the Industrial Establishments Against Industrial Pollution

The Government of Egypt has made several regulations with the ultimate purpose of protecting the general public against pollution caused by industrial establishments. Most prominent in this respect is Resolution No. 380 of 1975, issued by the Minister of Housing and Reconstruction, regarding the general conditions and provisions that should be fulfilled in the industrial domain, as well as others that cause discomfort and harm the public health.¹¹ This Resolution obliges industrial projects and establishments producing "noise, vibration, or offensive smells harmful to residents" to construct their concerns far from residential areas though they may be allowed, in some instances, merely to take the necessary preventive steps. It also necessitates getting a construction license as well as permission for running industrial machines provided that they take preventive action in order to avoid the harmful consequences that might be caused to nearby residents. Moreover, it includes detailed rules that ensure the disposal of fluid wastes in such a way as to prevent pollution affecting drinking and irrigation water, lakes and sea waters, and consequently averting soil pollution.¹² On the other hand, Statute No. 38 of 1967, concerning public cleanliness, and the Executive Regulation under it, No. 134 of 1967, issued by the Minister of Housing, stipulates the

10. In 1983, the Minister of Manpower and Training issued his order No. 55 concerning the conditions and precautions necessary to provide means of vocational hygienics in working places. This order did not abrogate the previous order but added to it some details (COLLECTION OF INDUSTRIAL SECURITY LAWS, Cairo, 1988, pp. 103-120). On the same subject the Minister of Manpower and Training issued in 1982 his order No. 35, defining the establishments and organs of vocational hygienics and security. The President of the Republic issued too, in 1969, his ordinance No. 432 concerning the establishment of National Centre of Industrial Security Studies.

11. *Elwaka'is Almessria*, 23 December 1975, No. 290. The mentioned order was issued according to the Ordinance of the President of the Republic No. 991 of 1967 concerning some rules of industrial security and licenses of establishing industrial, commercial and public shops (*Official J.*, 6 April 1967, No. 55).

12. Art. 2, 5, 19.

general and detailed rules for protecting individuals against the solid wastes of industrial establishments.¹³

As for the protection of sea water against pollution caused by petroleum exploration operations, Statute No. 72 of 1969 was issued to safeguard against this.¹⁴ Statute No. 42 of 1982 stipulates details for protecting the River Nile and other water sources from pollution.¹⁵ Afterward, its executive regulation was issued by Resolution No. 8 of 1983¹⁶ by the Minister of Irrigation. This included general and detailed rules regarding the protection of soft and hard water surfaces, and underground water reservoirs from pollution caused by industrial wastes. In addition, Resolution No. 380 of 1982, issued by the Minister of Industry, obliges prospective or modernized factories, which require a license from the Ministry of Industry, to include pollution preventive devices among their equipment.

Presidential Decree No. 63 of 1982 was issued in order to effect the establishment of an authority for environmental affairs, under cabinet supervision, which has prepared three bills concerning environmental protection from pollution. These are still being discussed by the People's Assembly.¹⁷

The Government of Egypt has made an overall survey of industrial pollution, and set out plans for combatting it. A number of projects in this respect have already been started, and scientific organizations as well as other state authorities are devoting time to convening conferences and conducting studies for this purpose.

C. Persistence of the Problem

Despite the aforementioned efforts, the authorities have remained unable to overcome the problem of pollution caused by industrial

13. A. Abd Elhadi, *Protecting Environment Against Industrial Pollution*, Dar Elnahdda Elarabia, Cairo, 1985, pp. 50-56.

14. *Official J.*, 5 December 1968, No. 49.

15. *Official J.*, 26 June 1982, No. 25 (bis).

16. *Elwaka'i Almessria*, 5 February 1983, No. 31.

17. For details, see A.I. Amin, pp. 279-287; F. Elbedewi, *Program for Combating Pollution*, Institution of Environment Affairs, Cairo, 1990; M.S. Elnagar, pp. 107-113.

establishments. Studies have indicated that pollution is still prevalent, and that its harmful effects on health are increasing, for several reasons:

(a) Most of the large industrial projects in Egypt had been set up before the pollution problem had seriously been taken into account. Hence, they were not equipped with the technical devices necessary to evade harmful pollution. This means that Egypt needs a huge sum of money to provide its industry with the necessary equipment. The costs are estimated at two billion Egyptian pounds for the whole industrial sector at the national level. On the other hand, allocations and assistance received for this very purpose have only totalled about one-fourth of the required amount, which is simply not enough.

(b) The country has been forced, due to its urgent need to encourage and expand the scope of industry that suffered as a result of the severe economic crisis, to not impose strict anti-pollution measures. Such circumstances have meant a reluctance to take strict measures against industrial establishments that did not conform to such conditions because of the harsh economic consequences that would directly inflict upon production and workers, and would consequently aggravate the problem of unemployment.¹⁸

(c) Awareness among the general public, as to the major harmful consequences of pollution and its impact on health, is still limited to such an extent that the sweeping majority of those directly suffering from pollution have not yet moved to ask for a reduction in the risks or to identify the responsible body. This has been compounded by general carelessness on the part of the state as to the value of people and health, which has slowed down the state bodies' actions.

(d) The weakness of administrative bodies in charge of the implementation of laws and regulations stipulating preventative action against industrial pollution, together with their limited

18. A.I. Amin, pp. 280-84.

awareness of necessary systems and the way of its implementation.

Part II

The State Accountability for the Harmful Effects of Industrial Pollution on Health

Egyptian law has failed to identify the bodies liable for compensating those harmed as a result of industrial pollution. The judicial authorities have failed to give a comprehensive view of all aspects of the problem, especially regarding the state's liability. However, we may be guided by the general rules concerning liability stipulated in the Egyptian civil code, as well as those of administrative accountability applied in judicial judgments in Egypt, in order to identify the rules defining the dimensions of the state's liability in this respect under the present circumstances. Thus it is possible to see that the state's liability can be represented by the fact that it is, first, the owner of many industrial projects and, second, the administrative body in charge of the maintenance of public health and the imposition of rules issued to protect it. We can tackle each point separately.

A. The State's Accountability as the Owner of Industrial Projects

The state in Egypt is the owner of the largest percentage of industrial establishments which are a major source of pollution, causing several forms of harmful diseases both to workers and the general public living around such establishments. The bodies in charge of the implementation of the state-owned industrial projects are public sector companies that take the legal form of joint stock companies.¹⁹ The state's rights in the public sector companies are all

19. Statute No. 97, 1983 Concerning Public Sector Authorities and Companies, Art. 17, 18 (*Official J.*, 4 August 1983, No. 31 bis). For further details, see S. Yehia, *Control on Public Sector, The Modern Egyptian Office*, Cairo, 1969, p. 69.

referred to state-controlled bodies called “the public sector authorities.”²⁰

The public sector companies taking the form of joint stock companies are considered as persons in private (civil) law.²¹ Accordingly, a suit against the public sector for its liability damage caused by industrial pollution emanating from a project affiliated with the public sector (whether such a suit was prosecuted against a public sector company or a public sector authority owner of the project concerned) is included within the jurisdiction of the civil courts, and is judged according to the provisions of the Civil Code.²²

Based on this, we can consider that the liability of the state (represented by the public sector company and the public sector authority, concerning health damage incurred by pollution emanating from the industrial projects affiliated with the public sector) is governed by the rules of the civil code, which relates to the liability of the guard keeping watch over mechanical equipment as stipulated in Article 178 of the civil code. This states that “whoever undertakes to watch over objects that require special care or over mechanical equipment shall be liable for whatever damage is caused by these objects unless it is proved that the damage was incurred by an alien reason that has nothing to do with him, without prejudice to other special rules that may be issued in this respect.” Evidently, the health damage resulting from industrial pollution usually comes from materials that emanate from mechanical equipment — mechanical equipment here means “machines equipped with an engine or motive force other than the hand of man.”²³ At the same time, such mechanical equipment is under the watch of the public sector company

20. Art. 2 of the before-mentioned statute; see for further details about the property of public sector projects, E. Kh. Haikal, *Control on Public Establishments*, Monshaat Almaaref, Alexandria, 1971, pp. 57-76.

21. S. Eltamawy, *Administrative Judiciary*, Book 2, Dar Elfekr Alaraby, Cairo, 1986, pp. 269-71. Legal opinion of the General Committee For Legal Opinion and Legislation — State Council (Conseil d'Etat), 14 February 1968, Collection of Legal Opinions of the General Committee, Year 22, p. 67.

22. For details about distribution of competence between Civil judiciary and Administrative Judiciary according to the present law of the State Council, see S. Eltamawy, pp. 110-114; S. Elsharkawy, *Administrative Accountability*, Dar Elmaaref, Cairo, 1973, pp. 80, 81.

23. S. Morcoss, *Civil Law*, Book 2, Cairo, 1989, p. 1058.

and the public sector authority owner of the equipment. "Watch" here means having virtual control of the object, directing it, and having it under control.²⁴ According to Egyptian law, this guardsman can be an incorporeal person of a public sector firm or authority, not necessarily a natural person.²⁵ To establish the liability of the public sector company or authority for any health damage resulting from industrial pollution under Article 178 of the Egyptian Civil Code, the person incurring the damage need only prove that the health damage did befall him and that said damage resulted from pollution emanating from the industrial projects. For liability to be established, it is not required to substantiate that the wrong was done by the one claimed to be liable because this kind of liability is established on the basis of a wrong presumably done by the guardsman of the mechanical equipment. This presumption does not allow for the proving of the opposite. Liability is not precluded by proving he did nothing wrong and that he was duly careful and cautious that no damage was incurred from the machines left under his guard.²⁶

The Possibility of Negating the Liability of the State as Being Owner of the Industrial Projects

If the public sector company or authority cannot disclaim liability in the subject at hand by disproving its culpability it can, nonetheless, do so under Article 178 of the Civil Code if there is proof that health damage was incurred by the claimant due to an independent alien reason. In connection with this, the Court of Cassation in Egypt ruled that the liability of the guard of the mechanical equipment is not removed "unless he proves that the damage was because of an alien reason with which he has nothing to do, and this reason shall not be but a force majeure or a wrong done by the damaged person or by a third party."²⁷ From another ruling of the Court of Cassation, it

24. *Ibid.*, pp. 1066, 1067; S. Eltamawy, p. 337; Elsharkawy, p. 198.

25. S. Morcoss, pp. 1068-1073.

26. Decision of Court of Cassation, appeal No. 1063, 2 December 1981. Collection of decisions of Court of Cassation, Part 2, year 32, pp. 2212, 2213; Eltamawy, pp. 337, 338.

27. *Ibid.*

turns out that the force majeure which can constitute an alien reason, and thus removes liability from the guardsman of the equipment, has to be "an unexpected and uncontrollable accident."²⁸

In light of the aforementioned, the public sector company or authority, sued for indemnity for health damage, can disclaim its liability if, for instance, it proves that it has taken all the necessary technical precautions to preclude the noxious pollution but that the pollution took place as a result of an earthquake of a degree that surpassed all scientific expectations which led to the destruction of the anti-pollution equipment, and that pollution actually took place incurring damage on the claimant. All this is deemed a force majeure that cannot be expected, nor can it be controlled.

However, the public sector company or authority cannot disclaim its liability on the basis of fiscal regulations or of financial allocations being inadequate to cover expenses required for fitting the necessary anti-pollution equipment. Such a reason cannot render the prevention of damage resulting from pollution impossible for the company or the authority. This is because it can completely stop the industrial activity causing that pollution, even if this stoppage damages the company and its staff. This damage does not constitute a material impossibility that precludes the prevention of the cause of damage incurred on others. Nor does it provide a justification for the damaged person to sustain the damage inflicted upon him without indemnifying him for that damage. So, if the company wished to continue in its business, despite the pollution that it causes which is injurious to health, it has to take it upon itself to pay indemnities to those who have incurred health damage in return for the advantages it obtains as a result of continuing in business despite its failure to undertake necessary action to preclude any extraordinary damage incurred by the continued activity.

The question arises about liability in a case where an authority in the state issues an order obliging the company implementing the

28. Decision of Court of Cassation, appeal No. 979, 27 March 1980, Collection of decisions of Court of Cassation, year 31, Part 1, p. 933; for details about the alien reason, see S. Morcoss, *ibid.*, pp. 477-505.

project causing the pollution to continue its activities, despite a decision by the company itself to stop business until anti-pollution measures are in place. In this case we consider that the liability of the company does not stand because the damage incurred comes as a result of a wrong done by a third party represented in the High Authority that issued the aforesaid order. But liability of that higher authority is established according to the same rules which establish the liability of the guard of mechanical equipment.

The public sector company or authority may contest its liability, depending on whether it received a license from the competent authority based on the fact that such a license procured from those quarters means that it fulfilled the requirements of the law, including those related to the avoidance of health-damaging pollution. However, the Egyptian judiciary decided that this argument is not acceptable within the context of liability of the guard of the mechanical equipment for the damage resulting therefrom: such liability cannot be disclaimed by proving that the guardsman was abiding by law and thus negating a wrongdoing on his part because it is established on a presumed wrong that he cannot prove to the contrary. Liability shall only be negated where the defendant proves that the damage resulted from an alien reason in which he is not involved.²⁹

It is important to note that the liability of the public sector company or authority for whatever health damage is sustained by a member of staff of the industrial project as a result of pollution emanating from that project, cannot be discharged by the fact that the worker had received indemnity for this damage in accordance with the social insurance law. The Court of Cassation in Egypt ruled that what the General Organization for Insurance and Pensions pays to the worker or his heir because of industrial accidents is paid against what the organization levies from insurance subscriptions. This, according

29. In this regard the Court of Cassation ruled that "It is determined that the issuance of a license by the competent quarter for the establishment and direction of any shop that is disquieting or harmful to health, such as a chemical factory does not negate the liability of the guard of things for the harms caused by operating it...because the issuance of the license cannot be considered an alien reason that negates the liability for the harms that befall the others." E. Aldenasory and A. Alshawarby, *Civil Liability in the Light of Doctrine and Judicature*, Cairo for Modern Press, 1988, pp. 380, 381.

to the Court ruling, does not prevent the worker from claiming his rights to other indemnities on the basis of holding the body that caused the damage liable for this damage.³⁰

It is also noted that a public sector company or authority cannot be relieved from liability for health damage as a result of pollution emanating from industrial projects affiliated with them in accordance with an advance agreement between that company or authority on the one hand and those on whom damage can thereby be incurred: workers in the project or the people residing in the neighborhood. The Egyptian legislator considered all the rules concerning liability for default relating to public order. He accordingly provided in Article 217(3) of the present Civil Code that "it is null and void any provision on relieving liability resulting from unlawful action."³¹

On the other hand, we consider that liability of any company or public sector authority does not exist if a person's health is affected because he lived in an area which the government had prohibited, in order to avoid health hazards which might result from the proximity of his residence to the said industrial project. Harm in this case would be the result of an alien reason. The person harmed would have caused harm to himself as a result of his own negligence.

Liability of the company or the public sector does not exist if a worker's health is harmed as a result of pollution inside the industrial project if it is established by the company or authority that the person in question had not worn required protective equipment or clothing that was supplied in sufficient numbers and in a proper manner for all workers.

B. The State Liability as an Authority Responsible for the Maintenance of Public Health

There is no doubt that man has a genuine right to life: the safety of his body and his health. Consequently, the maintenance of public

30. Decision of Court of Cassation, appeal No. 979, 27 March 1980; Collection of decisions, Year 31, Part 1, pp. 933, 934; S. Morcoss, pp. 55-57.

31. For details, see S. Morcoss, pp. 638-646, 1110; S. Eltamawy, pp. 363-365.

health for all affords a genuine obligation on the state, in that it forms part of its commitment toward maintaining public order, including the maintenance of public security, public health, and public tranquility.

It is established that pollution from industrial projects in Egypt has caused harms to public health. This necessitates that the state carry out its obligation to maintain public health by using all possible means to overcome harmful pollution. Otherwise, it would be accountable depending on whether pollution emanated from a project belonging to the public sector or to the private sector.

We can say that legislation and regulations enacted in order to avoid harmful pollution emanating from industrial projects are now evident in Egypt, to the extent that the state has not failed as a legislative body³² or as an organ with the power to issue police regulations.³³ The liability of the state in this respect may be based on the failure of the administration to take administrative control measures, such as individual administrative decisions or compulsory executive measures to protect public health against harmful industrial pollution in compliance with relevant legislation and regulations. This will be the subject of our study in this part.

32. Note that the general rule in Egypt is that the state is not liable for its legislative acts: see the decision of the Court of Administrative Judiciary of 3rd March 1957, collection of year 11, p. 239; S. Eltamawy, p. 41; B. Elkabani and M.A. Elbanna, *Judicial Control on Administration's Acts*, Elkahera Elhadceetha, Cairo, 1970, pp. 203, 204.

33. In the case of absence of the needed legislation for combating industrial pollution, I think that the law in Egypt gives the damaged person the right to compensation based on negligence on the part of the authority competent to issue administrative control regulations (Police regulations), if this authority did not issue the regulations needed for combating the harmful pollution in spite of the necessity of these regulations. See M.S. Gamal Idean, *Judicial Control on Regulative Acts of the Administration*, Ph.D. Thesis, University of Alexandria, 1981, pp. 328-332; M. Badran, *The Special Nature of Administrative Control*, Dar Elnahda Elarabia, Cairo, 1989, pp. 34, 99. But see the opinion of Prof. Eltamawy on the nonliability of the state for the damages caused by regulations, S. Eltamawy, p. 370. I think that the non-liability of the State is true in case of issuance of the regulations, but this nonliability is not true from the legal point of view in case of abstaining of the competent authority to issue the needed regulations.

I. The Administrative Authority Assigned the Task of Making Industrial Projects Abide by Rules for Combatting Pollution and the Powers Granted To It

The Local Administration Code No. 43 of 1979 and its executive Regulation issued by decision of the Prime Minister No. 707 of 1979,³⁴ gave local administrative agencies (each within its own competence) general prerogatives to supervise implementation of legislation and regulations connected with protecting public health against pollution resulting from industrial projects.³⁵ The law gives the same authority to other bodies to carry out codes issued in this respect, such as the Minister of Irrigation, and the river patrols of the Ministry of Interior to carry out Code No. 48 of 1982, to protect the Nile course and water canals from pollution.³⁶

The law gave those administrative bodies powers which enable them to force industrial projects to abide by laws and regulations issued for the protection of public health against industrial pollution. This is evident in the authority granted to these bodies to give licenses for the establishment of industrial projects, after ascertaining that conditions laid down by law have been complied with.³⁷ The law also gave the administrative authority the power to issue a decision to suspend an industrial project partially or totally. The decision should be carried out through administrative measures, if the operating of the project causes overwhelming damage.³⁸ This could apply to industrial projects which cause pollution constituting a major hazard to health.

On the one hand, the law has made it incumbent upon the relevant administrative authority to rescind the permit of the industrial project if its operation represents a major health hazard which cannot be dealt

34. *Official J.*, 25 July 1979, No. 29.

35. Art. 7, 13, 20 of the executive Regulation of the local administration state.

36. Art. 3, 4, 6, 11, 17, 19, 13.

37. See Art. 2, 4 of the ordinance of the President of the Republic, No. 991 in 1967, Concerning some rules related to industrial security and licenses of establishing industrial, commercial and public shops, *Official J.* 6.4.1967, No. 55; see also Art. 2-7 of the Statute No. 453 of 1954 concerning industrial and commercial shops.

38. Art. 12 of the Statute No. 453 of 1954.

with, or if the project has not carried out all conditions regarding its location.³⁹ In the case of particular kinds of pollution, the administrative bodies concerned have been given authority which enables them to enforce projects that do not cause harmful pollution. This is evident in what is stipulated in Law No. 48 of 1982, for the protection of the River Nile. The Minister of Irrigation is given authority to give licenses to industrial projects to dispose of their liquid waste in water canals, having made sure that they have been treated and ways compatible with the rules and standards laid down for protection against pollution. On the other hand, the same law gives the Minister of Irrigation the authority to withdraw the said license, and stop the disposal of waste in water canals by taking administrative measures, when harmful pollution took place as a result of the discharge of industrial waste.⁴⁰

II. The Basic Rules That Govern Administrative Liability in Egypt

No rules have been issued in Egypt to identify administrative liability for the protection of public health from industrial pollution, and no established views have been defined by the Egyptian judiciary in this respect. Hence we will briefly try to identify the fundamental rules derived from Egyptian law and judicial judgments regarding the administration's liability in general, as well as its liability as the power of administrative control concerning the maintenance of public order, in order to establish the administration's liability to this subject.

The main rules can be summarized as follows:

(1) Cases concerning the state's liability in relation to the performance of duties by the administration (as an administrative control power) regarding the maintenance of public health, as well as the maintenance of other components of public order, are considered

39. Art. 16 of the statute above mentioned.

40. For details *see* Art. 3 of the Statute No. 48 of 1982.

administrative disputes that come under the jurisdiction of the State Council, the administrative judicial authority in Egypt.⁴¹

(2) The Egyptian State Council applies to non-contractual administration accountability, basic rules of the Civil Code concerning non-contractual liability. In some cases, it is allowed to deviate from the Civil Code, in conformity with the responsibilities shouldered by the administration. In this connection Article 163 of the Civil Code applied by the State Council stipulates that "any (wrongdoing) incurring damage to another person abides its culprit to pay indemnities." Also, article 174 of the Civil Code stipulates that "the body to which the subordinate is affiliated is liable for any wrong committed by such a subordinate while performing illegal work if he were in a state of carrying out his task or were it because of such a task."⁴²

In order to establish the administration's liability for material or administrative acts performed by the administration itself or by one of its subordinates, the claim should prove that the damage incurred was the consequence of a wrong committed by either the administration or its subordinate, and the causal relationship between the wrongdoing and the consequent damage. The administration can disclaim its liability by negating the existence of a wrong on its own behalf or on the behalf of its subordinate.

(3) The administration is liable to pay indemnities to the claimant if he proves that such damage was incurred as a result of an administrative decision, provided that such a decision was illegal.⁴³ The administration's liability is not exclusively confined to the case of taking an illegal decision; the judicial authority has also imposed liability for abstaining from taking a decision in contravention of the

41. For the jurisdiction of the State Council (Conseil d'Etat) according to its present statute, see S. Eltamawy, pp. 110-114.

42. For details about application of this rule regarding errors committed by employees during the performance of their jobs or because of it, see S. Eltamawy, pp. 265-315; S. Elsharkawy, pp. 109-132.

43. Decision of the Supreme Administrative Court on 21 June 1981; see S. Eltamawy, p. 394, for details. See M.R. Elhelo, *Administrative Judiciary*, Dar Elmatboaat Elgami'ia, Alexandria, 1985, pp. 502-508.

law, so long as the abstention would be the reason for damage being incurred upon someone.⁴⁴

(4) The Supreme Administrative Court of the State Council does not impose administrative accountability for issuing a decision contravening the law (even in non-exceptional cases) if such a decision had been issued in response to an urgent need for general well-being. The Supreme Administrative Court established such a principle in a contest concerning a judgment ordering the evacuation of a building occupied by refugee girls because the rent had not been paid. In response, the Minister of Education issued a resolution to take over the building, as it was abandoned. As a consequence, a contest was raised stating that the resolution was issued in contradiction of a judgment and therefore the Supreme Administrative Court issued a judgment in this respect. It stipulated that: "If the said judgment was executed, it would result in the expulsion of the refugees from the building as soon as was required and, as a consequence, the girls would be homeless. Thus the action in relation to the public service of education toward a category of its beneficiaries would be impeded which would, in turn, and as a matter of fact, aggravate similar refugees and disturb public order. Hence, the resolution was meant to avoid such serious consequences.... In this way, the resolution positively responded to an urgent need necessitated by a public interest and eagerness to provide security and calm for the refugee girls."⁴⁵

(5) The administration, when taking administrative decisions and actions, is quite free in practicing its discretionary powers within the legal limits, but is still accountable for the damage resulting from its negligence or indifference in practising such powers.

44. See, for example, the decision of the Court of Administrative Judiciary that held the administration liable for a refusal to put into effect the nullification of a decision that was issued by the administrative authority (Collection of decision of the Court of Administrative Judiciary, year 6, p. 1238).

45. Decision of the Supreme Administrative Court, 23 December 1961, Collection of its decisions, year 7, p. 112. See also S. Eltamawy, p. 400.

This may happen as a result of resorting to such powers in order to implement goals contrary to the public interest.⁴⁶

(6) That the damage should be a direct consequence of a wrong act committed by the administration is not a precondition for its accountability. If another wrong act was the direct reason for the damage, the administration would be accountable only if its wrong act precipitated the other wrong act or made the opportunity available for its occurrence.

The attitude of the Egyptian judiciary in this respect can be illustrated by a judgment passed by the Court of Cassation. The Court assessed the administration's accountability for damage incurred by an owner of a yacht which was sunk in the Nile due to an inflow of masses into the yacht. The court found the administration accountable on the pretext that there was some sort of negligence in providing the necessary protection under such circumstances.⁴⁷

In such cases, the administration would be jointly liable with other liable persons, in paying the indemnity vis-a-vis the victim. Their liability is equal unless the judge defines a quota for each liable body.⁴⁸

III. Toward A Balanced Rule Governing the State Liability For the Damage Incurred to the Health by Industrial Pollution, As Being an Administrative Authority

In light of what has already been discussed regarding administrative liability, the state will be liable, as the administrative power responsible for the maintenance of public health, if it can be

46. Decision of the Court of Administrative Judiciary, 23 December 1956, Collection of its decisions, year 11, p. 105; see also Decision of the Court of Cassation, 15 March 1956, Collection of its decisions, year 7, p. 310; S. Eltamawy, p. 395. For details about the performance of the discretionary power in the field of administrative control, see M.A. Elbanna, *The Limits of the Administrative Control Power*, Cairo Univ. Press, 1980, pp. 62-73; H.Y. Okasha, *The Administrative Decision in the Judiciary of the State Council*, Manshaat Elmaaref, Alexandria, 1987, pp. 663-683.

47. Decision of the Court of Cassation, 20 May 1965, S. Eltamawy, pp. 325-327.

48. See Art. 169 of the Civil Law and, for details about its application, the decision of the Court of Cassation, 22 May 1980, collection of its decisions, year 31, Part 2, pp. 1474, 1475.

proved that the claimant's health suffered as a result of pollution emanating from an industrial project and that such pollution was caused by the failure of the administrative organ concerned with performing its due task of avoiding harmful pollution. For example, the administration would be accountable if it were proven that a person suffered health troubles or damage as a result of industrial pollution emanating from a project situated close to that person's residence. The claimant must prove that the administrative body licensed the establishment of the project in ways contravening the conditions regarding the siting of industrial establishments that are set out in Resolution No. 380 of 1975 by the Minister of Housing.

Moreover, the administration would be accountable if a worker of an industrial establishment suffered health damage which was proven to be the result of pollution emanating inside the industrial project, and it was established that the administrative body had licensed the construction of the project contravening the preconditions safeguarding the worker's health against pollution approved by the above-mentioned resolution of the Minister of Housing.

On the other hand, if a person caught a disease or if his health was damaged as a result of pollution emanating from an industrial project, and such pollution constituted a major threat to health in a way that could not be avoided, the administrative body concerned would be liable for compensating the victim even if it is proven that there was no abrogation of the license for the project, in contravention of Article 165 of Code No. 453 of 1954. Also, if someone's health was affected as a result of pollution emanating from a certain industrial project which constituted a health threat and the administrative body with the power to close down that project (either partly or totally) failed to close down the project, such a body would be liable for the health damage caused if negligence or abuse in practicing the power granted to it by law was proven.

An important matter that should be considered concerning administrative liability is that if strict measures were imposed such as closing down an industrial project or withdrawing the license of such a project and stopping its activities with a view to protecting public health, this would have a serious impact on production and would in consequence incur financial losses for the project and the national

economy. Moreover, it would have negative consequences for the workers who might, as a result, lose their jobs and hence their livelihoods. The fact that the national economy of Egypt is facing major difficulties, in addition to increasing unemployment rates, aggravates this situation in ways that might cause a major threat to the general security and stability of the state. In light of such an important consideration, the general rules establishing the aforesaid administrative liability in Egypt would guide us to a balanced situation concerning state liability — preserving the claimant's right to indemnification while observing the economic and political conditions under which the administration is performing its tasks. This situation is justified by administration accountability for health damage caused by industrial pollution, if the administration has permitted the existence of such pollution by not taking the correct legal action or by negligence, indifference or misuse of her powers authorized by law. However, the administration can disclaim liability if it can prove that the pollution was not a result of negligence, indifference or misuse of power on her part, and alternatively proves that an effort was made to preclude major damages to the general public interest, and that such damages would surpass (in their seriousness) those injuries to health emanating from the industrial project concerned. If so, the court has to establish whether the administration was liable or not by balancing the contradicting damages according to the real conditions of the case under review. The court also has to decide whether to relieve the administration of liability, based on national concerns of public interest.

It is worth mentioning that the damaged party will not be denied indemnification if state liability is disclaimed, for he can obtain his due indemnification from the guard of the industrial project whether it is a public sector company or authority, or any other person, according to the civil law rules governing the liability of the mechanical equipment guard.

Conclusion

There is no doubt that the contradiction between the state's commitment to encourage industry and its commitment toward the maintenance of public health in a developing country, such as Egypt, is one of the complexities faced by the underdeveloped state in its endeavours to realize development. This is a result of poor conditions, such as the lack of financial, technical and administrative potential.

However, it is also true that the state should not deny human rights in its pursuit of economic development, especially if such rights are related to man's health, safety and his very existence. Man is the ultimate end sought by the state in its development efforts, and foresight affirms that the protection of public health is a basic element in the process of economic development itself. Hence, we cannot deny man's right of protection against industrial pollution, as well as his right to indemnity and compensation for damage inflicted as a result of industrial pollution. This is according to the rules of liability consistent with the nature of the prevailing conditions in the developing countries in general, and in Egypt in particular.

We have tried through our research to take a humble part in making this connection, and we believe that lawyers should launch awareness campaigns to let people know of their rights and of aspects of state liability. This is important in order to push citizens to ask for their rights, and could be a motive driving the state to adopt a balancing attitude between its search for promoting industry and its commitment to maintain public health, instead of totally favouring the former at the expense of the latter. This is done in order to achieve quick material returns by relying upon a lack of awareness on the part of man.

References

- Abd Elhady, A., *Protecting Environment Against Industrial Pollution*. Dar Elnahda Elarabia, Cairo, 1985.
- Abd Elrasek, A., *Mechanism of Environmental Pollution, its Effect and Treatment*, First National Conference for Environmental Studies and Researches, Cairo, 1988.
- Aldenasory, E. & Ashhwarby, A., *Civil Liability in the Light of Doctrine and Judicature*, Cairo, for Modern Press, 1988.
- Amin, A.I., *Strategy for Reducing Industrial Pollution and its Plans*, Conference on Protecting Environment in Cairo, Cairo, 1986.
- Ashry, A.M., *Competence of Protecting Maritime Environment Against Pollution*, Ph.D. Thesis, Zagazig University, 1989.
- Badran, M., *The Special Nature of Administrative Control*, Dar Elnahda Elarabia, Cairo, 1989.
- Elbanna, M.A., *The Limits of the Administrative Control Power*, Cairo University Press, 1980.
- Elbedewy, F., *Program for Combating Pollution*, Institution of Environment Affairs, Cairo, 1990.
- Elgohary, F., *Problems of Water Pollution*, Conference on Protecting Environment in Cairo, Cairo, 1986.
- Elkamani, B. and Elbanna, A., *Judicial Control on Administration Acts*. Elkahera Elhadeatha, Cairo, 1970.
- Elnagar, M.S., *Environment Pollution and its Effects on National Security*. Nasser Military Academy, Cairo, 1989.
- Elsharkawy, S., *Administrative Accountability*, Dar Elmaaref, Cairo, 1973.

Eltamawy, S., *Administrative Judiciary*, Book 2, Dar Elfekr Alaraby, Cairo, 1986.

Fahmy, K.M., *The Relation Between Economic Development and Natural Environment*, Conference on Protecting the Environment in Cairo, Cairo, 1986.

Gamal Eldeen, M.S., *Judicial Control on Regulative Acts of the Administration*, Ph.D. Thesis, University of Alexandria, 1981.

Haikal, E. Kh., *Control on Public Establishment*, Manshaat Almaarf, Alexandria, 1971.

Hmmam, M.H. & Masoud, A.E., *Silicosis Among Workers in Superphosphate Industry*, First National Conference for Environmental Studies and Researches, Cairo, 1988.

Kandil, A.T., & Elkateb, A.H., *Air Pollution in the Helwan Community*, First National, Conference for Environmental Studies and Researches, Cairo, 1988.

Labib, T.M. & Elfarouky, A.A., *Soil, Water and Plant Pollution in Helwan District*, The First National Conference on Environmental Studies and Researches, Cairo, 1988.

Labib, T.M. & Nagib, B.H., *Soil and Environmental Pollution Around Some Industrial Complexes in Egypt*, The First National Conference on Environmental Studies and Researches, Cairo 1988.

Morcoss, S., *Civil Law*, Book 2, Cairo, 1989.

Nassr Allah, M.M., *Some Specifications of the Air in Cairo*.
Conference on Protecting Environment in Cairo, Cairo, 1986.

Yehia, S., *Control on Public Sector*, the Modern Egyptian Office, Cairo, 1969.

Yosseph, Y.S.H., *Observation of River Nile Pollution*, Conference on Protecting Environment in Cairo, Cairo, 1986.