

Litigation on two degrees in the criminal subjects under the algerian legislation

التقاضي على درجتين في مواد الجنايات في التشريع الجزائري

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Abstract:

The Algerian legislator decided to establish remedy with opposition and appeal the judgment of the criminal court following the establishment of an appellate criminal court, after amending the Criminal Procedures Law, according to Law 17-07 of March 27, 2017, in order to enshrine the principle of litigation in two degrees, after the constitutional legislator declared that it is necessary to ensure litigation on Two degrees for the accused in the criminal subjects.

key words:

Opposition- appeal- criminal court- litigation in two-degrees.

المخلص :

أقر المشرع الجزائري الطعن بالمعارضة والاستئناف في أحكام محكمة الجنايات على إثر إنشائه لمحكمة جنايات استئنافية ، بعد تعديل قانون الإجراءات الجزائية، بموجب القانون 07-17 المؤرخ في 27 مارس 2017، تكريسا لمبدأ التقاضي على درجتين، بعد إعلان المشرع الدستوري عن وجوب ضمان التقاضي على درجتين للمتهم في المواد الجزائية.

الكلمات المفتاحية :

المعارضة - الاستئناف - محكمة الجنايات - التقاضي على درجتين - المساواة.

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Introduction:

The theory of remedy in criminal judgment means the possibility of reviewing the judicial verdict through the procedures provided by law for opponents to face a court judgment aimed at cancelling or amending it, and this possibility finds its support in the fact that the criminal judge's judgment is like every human action that is subject to error.

The theory of remedy in judgments reflects the building of the judicial organization on the principle of litigation in two degrees, which is one of the most important guarantees of a fair judgment and which requires that the subject of the case be presented to a higher degree body to review the preliminary judgment, which may be subject to legal or legal errors.

This is the principle that the Algerian legislator enshrined in the 2016 constitutional amendment¹, and he sought to apply it to all crimes, including felonies, by amending the Criminal Procedures Law under Law 17-07 of March 27, 2017², which established an appellate criminal court and approved the opposition's remedy and appeal in the criminal court judgments, which prompted us to address this issue, which raises the following problem:

How effective is the approval of the opposition's remedy and the appeal of the criminal court judgments, in dedicating the principle of litigation to two degrees?

To answer this problem, we addressed:

The first section: Opposition to the criminal court judgments.

The second section: Appeal to the criminal court judgments.

Section I

Opposition to the criminal court judgements

Opposition remedy is one of the ordinary methods of remedy, which aims to prevent the judgement from possessing the authenticity of the matter ruled in the event of a judgment in absentia, and to study the opposition's appeal in the rulings issued in absentia by the criminal court, the scope and procedures of the opposition, as well as its effects, must be addressed.

A) The scope and procedures of the opposition:

After the removal of the physical arrest, the absence of the accused from the felony session became possible, and thus the so-called non-attendance procedures were canceled to be replaced by opposition procedure, so in this requirement we have to deal with canceling physical arrest, and the meaning of the system of procedures for default, then the scope of the opposition, which

requires that absent judgments be taken before the criminal court, who may appeal the opposition, at any time, as well as the methods of notification, and then opposition procedures.

1- Canceling physical arrest, and the meaning of the system of procedures for default:

Before the recent amendment to the Criminal Procedures Law, it was not conceivable to oppose the provisions of the felonies, since the criminal accused is not being tried freely, except that after the removal of the physical arrest, the absence of the accused from the felony session became possible, and thus the so-called non-attendance procedures were canceled to be replaced by the opposition procedure. That why we must first address what is stated in the matter of canceling physical arrest, and the meaning of the system of procedures for default.

First: Canceling the order of physical arrest

It is not possible to understand what is stated in the annulment of physical arrest without addressing the meaning of the latter and distinguishing it from similar other orders.

-The significance of the matter of physical arrest:

Prior to the amendment to the Criminal Procedures Law, the Indictment Chamber had issued an order to the public force according to the referral decision stating that the accused was taken and placed in custody before trial for at least 24 hours, even if he was at liberty in accordance with Article 137 of Criminal Procedure Algerian Code. This is what we call the order of physical arrest. After the amendment, the same article came to stipulate that if the person pursuing a felony was released or not imprisoned during the course of the investigation, a physical arrest order will not be issued against him, but this is only if a set of conditions are met, so the accused must comply with the summons to appear on the day specified for his interrogation before the trial On the part of the President of the Court, in the event of his non-compliance, he must have a legitimate excuse, but if his non-compliance is not based on a legitimate excuse, the President of the Criminal Court may issue an order of exacting or summoning against him, and in the event that this is not feasible, he may, as a last resort, issue an arrest warrant against him.³

The commands are the same, what causes many to confuse them is what necessitates distinguishing them from one another.

-Distinguish the order of physical arrest from orders similar to it:

It may come to mind at first that both the order of physical arrest, the order to summon and the warrant of arrest have the same meaning, except that they are orders that may agree on points but differ on other points.

The summons order is known under Article 110 Algerian Code of Criminal Procedures as that order issued by the investigating judge to the public force to take the accused person before him and appear immediately before him, as for the order of physical arrest, according to the referral decision to take the accused to a penal institution before trial.⁴

We note that after the amendment of the aforementioned Article 137, the habeas corpus was included within the jurisdiction of the president of the court without the latter being within the definition provided by Article 110, but by referring to Article 276 of the same law, we find it stipulating that the president of the Criminal Court may if he thinks that the investigation is not adequate Or explore new elements after the referral decision is issued to order any investigation action.⁵

The order of physical arrest was stipulated in Article 137 of the Algerian Code of Criminal Procedures before the amendment. As for the arrest warrant stipulated in Article 119 of the same law, the first was issued according to the referral decision, and the second was issued by the investigating judge in the event that the accused was a fugitive or residing outside the territory of the Republic After taking the opinion of the public prosecutor, and in other than these cases, only a summons is issued. As for the warrant of arrest issued by the ruling authority, it is considered part of the judgment, and it is only in the absence of the accused, because in the event of his presence, he issues a placement order⁶.

Second: Substitution for non-attendance procedures with opposition procedures

After the physical arrest was canceled, the default procedures with him were canceled and they were substituted with the opposition procedure. However, these two measures agree in many points, which requires us to address the meaning of the procedures for failure to attend in order to understand the amendment in this regard more.

Sometimes circumstances arise that lead to the absence of the accused who is referred to the criminal court from the session, which requires the president of the criminal court to take a set of measures, and the first procedure is to issue a default or absence order on the condition that the accused is not imprisoned and it is not possible to arrest him after the referral decision is issued and has not He

submits 10 days after his notification, or he is in a state of flight, then a copy of this order is attached to the door of the defendant's house, another on the door of the Municipal People's Council headquarters belonging to him, and a third at the door of the Criminal Court, and if it happened and that the accused presented himself before the lapse of 10 days from The suspension is made or he is arrested, then he is tried in a normal trial in the presence of the jury, but in the event that the specified period elapses without this occurring, his trial shall be initiated in absentia without the participation of the jury after reading the referral decision and the report of the notification of the summons to appear and reading the orders related to the absence of attendance, after which the trial procedures shall be initiated. And if the court is convinced that the crime has occurred, then it shall pass a conviction without informing the accused of the mitigating circumstances, and among the effects of this ruling is placing the money of the convicted person in absentia under guard, in addition to suspending the conviction judgment in the same places mentioned previously related to E-matter to default. According to the provisions of Article 326 the Algerian Code of Criminal Procedures, in the event that the accused surrenders himself or in the event that he was arrested after the judgment in absentia and before the expiration of the penalty by prescription, the previous procedures are not enforceable by the force of law and the usual measures shall be taken regarding it.⁷

2- The scope of the opposition:

The opposition is in absentia judgments, and the absentee judgment is defined in general as "the verdict issued in the case without the accused attending all pleading sessions, and even if he attended the judgment pronouncement session, as long as the pleading did not take place in the session in his presence."⁸

And the French jurist Jean-Claude Ciar defined it as: "The situation in which the accused does not attend the session himself or through his representative and did not express his defense due to the fact that he was not aware of the date of the session or because there is an acceptable excuse, such as illness."⁹

As for the absentee judgment before the criminal court, it is "the judgment issued by the criminal court without the participation of the jurors, when the accused of a crime is absent from attending the session, despite being notified by law on the date of its convening."¹⁰

Only the accused may appeal the opposition without enabling the other parties to this right in accordance with Article 321 of the Algerian Criminal Procedure Law, within a period of ten (10) days starting from the date of

notification in the home or the municipality headquarters or comment on the notice board at the Public Prosecution and it is also permissible during the same period, starting from the date of personal notification, for the period of the lapse of the penalty by prescription.¹¹

Article 321 of the Algerian Criminal Procedure Code did not provide for extending the deadlines for the accused residing outside the country, and also stipulated that personal notification is permissible for the entire period of the lapse of the penalty by statute of limitations, knowing that the statute of limitations begins with the calculation from the date the judgment becomes final and it opens the way for perpetuation Penal provisions which contradict legal principles.¹²

The question also arises about the extent of implementation of the notification methods stipulated in the Algerian Civil and Administrative Procedures Law, especially as Law 17-07 stipulated the use of civil notification methods when reporting the date of the hearing in the opposition, and about the methods of reporting the absentee ruling to the detainee that he did not address The Algerian legislator, where it is limited to singling it out if mentioning the date of the session.¹³

3- Opposition measures:

The remedy is recorded by the accused personally, and this is in the case of an arrest warrant issued against him. If there is no arrest warrant, the opposition may be registered by the defendant's lawyer or an attorney.¹⁴ Article 317 of the Algerian Code of Criminal Procedure provides, after its amendment, that the arrest warrants issued by the investigating judge or from the president of the court during the preparatory procedures remains in effect until the dissolution of the opposition. If it occurred and in the absence of it, the court issues an arrest warrant against the accused, meaning that in all cases the arrest warrant is present and he is obliged to talk about opposing an absence judgment where there is no warrant of arrest. Except for the absence of a judgment in absentia before the test The appellate period, and the accused was a misdemeanor, as long as Article 318, paragraph 2, made the issuance of the arrest warrant in this case permissible.¹⁵

The hearing shall be notified in accordance with the procedures specified in the Algerian Civil and Administrative Procedures Law. As for the accused, who is imprisoned for any reason, he shall be notified by the Secretariat of Control of the Punitive Institution.¹⁶

Article 322 of the Algerian Penal Procedures Code, after the amendment, raises the question about the permissibility of submitting the notification through

the judicial seizure as applied in misdemeanors and violations, and about the obligation to inform the other parties, as long as the legislator only referred to the accused.¹⁷

By referring to the text of Article 322 bis of the Code of Criminal Procedure, we find that it is not permissible to remedy the judgments in absentia except by opposition and it is not permissible to remedy only after taking the path of the opposition, except that Article 321 states that: "It is not permissible to challenge the absence judgment in any way of appealing except on the part of the government on him personally ... "It is the text that raises doubts about the possibility and extent of the right of the accused convicted in absentia to waive his right to the opposition and initiate an appeal.¹⁸

Contrary to the French legislator, who resolved the dispute on this issue explicitly, the reason for the inadmissibility of appeal against the appeal by the accused convict in his absence in accordance with Article 379-5 of the French Criminal Procedure Code.¹⁹

B) The effects of the opposition:

The appeal against the opposition has two effects, namely, stopping the implementation of the absence judgment and re-submitting the case to the same judicial authority that issued the absent judgment, which is what we deal with in succession.

1- Stopping the implementation of the judgment in absentia:

The opposition shall stop the implementation of the judgment in absentia as a general principle, and it will not be enforceable before informing the concerned person and during the opposition's term and during its consideration, except for the arrest warrant issued by the investigating judge or by the president of the court, during the preparatory procedures or by the criminal appellate court when issuing the judgment in absentia.²⁰

And if the accused submitted an opposition in the implementation of the judgment in absentia, then the latter becomes null and void in everything that he decreed against the accused, and the case is reviewed again²¹, while what was spent in the absence judgment in favor of the appellant accused, such as innocence or rejection of civil requests, the opposition does not extend him , As the accused has no interest in opposing a judiciary in his favor, which explains the public prosecutor's right to appeal the acquittal.²²

2- Re-submitting the case to the same judicial authority that issued the judgment in absentia:

According to Article 413 of the Algerian Criminal Procedure Code, the party that issued the judgment in absentia is ruling in the opposition, as a distinction must be made between the absent judgment issued by the First Instance Court and the absent judgment issued by the Appeal Criminal Court, and if the absent judgment was issued by the First Instance Court, the trial is repeated before The latter, but if the absence judgment was issued by the appellate court, it will be returned before it, with a complete set of any judges and jurors, except in the case of the opposition in the absence of a judgment issued by the appeals court against a defendant who followed a misdemeanor, according to Article 318 of the Code of Criminal Procedure, His opposition to the composition of the judges shall be decided only according to the procedures applied in the misdemeanor article, without referring to the appealed judgment.²³

According to Article 409 of the Code of Criminal Procedure, opposition to the opposition may include public and civil lawsuits, and may be limited to either of them.²⁴

Section II

Appeal to the criminal court judgments

Appeal is the second of the ordinary methods of appealing the judgments issued by the Criminal Court, in application of the principle of litigation in two degrees, and the Algerian legislator has allocated a number of articles that exceed those dealing with appeals against the opposition, where he added according to the aforementioned Law 17-07 mentioned Chapter 8 bis under The title of "Appealing the Judgments issued by the First Instance Criminal Court" and Chapter VIII bis 1 under the title "Procedures before the Appeal Criminal Court" and therefore we address in this topic the appeals judgments in criminal matters, then the role of the Appeal Criminal Court in devoting the litigation system in two degrees.

A) The judgments of appeal in crimes:

The Algerian legislator stipulated the appeal of the rulings issued by the First Instance Court in the articles from 322 bis to 322 bis 5 of the Code of Criminal Procedure and stipulated the procedures followed before the Criminal Court of Appeal in articles from 322 bis 6 to 322 bis 9 of the same law, and we have to address in This requirement the scope and procedure of the appeal, and then the effects of the latter.

1- The scope and procedures of the appeal:

In this section, we refer to each of the provisions that may be appealed, the persons who have the right to appeal and the time of the appeal and its procedures.

First: Appealed judgment:

Article 322 bis of the Code of Criminal Procedure stipulates: “Judgments rendered in the presence of the Court of First Instance, which adjudicates the matter, are subject to appeal to the Criminal Court of Appeal.”

It is required through this text in the appeal judgment before the appellate criminal court that it has been issued in the presence of the first instance criminal court and that it is decisive in the matter.²⁵

-Presumptive Judgments: The legislator explicitly stated that the appeal in the articles of crimes is only referred to the presumptive judgments, meaning that absent judgments are not directly appealed, but the opposition must be appealed against first and when a verdict is issued, the remedy is appealed.²⁶

And the question arises about not referring to the judgments issued in a legal presence, which is the case in which the free accused attends the opening of the session and then leaves the courtroom of his own free will in accordance with Article 319 of the Code of Criminal Procedure.²⁷

– definitive Judgments in the subject: The legislator expressly excluded non-adjudicating judgments in the subject, such as the preparatory and preliminary judgments, and those separating them in a formal payment, and did not differentiate between the separation judgment in a crime or a misdemeanor, as the accused convicted of a crime before the court of first instance may also be convicted of a misdemeanor The judgment resumes. It also did not differentiate between the ruling in the public case and the ruling in the civil case, as they both accept the appeal against the appeal before the court of appeal, and the difference is only in the verdict of the judgement.²⁸

Whereas, when the Court of Appeal adjudicates the criminal part, it re-adjudicates the case without referring to the preliminary judgement, neither by endorsement, by amendment, or by annulment²⁹, whereas when it is adjudicated in the civil case, it requires support, amendment, or cancellation, and if the appeal is limited to the civil case Only the Judicial Chamber criminal chamber shall adjudicate which can uphold, amend or cancel the appealed judgment without offending the appellant alone.³⁰

Second: Persons entitled to appeal

The right to appeal the judgment issued by the First Instance Court of First Instance is entitled by the same parties that are entitled to appeal the rulings issued in the articles of misdemeanors and offenses, who are the accused, the Public Prosecution, the civil party, responsible for civil rights, public administrations in the cases in which the public case is initiated.³¹

And Article 322 bis 5 of the Criminal Procedure Law allowed the accused if he appealed alone without the Public Prosecution to waive his appeal in relation to the public case, provided that such waiver be before the beginning of the court formation, and the defendant and the civil party may waive the resumption of the civil suit by extension in any One of the stages of the proceedings, and the assignment is confirmed by order of the President of the Appeal Criminal Court.³²

Third: The deadline for appeal

The appeal of the judgements of the First Instance Court of First Instance shall be filed within a period of 10 full days calculated from the day following the pronouncement of the judgment in accordance with Article 322 bis, Paragraph 2 of Code of Criminal Procedure, in other words, it shall not be counted on the day on which the judgment of the First Instance Court was issued, and if it happened that it happened on the last day In term, a weekend or public holiday, the term extends to the first business day after the holiday.³³

Law 17-07 did not address the sub-appeal in the judgment of the first instance criminal court as in the case of misdemeanors and violations, so that the appeal period is extended for another 5 days in the event that one of the litigants resumes within the prescribed time.³⁴

The deadlines are extended in the event that the accused is absent from the pronouncement of the judgment, so that it is calculated from the date of notification, because the judgment was inconsistent, and if the matter relates to an absence judgment, an appeal cannot be registered until after the opposition deadlines expire.³⁵

Fourth: Appeal procedures

The appeal shall be decided in accordance with the text of Article 322 bis 2 of the Criminal procedure code, according to a written or oral statement before the first instance of the Criminal Court of First Instance, which issued the contested judgment if the accused is free to sign the appeals report by the arrest clerk, the appellant himself or his attorney or a special authorized representative It is signed by the signature, and in the last case, the authorization is attached to

the document written by the writer, and if the appellant cannot sign, the writer mentioned that.³⁶

And if the accused is imprisoned, the appeal shall be registered before the clerk of the penal institution in custody, and he shall be registered in a special record and a receipt from him shall be delivered to him, and in this case the director of the penal institution shall send a copy of the report within 24 hours to the clerk of the judicial authority that issued the contested judgment under Significant administrative penalties.³⁷

2- The Effects of the appeal:

In this section, we deal with the effects of the appeal against the judgment of the First Instance Court of First Instance, which is the suspended effect and the transferred effect.

First: The impact position

Appealing the verdict of judgement in the public case, as well as in the civil case, leads to a stay of execution during the deadlines for appeal and judgement the appeal dispute, except for the release of the imprisoned accused in the event of a verdict of acquittal or a suspended sentence for freedom suspended or the penalty of work for public benefit unless he was imprisoned for another reason. And the fact that the accused convicted person, who was sentenced to a penalty of deprivation of liberty for a misdemeanor in custody, remains in custody until the final decision on the appeal, unless he has exhausted the sentence imposed on him. And execute the punishment that deprives the liberty of judgment in the event of a crime or misdemeanor with the order to deposit.³⁸

Second: The carrier effect

The effect of the appeal means the presentation of the dispute again before a higher party than the issuing party³⁹, and the effect of the appeal of criminal judgements differs from the appeal in misdemeanors and violations in the lack of limiting the appeal to parts of the ruling, so that the appellate courts in the case must be examined in full.⁴⁰

And it is required, according to the general rules in force in this regard, and in accordance with Articles 322 bis 7 and 322 bis 9, paragraphs 1 and 2 of Criminal procedure code, the following:

- Inability to submit new applications on appeal: Nevertheless, the civil party may request the increase of civil compensation in relation to the damage suffered since the issuance of the judgment of the First Instance Court, and from it the victim who was not established as a civil party before the Court of First Instance may not request this before the court Appellate.⁴¹

- the inadmissibility of harming the appellant: the effect conveying the appeal is determined by the inadmissibility of harming the appellant if the appeal is filed by one party and is what is stipulated in Article 322 bis 9 paragraph 1 of t, and the Criminal procedure code is is whether the appellant is the accused or the civil or responsible party Civil, noting that the legislator has limited the text of the above-mentioned article to mentioning the accused and the civil official and did not mention the civil party.⁴²

B) The role of the appellate criminal court in establishing the two-level litigation system:

The Algerian legislator accused the follower for a crime with a set of guarantees, and he approved the principles of a fair trial in the first article of the Criminal Procedure Law, and within the framework of the necessity for Algeria to fulfill its international obligations, the appellate criminal court was established, and in this requirement we address the necessity of establishing a criminal court Appeals and then their inconsistency with the principles of fair trial.

1- The necessity of establishing an appellate criminal court:

A part of the jurisprudence⁴³ believes that both the Algerian constitution and the Algerian Criminal Procedure Law have surrounded the prosecution of a felon with a set of guarantees that may obviate asylum in an appellate criminal court, including:

First: The investigation and the imposition of crimes in two degrees:

Where the legislator assigned the task of investigation before the court to the investigating judge and before the judicial council to the indictment chamber, the orders issued by the investigating judge regarding the file before him are subject to the control of the indictment chamber, either automatically or upon the request or appeal of one of the parties to the litigation.⁴⁴

Crimes are subject to compulsory investigation. It is not permissible at all to the Public Prosecution to refer a case in relation to a crime that has the description of the crime directly to the court, nor can it be the subject of a mandate to appear by the victim in accordance with the provisions of Article 337 bis. Examining the file, and when convinced that the burdens are sufficient against the accused, an order is issued to send the documents to the Public Prosecution, in order to seek to schedule it in front of the accusation chamber, and to look again at the crime by the accusation chamber is in the field of obligatory and not an option, because it is a serious crime, let alone that this The Chamber is the only referring authority in criminal case⁴⁵.

So the Algerian legislator adopted the principle of the duty of an investigation before the investigating judge, then the indictment chamber for criminal matters, which avoids resorting to an appellate criminal court.

Second: The presence of guarantees before the criminal court

Among the guarantees that exist before the criminal court and from which the accused benefits, what is related to the composition of the court that includes professional judges and popular judges, the trial before the criminal court has great privacy and its procedures are complicated that makes it distinguished from the same in relation to misdemeanors or violations, whether before the court or the judicial council, The guarantees are stronger, so there is no need for another appellate criminal court, as long as the mistake in it is almost non-existent, and in the worst cases it rarely happens.⁴⁶

Third: Mandatory presence of lawyer in crime cases

The presence of a lawyer at the hearing to assist the accused is obligatory and, when necessary, the president appoints on his own counsel a lawyer for the accused in accordance with Article 292 of The Criminal Procedure Code representation by counsel is a fundamental issue related to public order that may be paid at any stage, but it may be raised by the Supreme Court itself, so it is overlooked In all cases, it violates the right to defense, which makes the criminal court judgement null and void.⁴⁷

This guarantee is only available in criminal cases, and through which the Algerian legislator is keen on the presence of the lawyer in all the investigations of the trial, and ensuring sufficient time for monitoring and expressions of defenses, it avoids resorting to an appellate criminal court.⁴⁸

2- The Appeal Criminal Court and the principles of a fair trial:

In this section, we deal with the extent to which the establishment of an appellate criminal court conflicts with some principles of fair trial, chief among them the principle of two-level litigation, the right to expedite procedures, and the principle of equality between litigants before the law.

First: The principle of litigation in two degrees

Two-degree litigation means that every person who has a judgment has the right to have his case examined by a higher judicial authority, which necessitates examining the case in terms of facts and the law before two different courts in the degree provided that the second court has a higher degree and has more experienced judges and More efficient and more number than what is in front of the first degree.⁴⁹

However, Articles 248 and 252 of the Code of Criminal Procedure determine the seat of both the Court of First Instance and the Appeal at the headquarters of the Judicial Council, meaning that they are of the same degree and almost the same composition, which is represented by 3 professional judges and 4 popular judges in accordance with Article 258 BC. C, except for a slight difference in the rank of the chief of the court of appeals for the criminal appellate court, which must be at the rank of chief of the chamber at least, while the assistants are at the same level, and this makes the right of appeal not a right to appeal in the strict legal sense, but rather just a second chance To sue in front of another party and not in front of a higher party.⁵⁰

What confirms this is that the role given to the appellate criminal court in examining the case again is not supervisory, but is limited to re-ruling the case without referring to what was decided by the appellate ruling in the public case, neither by endorsement, nor by amendment, nor by cancellation. The jurisdiction of this court is when An appeal does not differ from its competence in the opposition, only that the first case is in presumptive rulings, while the second case is in absentia judgments.⁵¹

Second: The right to expedite procedures

The right to expedite procedures requires the prosecution of the accused in deadlines that must be very reasonable and expeditious, far from keeping the accused in custody or under trial for a long and unjustified period in application of the presumption of innocence.⁵²

A speedy trial does not mean a speedy trial, because the latter brings a violation to guarantee the rights of the defense, and this is what made international agreements explain the speedy trial by trial within a reasonable period, and reasonableness states that excluding haste from taking actions, and at the same time not permitting the trial to be prolonged Exaggerated.⁵³ Article 1, Paragraph 4 of the Algerian Criminal Procedure Code states: "The follow-up and the procedures that follow will be conducted within reasonable periods and without undue delay, and priority will be given to the case in which the accused is arrested."

However, determining the right to appeal the rulings of the criminal court would lead to prolonging the litigation to more than necessary, especially that the crimes in the Algerian legislation have special and complicated and long procedures, including the duty of the investigation and the length of time it takes, then it must pass through the indictment chamber. Then the referral order issued, which can be appealed against the cassation, is issued, which makes the period

longer to be decided, then the referral to the First Instance Court and then the appeal to the Criminal Court of Appeal and the delay in issuing judicial rulings.⁵⁴

Third: The principle of equality between litigants

The Algerian constitution⁵⁵ recognized the need to respect the principle of equality before the law among all litigants, as Article 158 of it stipulates that: "The basis of the judiciary is the principles of legality and equality.

Everyone is equal before the judiciary, and it is accessible to all and is embodied by respect for the law. "

However, the Algerian legislator opposed this principle when restricting criminal offenses related to terrorism, drugs and smuggling to professional judges only, that is, he abandoned popular judges in these crimes, according to Article 258 paragraph 3 of the Algerian Criminal Procedure Code, which is not compatible with The principle of equality.⁵⁶

Conclusion:

Among the most important results reached through this research are that:

- The Algerian legislator has taken an important step in organizing the criminal court, especially with regard to challenging the opposition and appealing its rulings, as he tried to materialize the principle of litigation in two levels by establishing the appellate criminal court, but the latter was not able to extend its control over the rulings of the first criminal court, Although he obliged the latter to cause its rulings, he would have thus deviated from the two-level principle of litigation, which requires a party to consider the highest court judgement.

- Establishing an appellate criminal court in the current form in Algeria and the way it was drafted is considered an international commitment rather than a national need, in view of the agreements to which Algeria has acceded, including the International Covenant on Civil and Political Rights.

And from that we decided to include in this research a set of suggestions, which are:

- Clarify the methods of communicating the absence judgment to the detainee, and explicitly stipulate that the appeal cannot be appealed by the accused convict in his absence, in order to avoid the ambiguity that Article 321 of the Code of Criminal Procedure raises.

- Providing explicitly for the appeal of judgments issued in a legal presence in accordance with Article 319 of the Algerian Criminal Procedure Code.

- Addressing the sub-appeal in the judgment of the first instance criminal court, as in the case of misdemeanors and violations, so that the period of appeal

is extended for another 5 days in the event that one of the litigants resumes within the prescribed time.

- Amend Article 322 bis 9, paragraph 1 of the Algerian Criminal Procedure Code, by adding the phrase "or the civil party alone".

- Simplifying the trial procedures in the felonies and making the referral decision issued by the indictment chamber regarding them not subject to appeal by cassation, while expediting the settlement thereof.

- Enabling the appellate criminal court to extend its control over the rulings of the first instance criminal court, whether by amendment, cancellation or support in public and civil cases.

- The deletion of Article 258, paragraph 3, of the Algerian Criminal Procedure Code, out of respect for the principle of equality between litigants before the law.

Bibliography:

¹ - Article 160, paragraph 2 of the Constitution of Algeria for the year 1996, issued by Presidential Decree No. 96-438, dated 07 December 1996, relating to the publication of the text of the amendment of the constitution approved in the referendum of November 28, 1996, the Official Gazette of the Algerian Republic, No. 76, dated December 08, 1996, amended and Completed by Law No. 16-01 of March 06, 2016 the Official Gazette of the Algerian Republic, No. 14, dated March 7, 2016.

² - Law No. 17-07 of March 27, 2017, amending and completing Order No. 66-155 of June 08, 1966, which includes the Law of Criminal Procedure, Official Gazette of the Algerian Republic, No. 20, dated March 29, 2017.

³ - See Article 137 of the Algerian Criminal Procedure Code.

⁴ - See Article 110 of the same law.

⁵ - See Article 276 of the Algerian Code of Criminal Procedures.

⁶ - See Article 119 of the same law.

⁷ - Saad Abdelaaziz, *Principles of procedures in front of criminal court*, Dar houma, without printing, Algeria, 2010, p185.

⁸ - Ahmed Fathi Sorour, *mediator in the Code of Criminal Procedure*, Dar Alnahdha, without printing, Cairo, p 1820.

⁹ - Quoted from Raouf Obeid, *Principles of Criminal Procedure in Egyptian Law*, Dar Al-Fikr Al-Arabi, 16th edition, Egypt, 1985, p 868.

¹⁰ - Belzam Mabrouk, *"Appealing the Opposition and Appealing the Criminal Court's Judgments," Lawyer Magazine*, published by the Bar Association of Setif, No. 29, December 2017, p 58.

¹¹ - According to Article 322, Paragraph 2 of the Algerian Criminal Procedure Code.

¹² - Belzam Mabrouk, previous reference, p 59.

¹³ - Same reference, p 59.

¹⁴ - According to Article 321 of the Algerian Criminal Procedure Code.

¹⁵ - Belzam Mabrouk, previous reference,p60.

¹⁶ - According to Article 322 of the Algerian Code of Criminal Procedure, which referred to Article 439.

¹⁷ - Belzam Mabrouk, previous reference,p60.

¹⁸ - It is established in the articles of misdemeanor that the accused convicted in absentia may appeal the absentee judgment against him, and this is considered a waiver of him from his right to the opposition.

¹⁹ - Article 379-5 of the c.p.p.f provides: "The appeal is not open to the person sentenced by default" available on: <https://www.legifrance.gouv.fr>.

²⁰ - Article 317 of the Algerian Criminal Procedure Code states that "... the arrest warrant issued by the investigating judge or by the president of the court, during the preparatory procedures, remains in effect for a while in the opposition if it occurs, and in the absence of it, the court issues an arrest warrant against Accused..."

²¹ - According to Article 409 of the Algerian Criminal Procedure Code.

²² - Noujimi Gamal, **Judges' Guide to Ruling on Misdemeanors and Violations in Algerian Legislation guided by the International Principles for a Fair Trial**, Part Two, Dar Homma, Algeria.

²³ - Belzam Mabrouk, previous reference,p62.

²⁴ - Article 409 of the Code of Criminal Procedure states: "... and this opposition may be limited to the civil rights provided for in the ruling."

²⁵ - Donia Zaid Thabet, **"Litigation in two degrees before the Criminal Court in Algerian Legislation: An analytical study in the light of Law 17-07 of March 27, 2017 amending the Law of Criminal Procedures"**, *Journal of Social and Human Sciences*, published by Tebessa University, No. 15,p 58.

²⁶ - Belzam Mabrouk, previous reference,p64.

²⁷ - Article 319 of QS states: "If the free, accused accused of a felony or misdemeanor appears at the opening of the session and then leaves the courtroom of his own free will, then the judgment will be present in his confrontation."

²⁸ - Belzam Mabrouk, previous reference,p65.

²⁹ - See Article 322 bis 7 of the Algerian Criminal Procedure Code.

³⁰ - See Article 316/6 of the Algerian Criminal Procedure Code.

³¹ - See Article 322 bis 1 of the same law.

³² - See Article 322 bis 5 of the same law.

³³ - Khalafi Abd al-Rahman, **"What is the role of the appellate criminal court under Law 17-07?"** *Lawyer Magazine*, published by the Bar Association of Sétif, No. 29, December 2017,p 74.

³⁴ - See Article 418, Paragraph 3 of the Algerian Criminal Procedure Code.

³⁵ - Khalafi Abd al-Rahman, **"What is the role of the appellate criminal court under Law 17-07?"** , previous reference, p 74.

³⁶ - See Article 421 of the Algerian Criminal Procedure Code.

³⁷ - See Article 422 of the same law.

³⁸ - See Article 309 of the Algerian Criminal Procedure Code.

³⁹ - Donia Zaid Thabet, previous reference, p 58.

⁴⁰ - Belzam Mabrouk, previous reference, p 67.

⁴¹ - Article 322 bis 9, paragraph 2 of the Algerian Criminal Procedure Code.

⁴² - Belzam Mabrouk, previous reference, p68.

⁴³ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p80./ Musasib Zuhair and Khalafi Abdul Rahman, **“A Critical Reading of the Role of the Appeal Criminal Court under Law 17-07,”** The Academic Journal of Legal Research, published by the Faculty of Law and Political Science, Abdul Rahman Mira University, Bejaia, special issue, 2017, p 30.

⁴⁴ - According to Articles 157, 159, 160 and 191 of the Algerian Criminal Procedure Code.

⁴⁵ - According to Article 197 of the same law.

⁴⁶ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p84.

⁴⁷ - Amr Muhammad Fawzi Abu Al-Wafa, **Litigation in two degrees in felonies (a comparative study)**, without printing, Dar Alnahdha, Cairo, 2006, p 338.

⁴⁸ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p85.

⁴⁹ - See Article 1, Paragraph 8 of the Algerian Criminal Procedure Code, developed under Law 17-07.

⁵⁰ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p85.

⁵¹ - See Article 322 bis 7 of the Algerian Criminal Procedure Code, introduced under Law 17-07.

⁵² - Khalafi Abd al-Rahman, **“The Trial During Reasonable Times (A Study in Legislative and Criminal Justice)”** Journal of the College of Law, Al-Mustansiriya University, Baghdad, seventh year, volume V, numbers 25-26, 2015, p 322.

⁵³ - Sherif Sayed Kamel, **The Right to Expedite Criminal Procedures (a comparative study)** without printing, Dar alnahdha, Cairo, 2005, p 2.

⁵⁴ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p88.

⁵⁵ - The Constitution of Algeria for the year 1996, issued by Presidential Decree No. 96-438, dated 07 December 1996, relating to the publication of the text of the amendment of the constitution approved in the referendum of November 28, 1996, the Official Gazette of the Algerian Republic, No. 76, dated December 08, 1996, amended and Completed by Law No. 16-01 of March 06, 2016 the Official Gazette of the Algerian Republic, No. 14, dated March 7, 2016.

⁵⁶ - Khalafi Abd al-Rahman, **“What is the role of the appellate criminal court under Law 17-07?”**, previous reference, p90.