

Penal protection for the wife's property

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Abstract:

A guarantee of the continuation of family relations the Algerian legislator puts a set of rights and duties, which is among them the husband's duty to support his family, a criminal sanction is arranged for him if he refuses to pay maintenance for his family, and the legislator also guaranteed the financial independence of each of them, if the husband violates that subject to criminal penalties contained in a criminal theft between spouses.

Where was this penal protection for the wife's money preventive protection sometimes and deterrence at other times, as we explain through this research all legal aspects to maintain the wife's financial independence.

Key words: Marital Spending, Non-payment of spending, Stealing, Private financial disclosure.

ملخص: ضمانا لاستمرار العلاقات الأسرية اعترف المشرع الجزائري بمجموعة من الحقوق والواجبات، من بينها واجب الزوج في إعالة أسرته، وترتيب عقوبة جنائية ضده إذا امتنع عن دفع نفقة أسرته، كما كفل المشرع الاستقلال المالي لكل منهما، إذا خالف الزوج ذلك مع مراعاة العقوبات الجنائية الواردة في السرقة بين الزوجين.

حيث كانت هذه الحماية الجنائية المقررة لأموال الزوجة حماية الوقائية أحيانا وردعية أحيانا أخرى، كما نوضح من خلال هذا البحث كافة الجوانب القانونية للحفاظ على الاستقلال المالي للزوجة.

الكلمات المفتاحية: النفقة الزوجية، عدم دفع النفقة، السرقة، الإفصاح المالي الخاص.

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Introduction:

First Algerian penal legislator special care the financial relationship arising from the family bond through the issuance of many laws regulating it and intended to protect it, where the legislator approved full independence in financial disclosure between spouses and the isolation of each of them of his financial gains whether he acquired it before the marital bond or while there is a marital bond between them, if the husband forbids his wife from her own money and his embezzlement or destroy it or squandered or to initiate any of that he has committed the crime of marital theft or initiate it which is punishable by law if the wife files a complaint it is raised under the Public Prosecution for moving the public lawsuit.

And similar to the emergence of a joint financial liability its basis stems from formation of the marital bond it is family alimony, where it is settled legally and legally the obligation of the husband to spend on his wife that bond has long combined between them or even after, but it may be interrupted by its performance if problems occur between them liable to compromise the stability of the family, sometimes the wife may leave leaving the marital home residence to settle in the home of her guardian desire to stay out of trouble psychological and emotional calm, what is considered by the husband recalcitrance to prevent it from continuing to spend on it, which is what the law considers a crime of failure to pay spousal maintenance.

In addition to the intervention of the penal legislator in ensuring the stability of the marital bond in all its details whether moral or physical, the procedural legislator also intervenes to restrict the Public Prosecution office the owner of the right of fit in directing and moving the public lawsuit provided suspending the

lawsuit movement a complaint from the aggrieved party from the occurrence of a previous crime, it is a wise intervention by the legislator a guarantee of it to understand these issues of a special nature and the curtain of calm and peace on the family and to prevent the situation from getting worse its development is on the downside which may be attributed to expiration and termination of the marital bond in the worst case.

It requires that ask the following problem: What is its criminal protection of funds arising from the marital relationship? Where it will be answered to this problem Using the descriptive approach in tuning and fixing the concepts that are related to this problematic subject of study, by proposing the following plan:

1. The crime of non-payment of alimony
 - 1.1. The concept of alimony
 - 1.2. Elements of the crime of non-payment of alimony
2. The crime of theft between spouses
 - 2.1. The concept of theft
 - 2.2. Elements of the crime of theft between spouses

1. The crime of non-payment of alimony:

Alimony is the wife's right as long as it exists in marriage, and divorced until the end of her waiting period, the obligation to spend on the husband it is not related to a woman's financial level, it concerns the marital bond that brought them together as the wife retention clause must be in return obligation to lead the man living expenses towards his wife, where we will explain the concept of alimony, then we show the penalty for the husband's engagement for the obligation to pay the alimony by analyzing the elements of the crime of non-payment of alimony.

1.1. The concept of alimony:

In this requirement we will touch upon determining the linguistic definition of alimony, then the legal definition of it.

1.1.1. The linguistic definition of alimony

Alimony in the language means death which is perdition, the animal is said to have died or commodity deaths if you wait, it is called the money that a person spends on others expense because that is a waste of money.¹

And in another definition, it means output and go, it said the animal died that is, it came out of the property of its owner, and alimony is the name of source collected expenses, and the man was spent which his supplies have expired.²

1.1.2. The legal definition of spending

As for the legal aspect it did not include family law defining the concept of alimony, but Article 78 of it determined alimony inclusions, it includes **"food, clothing, treatment, accommodation, or his wages, what are considered necessities in custom and habit"**, that is, the expense in its broad sense they are spending, care, housing, and all the necessities of life. and what we observe from the gradation texts of articles that follow her that the legislator stipulated persons who are obligated to spend and through Article 74 of the Family Code, the alimony is due the wife has her

¹ Al-Fayoumi, 1999, p. 318

² Ibn Mandhor, 1990, p. 357

husband's responsibility as soon as he marries her or to propose to her.¹

Alimony is what the husband spends on his wife, children and relatives of food, clothing and housing and everything needed for living according to the customary according to the ability of the husband.²

As it is a financial right that is due to the wife if the valid marriage contract is concluded, considering **"The money the husband pays on his dependents that is, who is legally charged with providing it"**. It is also the phrase **"everything a wife and children need for their livelihood from clothing, food, and nursing it is a service that is recognized among the people"**.

The wife's alimony is required on her husband if he marries her or if he engaged her³. It includes alimony for food, cladding and treatment, accommodation or its rent, which is what is considered necessities in custom and habit within the general standard of social life within the limits of the husband's energy without extravagance or default.⁴

The law has specified persons entitled to spousal maintenance, and between too alimony inclusions which the spender must provide and to guarantee it for his family, it is stated

¹ Aziz, 2013, p. 42

² Belhadj, 2004, p.169

³ Sakr, 2009, p. 243

⁴ Loail, 2004, p.71

Article 74 which it says: "The wife's maintenance is obligatory for her husband enter it or invite her to him clearly".¹

As well as what is included text of Article 78: "that you specified what a human requires of essential needs in life and the inclusions have been identified where included expense includes food, cladding, and treatment, accommodation or its rent, and what is considered essential in custom and habit"²

1.2. Elements of the crime of non-payment of alimony:

After stating the definition of alimony In two parts linguistic and legal, and clarify the implications of this alimony of the marital relationship, we will explain what was stated in the penal code in case of default of the spouse from doing his homework towards his wife related to alimony, where we will show in detail The legal text and the material and the moral substrates of this crime.

1.2.1. legal text:

Select the penal code the penalty for violating the husband for his marital duties towards his wife, which among them failure to pay her alimony, which is stated in the text of Article 331 of it³ , which included: "Punishable by imprisonment Six (6) months to (3) years and a fine of 50,000 dzd to 300,000 dzd whoever deliberately abstained, and for a period exceeding two months (2) about submission the amounts assessed spend to support his family, and

¹ Law No. 11-84 issued on June 09, 1984, the Official Gazette No. 24 of June 12, 1984, includes the Family Code

² Law No. 11-84

³ Law No. 06-23 of December 20, 2006, Official Gazette No. 84 of December 24, 2006, amending and completing Ordinance No. 66-156 containing the Penal Code

about performance the entire cost of the expense assessed it to his wife or its origins or its branches, and this despite the issuance of a ruling against him by forcing him to pay maintenance to them.

Presumably not to pay intentionally unless proven otherwise, and insolvency resulting from accustomed to misconduct laziness or drunkenness are not acceptable excuses from the debtor in any case.

Without prejudice to the application of the provisions of Articles 37, 40 and 329 of the Code of Criminal Procedure, it also specializes in governance in the misdemeanors mentioned in this article, home or domicile court the person to be entitled to receive alimony or the recipient of aid.

It lays down the victim's forgiveness after paying the amounts due an end to the criminal follow-up"

1.2.2. The material substrates:

If the husband fails to pay the spousal maintenance fall within the limits of the penal code, as the text of Article 331 applies to it which includes the offense of non-payment of alimony, where the material element includes the following:

1.2.2.1. The existence of the marital bond:

require this crime to be a valid and formal contract enrolled in the civil status records accordingly, the crime does not occur in the case of common-law marriage.¹

¹ Sakr, 2009, p. 244

1.2.2.2. Adjudication:

a verdict must be made it provides for determining the amounts due whether by the competent authority: department of Personal Status, urgent Department, personal Status Room, this provision must be enforceable. and to inform this judgment in order for it to become final, or to be issued from the Personal Status Chamber permanently.¹

The court ruling must be issued by making food expenditures, in this regard must take the words "Judgment" in its broadest sense which extends to include judgments issued for the courts of first instance and decisions issued about the board and orders issued for the President of the Court, the judgment may also be issued for a foreign judicial authority and dubbed with the executable formula the law is not required to be a final judgment it is enough to be a matter of urgency.

So it is the first condition or special items required by law to apply Article 331 of the penal code² ; it is a requirement of a judgment issued by a national judicial body at the first-class level or at the second degree level, have had the power of the litigation case or the power of the thing governed, or that it is a judgment issued by a foreign judicial body it has been cladding operational formula it or the existence of any other judicial decision issued by the urgent judiciary or include the expedited access formula, and that despite this judicial decision it was issued under the name of an order or judgment or others as long as it is legally capable of

¹ Ben Warith, 2006, p. 167

² Law No. 06-23

temporary execution or expedited despite the opposition or appeal.¹

1.2.2.3. Refrain from paying alimony for two months:

Is to refrain from paying the alimony of negative verbs this is achieved by the husband's abstinence for taking a behavior required by law it is the payment of alimony, taking into consideration spouse's ability to perform it, and upon it if the husband is unable to perform it, no crime realized for lack of bad faith this is stipulated in Article 331 of the Penal Code, where it was mentioned "Whoever deliberately abstained" which stating the necessity for the perpetrator to have bad faith and deliberately committing this crime.²

As it should be continuing to refrain from paying alimony for a period exceeding two months: it is stated in Article 331/1 that crime is based in the offender deliberately refuses on payment of alimony for a period exceeding two months³, and on it not enough to do crime mere failure of the debtor to pay, rather, this position must continue on the part of the debtor for two months, and the problem that arises in this regard it is the date of the commencement of this period. especially as the Algerian legislator this point may be overlooked.

Elimination agrees that the two-month deadline takes effect it starts from the day the ruling in effect is notified who decides to pay maintenance to the convict, but any notification is intended, is it intended for the initial procedure done by the

¹ Saad, 2014, p. 38

² Order No. 66-156.

³ Order No. 66-156.

judicial record under the official notification for court rulings according to Articles 408 and following from the Civil and Administrative Procedures Law¹ , it is the initial procedure who aims to notification of the court ruling immediately upon its issuance to the convicted person and hand him a copy of it.

Or is it intended the procedure performed by the judicial enforcer under forced Implementation for court rulings according to Article 612 onwards from the Civil and Administrative Procedures Law² it is the procedure aimed at official notification for judgments signed in the executive form, it is the second most likely possibility. especially that matter relates to non-execution of a court ruling, accordingly the two-month lead time calculation begins from the expiration date of the period of 60 days specified in the mandate to fulfill³ as the judgment is not enforceable only after being notified of an official notification according to Article 406 et onwards from the Civil and Administrative Procedures Law and the expiration date of the opposition and appeal that takes effect from the date of the official notification of the judgment.

1.2.3. The moral substrates:

Article 331 of the Penal Code passes⁴ about this corner with the ferry "intentionally" in other words, non-payment of alimony, or to refrain from paying the alimony, it is a premeditated crime. permission is required of delving into criminal intent i have the psyche of the accused, thus proves criminal intent when the judicial executor releases the record of abstaining from paying

¹ Law No. 08-09 of February 25, 2008, containing the Code of Civil and Administrative Procedures.

² law No. 09-08.

³ Law No. 08-09.

⁴ Order No. 66-156.

alimony, and this after giving it two months who informed him of the ruling to whom he decides to spend, it also proves criminal intent, his appearance before the Public Prosecution Judge, or a misdemeanor judge, it has not yet been paid established alimony although he is legally required to do so, it also proves criminal intent, if the accused does not provide an acceptable excuse, article 331 of the Penal Code stipulates¹ it is: "Assumed intentional failure to pay, unless proven otherwise, the insolvency resulting from laziness, drunkenness, bad behavior, not considered an acceptable excuse²

2. The crime of theft between spouses:

The law recognizes the principle of the independence of the couple's financial responsibility, as for both husband and wife independent financial disclosure, and each one of them pure private property, it is not permissible for one of the spouses unfair money for another except with legal right, which will be discussed through this element, which will be discussed through this element, where clarifying the concept of theft in language and law, then the pillars of the crime of theft that occurs between spouses if the husband committed it.

2.1. The concept of theft:

Through the contents of this requirement we'll go to a clarification meaning of stealing in the language and also in law.

¹ Order No. 66-156.

² ben Warith, p. 168.

2.1.1. The linguistic definition of theft:

Word stole indicate he took the thing in secret.¹

And theft: relative to theft, slothful the imperfect is weak in character and the listener is hiding, and the thieves to look at him which inattention asks to be seen, and steal: he stole little by little ", and it makes sense he who came hidden, he took him what is not for him, he is a usurper, took from apparent, he is peculiar and stolen and plump and watchful, the prevention of what is in his hands, he is usurper and throats and overheard theft: peeking and hearing theft is a language come on meaning, he who came hidden and taking from him what is not his.²

2.1.2. Idiomatic definition of theft:

Theft under the traditional concept the perpetrator seizes ownership of the stolen money or its benefit or possession of it it's all theft alike (possession seizure) roman law was narrowed on the moral side and expand on the substantive aspect, as for the modern concept it is not stealing it is not considered theft except what it contains culprit takeover on the ownership of others without his consent, it is not enough to grab but it deserves availability of earning motivator and money with the perpetrator.³

¹ Al-Fayoumi, 1999, p. 223.

² Ibn Mondhir, p. 175.

³ Dhahi, 2006, p.7.

2.2. Elements of the crime of theft between spouses:

After we explained the linguistic concept of theft as well as the idiomatic concept, we show through this requirement the material element of the crime of theft and the moral pillar.

2.2.1. Material element:

The physical component of a crime of theft between spouses in the husband's doing he stole his wife's money. is meant with money it is everything in the victim's possession of things and we drive and animals etc. than it is owned by him legally and it was taken from him stealthily and without his consent or his approval.

2.2.1.1. Element: Matrimonial:

Even can be applied article 368 of the penal code a correct and proper application a must above all proof of existence kinship relationship between the accused and the victim. so, the thief must be the husband of the stolen one. because if there is no marital association between the accused and the victim or between the thief and his stolen the crime it is considered normal theft.¹

If the complaint is submitted by who is entitled to present it and he gave it up before or while doing follow up procedures then the actions must stop it is not permissible to follow up the adjudication procedures whether from public prosecution or the court if the assignment occurred after the ruling, we see obligation to stop the punishment²

¹ Saad, p. 155.

² Saad, p. 160.

2.2.1.2. Embezzlement:

Meaning of embezzlement the culprit seize the stolen thing if that thing was handed over to him, by extradition, there is no embezzlement, more precisely, it is considered theft if the money is taken or grab it or move or remove from the possession of owner and without his consent, and the opposite may actually be permissible, it might be another crime as a breach of trust or fraud.¹

Jurisprudence has settled that theft does not happen unless the thing moved the subject of the crime from the possession of its rightful owner without his approval to the possession of the offender and on it, it must be issued the activity of the culprit is whereby possession seizure and this verb it is embezzlement, embezzlement falls on possession, and jurists knew criminal law embezzlement that he took someone else's money without his consent, required in this satisfaction it should be based on will and awareness but if there is no will as is the case for the impeller and forced, there shall be no pilferage also, not informing the victim about theft satisfaction with him is not considered.²

The theft does not happen except on something that can be possessed and it has value only something that has the quality of money is suitable for ownership according to the law and this trait can be divided into two components the first is the money transferred the second is money owned by others. details of that are as follows:

¹ Ben ouareth, p. 210.

² Dhahi, p. 21.

2.2.1.2.1. It has to be the money or something stolen from movable property:

This condition is not mentioned in the penal code except that real estate cannot be imagined because it cannot be transported as is, where it is considered Moved everything can be moved on the other hand this is according to the meaning in criminal law. After all, it differs from it in civil law which he considered real estate by allocation it does not matter the nature of the stolen thing and its type it may be a solid body or as a liquid or gas or an electric current.¹

The object of theft must be movable money, and money everything is private ownership and it has value no matter how slim or frivolous, everything that can be moved from one place to another is transferred from a criminal point of view even if it was from a civilian point of view it is an allotment real estate like movable which its owner puts on his property in order to serve and exploit this property, and like him contact property like the windows of a house well even proprietary by nature that is, even if he was stable in his possession fixed in it, it cannot be taken from it without damage can with that as transferred in the rule of criminal law as for the parts that can be extracted from it, even if it was damaged.²

2.2.1.2.2. It has to be the money or something stolen owned by others:

The stolen money must not be in property accused of theft whether this person is natural or moral determining ownership is

¹ Ashour, 2006, p. 230.

² Dhahi, p. 25

due to civil law rules¹, as long as the rule states that “everything that the perpetrator does not possess” is considered the property of others like lost money and money that is a treasure, which should be the subject of the theft: (money that the thief does not have) at the time of the robbery thus it is owned by others at the time of theft it is due in determining ownership to the rules of civil law, and until the person is a thief for money or the thing transferred this must be money or thing owned by others the time of pilferage as things lost from their owners and lost and others.²

2.2.2. The moral element:

Theft is a premeditated crime and in which there must be the general intention until the moral element of the crime of theft is complete it is intended there is an intention to own the peculiar thing at the culprit and permanently depriving its owner of it, if it was stripped of something it aims to empower the casual hand or with the intention of temporary possession no stealing in it.³

Considering that theft of intentional crimes requires a beginning availability of general criminal intent which is to know the perpetrator at the time of the action and the direction of his free will and his common sense with all the elements of the crime as established by law with the requirement of private criminal intent is known bad faith or harm others by embezzlement of his movable property, it also requires the moral pillar of theft availability of private intent besides the general intent any specific intention it is the intention to own the stolen thing and depriving its owner of it permanently if something was stolen it aims to

¹ Ashour, p. 230

² Dhahi, p. 26.

³ Ashour, p. 232

review or with the intention of temporary possession no stealing in it, then that the seizure intended for temporary use not enough in the criminal intent.¹

The moral pillar for the crime of theft between spouses represented intake money from one of the spouses with the intention of owning it and act in it without the consent of the owner nor his approval with his knowledge that it is pure money for his wife, and if the law did not explicitly indicate to the intention component of criminal intent then it can be concluded, it can be proven easily from the facts of the robbery among the clues indicating it, although the intent component or intention it is considered a general component it requires its presence in all crimes. this is because if it is proven, for example, that the accused took his wife's money in order to protect it and maintain it. or in order to put it in the name of his wife in a financial bank or a safe place, there is no intention or intent to steal. nor a stand subsequently crime theft between spouses.²

Conclusion:

In frame protection approved by the legislator for the family relationship from its various aspects, a guarantee of it to live in a family socially and legally stable, bind the criminal legislator on the husband to provide adequate conditions for a decent living for his family via the necessity of spending on his wife with all kinds of alimony from adequate housing and adequate food and effective medicine, and every default affects this spending it results in penal sanctions, as guaranteed by law the financial disclosure remains independent for the wife he arranged for any prejudice to it

¹ Dhahi, p. 32.

² Saad, p. 156.

criminal penalties as well, criminal follow-up is not carried out against the husband the perpetrator of these crimes only if the injured wife submitted complaint-free the Public Prosecution from the constraint that hinders their follow-up the offender's spouse.

Through what was included in this study, we reach the following results:

- ❖ The wife has an independent financial responsibility of her own include hers if it is working or the legacy you inherited or its financial wealth whether what it contained from movables or real estate.
- ❖ The Penal Code surrounds the financial rights of the wife with penal protection that prevents the husband from abuse this money and guarantees the wife's survival and continuation of her financial assets far from any encroachment.
- ❖ As long a formal marriage has been concluded it binds both spouses, the wife is required by carrying out her various marital duties, the law also dictated on the husband spend on her, and to take comprehensive care of his wife, including housing, food, and medicine.
- ❖ The law takes care of the importance of family continuity materially and morally, therefore, spousal maintenance is surrounded by punitive protection to Spouse deterred of abuse in not spending on his wife, and he forces him to perform it whether the marital bond exists or even after its expiration so he is obliged to spend on the incubator of his children.

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