

Crimes related to practicing the activity of written press

(The organic law No. 12-05 on Media)

(الجرائم الواقعة عن ممارسة نشاط الصحافة المكتوبة)

(القانون العضوي رقم 12-05 : المتعلق بالإعلام)



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Abstract:

Freedom of practicing the activity of written newspapers and its issuing occupies a place of utmost importance, as it represents the other face of freedom of expression and freedom of opinion that are internationally devoted through international and regional charters adopted by various constitutions and comparing laws. Along similar lines, the Algerian legislator adopted the practice of Media right in its various shapes under the organic law No. 12-05 on Media, as it is related to supreme freedoms for individual and guarantees its independent practice. However, this freedom involves several responsibilities due to its practice. Hence, the legal texts classified it as media crimes in case the violation of rules and legal frameworks that regulate the activity of press in general and the written press in specific.

Keywords: Media Crime, Media, Criminal Responsibility of journalism, written press.

ملخص:

تحتل حرية ممارسة نشاط الصحف المكتوبة وإصدارها مكانة بالغة الأهمية ، كونها تمثل الوجه الآخر لحرية التعبير والرأي المكرسين دوليا من خلال المواثيق الدولية والإقليمية والتي تبنتها مختلف الدساتير والقوانين المقارنة ، وعلى غرار ذلك تبنى المشرع الجزائري ممارسة حرية الإعلام بمختلف أشكاله بموجب القانون العضوي رقم 12-05 المتعلق بالإعلام ، كونها تتعلق بالحريات السامية للفرد ضامنة بذلك استقلالية ممارستها إلا أن هذه الحرية تنطوي على ممارستها مسؤوليات عديدة ، بحيث صنفها النصوص القانونية كجرائم إعلامية في حال مخالفة القواعد والأطر القانونية المنظمة لحرية ممارسة النشاط الصحفي ككل وبالأخص الصحافة المكتوبة .

كلمات مفتاحية: الجريمة الإعلامية ، الإعلام ، المسؤولية الجزائية للصحافة، الصحافة المكتوبة.

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INTRODUCTION:

Journalism is the profession of investigation, research, following the news and deliver it in a professional way to the public with extreme subjectivity and transparency. Freedom of press is expansion to freedom of thought, opinion and expression according to the external world, in addition to involving others in this thought in an exterior mold. The basic principle to freedom of press and multimedia in its various shapes –whether it was written or visual...- is an expansion for global publicities of human rights especially the universal declaration of Human Rights in 1948. The declaration states in article‘19’ that: “Everyone has the right to freedom of opinion and expression¹; this right includes freedom to hold opinions without interference and to seek, receive and impart

information and ideas through any media and regardless of frontiers”.⁽²⁾

However, this freedom is not considered as extreme because it is restricted by legal regulations appearing in the second paragraph of the article ‘19/2’ in the Human Rights declaration hereinabove. This paragraph states that there are special duties and responsibilities, thus the exercise of this right may be subjected to certain restrictions, but these shall only be such as are provided by law and are necessary:

- For the protection of national security or of public order, or of public health or morals.

- For respect of the rights or reputations of others.

In this sense, the Algerian legislator adopted the policy of openness and pluralism to the issuance of 1989 constitution announcing the freedom of political pluralism, freedom of opinion and freedom of expression, it also adopted freedom of establishing professional associations which resulted the issuance of the first media law No. 90-07 dated on 03 April 1990. It caused liberation of printed press from the dominance of the ruling party in the country. ⁽⁰³⁾

By the issuance of 1996 constitution that assured what came in the previous one in addition to some adjustments to enrich it, the 12-05 law has been issued on 12 January 2012 about granting the press an immense freedom especially in the field of printed

journalism. It also stipulated opening the audio-visual sector to the private sector.

The Algerian legislator has pursued to establish the aspects of this freedom and identifying its domain to create a sort of balance between the public interest and the private interest. In which the legislator avoids the disadvantages arising from practicing printed press.

If the journalist commit certain crime, he shall be convicted on the basis of penal responsibility. Although freedom of press is internationally and nationally recognized, it is necessary to have obligations and restrictions to regulate it. Without any controls, freedom of press can frame grave danger to the public stability due to its influential authority by spreading propaganda, and its ability to guide public opinion. Thus, this freedom was the center of interest to the international community whom enacted a set of articles to make it more rational and ethical. These articles are consistent with the interest of the Algerian legislator, whom imposed guaranties and restrictions in nature of penal connotation distributed between penal code and organic law 12-05 on media. On this basis, this study focuses on the suitability of criminal provisions in freedom of media. In this research document, we will offer objective evaluation to how extent freedom of press respects the conditions of practicing in Algeria through the following titles:

1- The concept of journalism.

2- Misdemeanors violating the conditions of practicing journalistic activity.

3- Publication misdemeanor related to judicial work.

4 - Insulting crimes mentioned in the Media Law.

5- The time limit for proceedings in media crimes

1- The concept of journalism

Journalism is collecting news and publish it, in addition to publishing all what connect to it in printed newspapers, magazines, newsletters, leaflets and various periodicals. The common use of press is confined to newspapers and some magazines. Printed press is the pioneer practical means to practice freedom of opinion and expression. Furthermore, it is one of the important activities in the field of media and practical media. The Algerian legislator has defined it and identified its concept as a media activity under article 06 of the organic law No. 12-05 that states “it is periodical publications in the concept of this organic law, newspapers and magazines in all its types that issue in regular intervals”. Periodical publications is classified into two types:

- Periodical publications for public media

- Specializes periodical publications

Hence, public publications means every publication that tackles news about the facts and events on the national and international level, Intended to the public. Whereas specialized publications is

every publication that tackles news about specific fields, intended to specific category.⁽⁰⁴⁾

2. Crimes related to the violation of conditions to exercise press activity

The Algerian legislator addressed in the organic law No.12-05 about media a collection of crimes which described it as misdemeanors regarding the type of the penalty and its judgment that does not exceed a fine. However, it belongs to the public law crimes consisting in the following:

2.1. funds source non-disclosure crime

In order to ensure freedom and independency of written press, it is necessary to acquire funding so it can continue its commercial activity that confines to state aid, donations and revenues of public publicity. Thereupon, article 29 of the organic law 12-05 stated the necessity to total commitment of publications and periodicals to declare the source of funds for its equity capital, and the fundamental funds to conduct it according to the legislation. The article above also obliged any periodical that receives financial support to have organic connection with the body responsible for the financial support and it must clarify the nature of relationship.⁽⁰⁵⁾

The Algerian legislator prohibited as well all shapes of financial support from foreign actors whether it was direct or indirect. The law also required the journalistic associations or media associations to publish the financial accounts outcome of

last year ratified, invoking notice issued by the regulatory authority of written press to publish its accounts within 30 days. In case the associations did not comply and execute as stated in the notice, the regulatory authority of written press shall cease the issuance of the newspaper until it settles its situation. ⁽⁰⁶⁾

Article 116 in the same law stated that violating article 29 of the organic law on Media is penalized by financial penalty (fine) between one hundred thousand Algerian Dinars 100.000DZD to three hundred thousand Algerian Dinars 300.000DZD, with the possibility of temporary suspension of the newspaper. The court can also order seizure of assets. ⁽⁰⁷⁾

Hence, it is necessary for media association to justify its funds and revenues, whether it was related to establishment or management, or through proving the contracts of publicity and advertisement by making agreements with the owners of the publicities. This will facilitate financial surveillance on money source and guarantee protection for the creditors to receive the print and management expenses. ⁽⁰⁸⁾

2.2. Crime of Accepting Foreign Donations and Funds:

Given the legislator's vigilance regarding the independence of Media Institutions in general and of written press in specific, he was not contented with making the statement hereof, but proceeded to ban accepting foreign grants, donations, and funds whether directly or indirectly. The penalty for infringing or violating this law is a fine ranging from one hundred thousand

Algerian Dinars 100.000DZD to four hundred thousand Algerian Dinars 400.000DZD, in addition to the potential seizure of the received amount of money; thus stated Article 117 of the Organic Law of Media.

It is worth mentioning that the legislator highlighted this law for it prohibited accepting funds and grants may they be under the Media Institution's name or through its principal's personal account considering the impact these grants may have on the independence of the Media Institution mentioned in Article 04 of the Organic Law. (09)

2.3. Crime of Identity Loan:

Article 118 of the Organic Law number 05.12 fines from one hundred thousand Algerian Dinars 100.000DZD to five hundred thousand Algerian Dinars 500.000DZD whoever deliberately lend his identity to a natural person or a legal person for the purpose of issuing a Bulletin, especially through stock subscriptions or through a share in the publishing company. (10)

The legislator prohibited this act as the assignor is often legally forbidden from participating in Media Enterprises, including issuing bulletins, hence resorts to loan another's identity, consequently escaping judicial supervision. Reasons for Identity Loan may vary. For instance, the assignor may be a foreigner, a citizen baring no civic or political rights, a convict of a crime of moral turpitude, or an individual that lacks the required criteria for founding a publishing company according to Article 23 of the

Law of Media and other preventives mentioned, for example, the means that allow identity loan. (11)

The second clause of Article 118 supplements that the assignee, i.e. the loanee of the identity, is to be penalized with the same sentence as the loaner. This is to say that both assignor and assignee subject to the same penalty as they are primary offenders of the crime.

3. Misdemeanour of publishing and broadcasting court cases:

The Law of Media prohibited reporting the secrets of judicial investigations and all matters regarding the ongoing hearings or the administration of courts, for they are considered as fixed affairs that journalists are proscribed to tackle given the sensitivity and the privacy of some cases; thus, they must not be publicized. Publishing means releasing certain information to the public by means of written press such as newspapers, magazines, and weekly or monthly periodicals. Criminalized publishing is reporting in the purpose to reveal the process which causes harm may it be written or verbal. While broadcasting refers to reporting information through audio-visual media such as radio and TV stations, in addition to reporting and broadcasting using modern cyber media on the Internet. (12)

Articles 119 – 120 – 121 – 122 of the Organic Law successively tackled these crimes that we shall detail in the following:

3.1. Misdemeanour of publishing or broadcasting news that affect the secrecy of preliminary investigations:

Considering that the preliminary investigations are undergone in secrecy, reporting events like testimonies or some of the material evidence of the case impacts the witness' frame of mind and the public opinion. Hence, it was necessary to proscribe Media from reporting these events and criminalize it, which is what the legislator highlighted in Article 119 of the Law of Media which reads as follows: "...penalizes with a fine ranging from fifty thousand Algerian Dinars 50.000DZD to one hundred thousand Algerian Dinars 100.000DZD for whoever publishes or broadcasts through any media platform mentioned hereof any information or document that harms the secrecy of the preliminary investigations in courts". (13)

3.2. Reporting the substance of in camera hearings discussions:

Trials are generally public; it is a substantial criterion that if contravened, the hearing is invalid. (14)

However, the legislator has made exceptions for this criterion _publicity_ in obligatory cases and in other suppositional cases. The former such as event hearings and personal affairs and the latter include hearings of moral turpitude. The judge is legally allowed to hold a hearing in camera whenever proved necessary. There is a variety of cases that require in camera hearings such as cases related to national security service. Thus, whenever the

hearings are decided to be held in camera, journalists are proscribed from publishing or broadcasting its events.

According to Article 120 of the Law of Media that reads: “a fine ranging from one hundred thousand Algerian Dinars 100.000DZD to two hundred thousand Algerian Dinars 200.000DZD for whoever publishes or broadcasts by any Media means texted in this law the substance of the hearings if the trials are secret.

3.3. publishing reports about trials related to personal status and abortion

Article 121 on media law provides that “every person publishes reports on trials related to personal status and abortion by any means of media shall be penalized by fine between fifty thousand Algerian Dinars 50.000DZD and two hundred thousand Algerian Dinars 200.000DZD.”

Personal status means notable traits on people, thus, it is prohibited to publish the events taking a place inside the court room including secrets especially trials of personal status for its privacy.

The reason for the prevention of publishing trials events, related to personal status and abortion is protecting the concerned and their personal lives which is secrets protected by the law. As a result, publishing or broadcasting the events may harm the social status for those people.

3.4. crime of publishing or broadcasting circumstances of certain felonies or misdemeanors

It means narrating the events of the crime as it occurred or with some adjustments using a collection of pictures, drawings, and caricatures or writing in form of narrative essay in addition to publish it in newspapers and magazines. This felony relates to identifying the law the felonies and misdemeanors that are forbidden for the press to partially or totally represent according to the article 122 on media law. This crimes are:

- Felony of premeditated murder and assassination texted in articles 255-256-257 from the Algerian penal code.
- Felony of parricide established in article 258 from the Algerian penal code.
- Felony of poisoning texted in article 260 from the Algerian penal code.
- Felony of torture and use of atrocities texted in articles 262-263 from the Algerian penal code.
- Felony of act of indecency against a minor by the ascendants texted in article 334/2 from the penal code.
- Felony of indecent assault and rape texted in article 336 from the penal code.
- Felony of act of indecency against a minor according to article 334/1 from the penal code.
- Misdemeanors of homosexuality texted in article 338 from the penal code.

- Misdemeanors of adultery texted in articles 339-341 from the penal code.
- Misdemeanors of incitement against a minor to depravity and prostitution texted in article 342 from the penal code.

This crimes are forbidden and prohibited due to being extremely dangerous as an aggravating circumstances (except murdering children), and all the crimes related to honor and sexual morality .⁽¹⁵⁾

4. crimes related to indignity in media law

Articles 123-126 in media law have tackled the crimes related to indignities included in the penal code such as insulting heads of foreign state and certified members of diplomatic missions in Algeria.

Hence, the Media Law decided to state legal rules to regulate journalistic activities from the phenomenon of infringement on others, thus article 123 in the same law stated “whoever insults heads of state and certified members of diplomatic missions in the People’s Democratic Republic of Algeria shall be penalized by fine of twenty five thousand Algerian Dinars 25.000DZD to one hundred thousand Algerian Dinars 100.000DZD.”

4.1. Felony of offending a journalist

Article 126 on Media law addressed the felony of offending a journalist, as a public employee should be protected from any

forms of violation. The law shall punish who infringes on, offends or causes an offence to the journalists while performing their job or because of their job. Thus, article 126 stated that “whoever offends a journalist while practicing his job or because of his job by heinous sign or harmful say shall be penalized by fine of thirty thousand Algerian Dinars 30.000DZD to one hundred thousand Algerian Dinars 100.00DZD”

The offence can be in a form of sign which is every move of the body or gesture, or position that express contempt and offence for the journalist. Whereas harmful say is every production of sound includes yelling and heinous cheers, not necessary indecent or obscene words, it can be statements that carry the sense of harm. (16)

4.2. Misdemeanor of refusing the publication of reply and correction

The right to reply and correction is one of the most important guarantees that the law 12-05 approved in order to empower the public to obtain integral and transparent Media, as well to empower every individual or public authority to use the right of reply and correction free of charge and with objective and formal conditions if the newspapers or any prints publish information against them. The objective conditions are the existence of false news and allegations in a published newspaper or magazine. Article 101 on Media law stated that

“every person sees that he has been exposed to false accusations that harm his honor and reputation, has the right to use the right of reply”.

Hence, the reply should contain a substance (what needed to be corrected), or the suggested correction, then send a recommended letter attached with a receipt, or through judicial officer within 30 days or would result loss of right concerning newspaper, printed material, audio-visual service or electronic device, and within 60 days if it is periodical publication. The formal conditions are on the side of people who have the right to reply and correction. Article 103 in the same law stated that “the right to reply and correction is exercised by:

- The journalist or the relevant entity.
- The legal representative of the person or the relevant entity.
- The authority that the person belongs to or the public entity.

Article 111 in the same law contained that if the person, whose name is mentioned in the news, is deceased or incapable of reply, his/her legal representative can replace him/her in exercising the reply, or the spouse, or one of his/her relatives of the ascendants or the descendants, or first degree collateral kinship. The right to reply is granted for every individual or entity.

The crime of refraining from publishing the reply or the correction that the legislator stated requires abstaining from publishing what the law demands, which can result exercising the

public right of action as stated in article 106 on Media law “in case of the refusal to publish the reply and the correction, the subpoena will be reduced to 24 Hours and it can be delivered on the petition as an order. The refusal can also cause the right to petition the court urgently according to the applicable legislation.”

It is worth mentioning that the law exempted the director of the newspaper from the penalty when proving that the content of the reply is incompatible with public morality or legal benefit for others, or against honor as stated in article 114 on Media law.

Article 125 on Media law stated as well a financial fine ranging between one hundred thousand Algerian Dinars 100.000DZD and three hundred thousand Algerian Dinars 300.000DZD, with consideration to the provisions of articles 110-111-112 about the refusal to publish or broadcast the reply through the concerned Media means in the organic law on Media

5. The time limit for proceedings in media crimes

Article 126 in Media Law stated “public and civil suit about the committed felony through written press, audio-visual press or electronic press, become outdated after 06 months from the date of the felony.” Hence, the legislator decreased the time limit in media crimes to solely 06 months starting from the date of its commission which is the date of its publishing and broadcasting.

(17)

Public suit becomes outdated in the penal code after 03 years from the date of its commission according to article 08 from the penal code, but according to the principle of “special rule restricts general rule”, this various crimes that media people and associations commit in all its forms are subjected to limit time according to Media Law, except what the penal code excluded such as crime of defamation, cursing and swearing in addition to the crimes against national security, treason, national unity to preserve the principle of equality when determining the penalty in the public crimes. (18)

Conclusion

Press by its numerous print and broadcast means became effective in the boundless influence on individuals. Towards this influence, it is necessary to put penal rules and policies that consider the nature of the committed crimes which are often excesses to the media activity, thus, identifying the field of journalism practice. The legislator regulated in the organic law of media and the penal code whoever jeopardizes the values and common system, and reduced as well the arbitrary use of this freedom. Through these laws, we notice that the legislator has considered the privacy of media crime when appearing to the public and distinguished between the crimes by describing them as felonies. He also balanced in determining the penalties by imposing financial fines or doubled fines, with abolishing custodial sentences that were stated in the previous Media Law 90-07. In addition to disregarding provisional arrest and locking

or confiscating the properties of the publication's association that are regarded as severe penalties. After we tackled certain media crimes in this research paper, we can only mention that the Algerian legislator promoted and devoted freedom of press in general, and freedom of issuing newspapers in specific. This appears in promoting the Media Law to organic law subjected to control according to the amended article 141 in 1996 constitution approved by the constitutional council. It is noted from the provided penalties in the organic Media Law 12-05 that the crimes have been reduced from 24 crimes in the previous law No90-07 to 11 media crimes, except what was excluded in the penal code which is regarded as a general rule. Through following the provided penalties on this crimes which are considered as protection for others and an insurance for national, economic, social security safety and the higher interest of the state as well, stating these laws was compatible to what most advertisements and international/regional conventions stated, professing the right of opinion and right of expression. These conventions also invited not to overuse this media freedom against the sovereignty of the states, the common system, and incitement on hatred and wars...etc. the same advertisements and conventions have pointed to the same exceptions given in the legislative texts of the states in order to frame it. And last we recommend some suggestions:

- Activate control authority to written and audio-visual press.
- commencing to prepare a charter or special law to regulate the morals and professionalism of media work.

- Amend article 117 that includes receiving funds from public or foreign entities and natural persons to guarantee the independence of media association.
- Misdemeanor of criminalizing loaning a name to a person in order to found a publication association stated in article 118 in the organic law 12-05 with disregard to other media means. Hence, it would be better to generalize this misdemeanor on other media means.
- Add a regulatory provision that clarify the vague procedures that include the right to reply and correction in a way considers the particularity of this procedure that most media laws included.

Comparison :

- 1- Mahmoud Ezzat Allaham, Maroua Issam, press between reality and ambition, 1st edition, Dar Al Esar Ilmi li nashr wa tawzi, 2014, Oman, Jordan, p19.
- 2- Universal Declaration of Human Rights approved and published by the General Assembly of the United Nations on 10 December 1948.
- 3- Law No 90-07 dated on 03 of April about Media, official Newspaper No 14, 1990.
- 4- It should be noted that this agreement is binding on state parties that signed it, thereupon, binding in their right, this Declaration forms the legal basis of an international nature and all state parties

should adhere to what has been stated in the Universal Declaration of Human Rights including details and articles, and becoming a reference for state parties internal legislations. Algeria has approved the Universal Declaration of Human Rights and the annexed chosen protocol on 25 April 1989 after the issuing of 1989 constitution on 23 February 1989 which is considered as constitution of law and not constitution of program.

5- Amimer Naima, *The Overall in Human Rights*, 1st edition, Dar El Kitab El hadith, Cairo, Egypt, 2009, P 108-109.

6- Algeria has approved on it under the presidential decree No 89-67 dated on 16 May 1989.

07- Ibtissem Sawli, Master's thesis, *The Legal Guarantees for freedom of written press in Algeria*, specialization Constitutional Law, Faculty of Law, University of Mohamed Khider Biskra, 2010, P22.

08- Donia Zad Sayeh, Doctoral Thesis, *The Regulatory Law of Practicing Freedom in Algeria*, specialization Constitutional Law, Faculty of Law, University of Batna, 2019, P146.

09- For more information, check articles 28-29-30 from the Organic Law No 12-05 on Media.

10- Article 116 from the Organic Law No: 12-05 dated on 12 January 2012 related to Media, official newspaper No: 02 year 2012.

11- Article 117 in the same law.

12- Foreign actors means every natural or legal person that does not carry the Algerian nationality according to what stated in article 03 from the law No: 08-11 dated on 25 June 2008 related to the conditions of foreigners entrance to Algeria, their residency and transportation in it, official newspaper No: 36, 2008.

13- Look at article 117 from the organic law on Media.

14- Nabil Sakr, Crimes of Press In The Algerian Legislature, 2007 edition, Dar El-Houda, Ain M'lila, Algeria, P137-138.

15- Ben Azza Hamza, previous reference P184.

16- Look at article 119 from the organic law on Media.

17- Lahssan Echikh Ath Milouya, thesis on misdemeanors of press, comparative jurisprudence- legal study, Dar Houma, Algeria, 2012, P282.

18- Lahssan Ath Milouya, previous reference, P295.

19- Mohsin Fouad Faraj, crimes of intellect and opinion and publication "The General Theory of Expressional Crimes", 2nd edition, House of the Arab Tomorrow, Cairo, Egypt, 1991, P217.

20- Belouadah Tayeb, The Right of Reply and Correction in Crimes of Publication and its Impact on Criminal Responsibility in Media Law, Doctoral thesis, Faculty of Law University of Mohamed Khider, Biskra, 2013, P27 and after.

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- 2- The African Charter on Human and People's Rights in Nairobi on 27 June 1987.
- 3- The Arab Charter on Human Rights- Declaration of Sanaa- to enhance independency and plurality of Media means, 1996.

B- The legal national texts:

- 1- The Algerian constitution 1996, official newspaper No76, year 1996 dated on 08 December 1996, amended and completed.

The organic and ordinary laws:

- 1- The organic law No: 12-05 dated on 12 January 2012 about Media, official newspaper No: 02 year 2012.
- 2- Law No 90-07 dated on 03 April about Media, official newspaper No14, 1990.
- 3- Law No 08-11 dated on 25 June 2008 about The conditions of foreigners entrance to Algeria, their residency and transportation in it, official newspaper No: 36, 2008.

4- Order 66-156 dated on 08 June 1966, including The Algerian Penal Code, official newspaper No: 49, 1966.

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