the formal offenses

الجرائم الشكلية

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Abstract:

The research deals with the topic of formal offenses through an analytical and historical approaches, drawing their origins back to the Roman era and their evolution to nowdays. These offenses consist of a set of acts that are not inherently criminal and do not infringe upon any rights or interests. However, legislators criminalized them as potential threat rights and interests, regardless of their criminal outcome, whether they occur or not. They have become offenses under the law, and jurisprudence has termed them "formal offenses."

The research also addresses the concept of criminal outcome in both its material and legal senses, as well as its relationship with formal offenses. It then categorizes homogeneous formal offenses into several groups: preventive offenses, negative offenses, attempts, and offenses deliberately endangering the lives and safety of others. Each of these categories is briefly explained and studied in the research.

Key words: formal offenses, preventive offenses, negative offenses, attempts, deliberate endangerment of others.

Introduction:

The penal law has to intervene, principally, when there is necessity to protect rights and interests that are supposed to be harmed. However, the prejudice must be a logical outcome of such offense. Naturally, there is no material act, which is legally incriminated, without giving out any harm. Although, the criminal act is not always the whole subject exposed in a context .Actually, a lot of acts are punished even without victims

So, the research focuses on formal offenses as a subject, considering them a category within modern legal frameworks in contemporary criminal policy aimed at preventing and combating crime before occurring. Despite being a classic topic, it holds significant scientific and practical importance, especially as it continues to evolve and the field of research remains open. This research is conducted due to the insufficient attention from Algerian criminal jurisprudence, the limited knowledge about the topic, and the scarcity of research and studies on it.

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Researchers have qualified these acts as ‘’ formal offenses ‘’. Their literature speaks out of a fundamental statement ‘’ Problematic ‘’, that is: In what extend, modern penal legislator would incriminate acts without causing harm, literally, named ‘’ formal offenses ‘’?

To answer The above key question, we should answer some secondary questions: what are formal offenses? Why are there such acts? How do they evolve? what is their legitimacy? and what is their practice in penal law?

We try to expose our paper research adopting a descriptive and analytical approach following the outlined plan:

Chapter One: Formal offenses
- Section One: Principles of Formal offenses
- Section Two: Definition of Formal offenses
- Section Three: Criminal Outcomes

Chapter Two: Categories of Formal offenses
- Section One: Preventive offenses
- Section Two: Negative offenses
- Section Three: Attempts
- Section Four: The offense of Deliberate Endangerment of Others

1- Formal offenses:

The first chapter of the research deals with foundational and conceptual aspects of formal offenses by tracing their historical origins since their emergence, their evolution, and the basis for their criminalization. It is divided into three sections:

1.1- Principles of Formal offenses:

The origin of formal offenses as a practice and its regulation can be traced back to ancient times. The Roman law, specifically the **Sylla Law** enacted in 81 BC, imposed penalties on individuals who placed poison, prepared it, or even those who sold or purchased it, regardless of any criminal outcome. In the Middle Ages, poison was associated with witchcraft, and engaging in sorcery or using poison was a punishable offense, carrying the death penalty, again regardless of any criminal outcome [1] .

As for the concept and theorization, credit goes to the naturalist German scholars of the 19th century, including **Von Litz,** who is attributed to the theoretical framework of criminal outcomes. He defined an offense as any action that led to a modification in the external world, even though the act itself appeared detached from this outcome [2].

Based on this idea, the outlines of modern formal offenses theory emerged among Italian jurists who attempted, for the first time, to differentiate between formal and material offenses by focusing on the criminal outcome. They used the criterion of material alteration in the external world as a pure criminal outcome. They argued that the existence of a formal crime depended on the legislator's will, whether the act itself was criminal or the alteration in the external world was criminal. Credit goes to the Italian jurist Carrara for making a clear distinction between formal and material offenses. According to **Carrara,** formal offenses are committed solely by violating the law through the commission of an act, while material offenses only occur when a specific material outcome takes place, which alone constitutes a violation of the law.

Thus, the development of formal offenses theory became intertwined with the development of criminal outcome theory, which has been a subject of extensive debate and discussion. This

prolonged discourse has led to an extended period of debate surrounding formal offenses, without achieving a consensus within legal jurisprudence to this day[3].

The idea of formal offenses was then introduced into French jurisprudence through **Henri Donnedieu de Vabres**, who was the first to formulate a concept of formal offenses in French law and distinguish them from material offenses using a new criterion: the exposure of protected rights and interests to danger. In other words, formal offenses involve the potential risk of harm to these rights and interests, while the discussions in France at the time revolved around the concept of "attempt"[4].

1.2- Definition of Formal offenses

The term "formal offenses" is applied to every behavior that, in itself, does not constitute a crime. However, it is the legislator who deems it a crime when it poses a threat to the rights and interests protected by law, regardless of whether any material outcome results from it. In this way, such behavior is transformed into a crime by the formal aspect of criminalization issued by the official authority, and it becomes a crime by law, even though it was originally permissible by its nature. Hence, they are termed "formal offenses."

Legal scholars have encountered difficulty in defining and delineating formal offenses for several reasons. One of these reasons is their reliance on the concept of criminal outcomes, which can carry multiple meanings [5]. It is one of the most complex and ambiguous concepts and one of the least developed in criminal law [6]. Another reason is the lack of uniformity among the various categories of formal offenses, as they do not adhere to a unified rule, leading each researcher to define them from their own perspective.

They have been defined as follows: formal offenses are offenses whose legal model does not require the occurrence of any outcome or alteration in the external world [7]. They have also been defined by comparison with material offenses as offenses where their outcome is not an element of the crime. Even if no harm or desired result occurs from them, they exist independently of any harm [8].

Some argue that the legislator does not consider the criminal outcome in formal offenses but rather focuses on the behavior. If it is found, it will expose a criminal risk and is penalized, then it is considered a formal crime. It is said that "formal offenses consist of elements that occur once the material element is fulfilled, coupled with the moral element, without the occurrence of a specific outcome [9]." An example of this is when a person intentionally refrains from paying the legally mandated expenses according to Article 331 of the Penal Code.

Others believe that formal offenses manifest the perpetrator's intent to commit a criminal act without regard to the outcome. If the perpetrator intends to achieve an outcome but fails due to circumstances beyond their control, the formal crime can transform into an attempted crime [10].

Some define them as "actions or events that the law criminalizes regardless of the result[11]." Others define them as "offenses that are executed independently of the outcome," as the law punishes the mere behavior. Hence, they are also referred to as behavioral offenses.

These definitions of formal offenses, which attempted to define them based on behavior, create confusion and ambiguity, as they blur the distinction between formal offenses and modern material offenses that are solely based on the material element. Furthermore, formal offenses require both a material and a moral element, making the attempt itself a formal crime.

Even their commonality in the material element differs. Formal offenses require the act to have the potential to achieve a criminal outcome, and if that outcome occurs, the description of

the crime changes. In contrast, modern material offenses are solely based on the pure material act without the occurrence of any outcome [12].

The classic example used to illustrate formal offenses is the crime of poisoning, as outlined and punishable by Article 260 of the Penal Code. It defines poisoning as an assault on a person's life by the influence of substances that can lead to death, whether immediate or delayed, regardless of the manner in which these substances are used or administered and regardless of the specific results they produce. This crime is committed simply by administering the toxic substance to any person, whether they ingest it or not, and whether the criminal outcome is achieved or not. Another example is the crime of intentional arson, as stipulated and punishable by Article 395 and subsequent articles of the Penal Code, where the crime is complete upon setting fire to the intended object, regardless of whether the fire continues to burn, extinguishes itself, or is extinguished. In both cases, the essence of criminalization lies in the threat to the right to life and the threat to the right of ownership through the destruction by the risk of assault, regardless of the material outcome, whether achieved or not.

Given the connection between formal offenses and criminal outcomes, the logic of the research necessitates an exploration of criminal outcomes and their relationship with these offenses, as follows:

1.3- The Outcome and Its Relationship with Formal offenses

There is a disagreement among legal scholars regarding the definition of the term "outcome" as one of the material elements of a crime. Some view it as a material or natural fact, while others regard it as a legal fact. This difference has an impact on the importance of the outcome in relation to the existence or non-existence of a formal crime. We will discuss the outcome in the material sense in the first subsection and in the legal sense in the second subsection.

1.3.1- The Outcome in the Material Concept

The criminal outcome in the traditional material concept is the material effect or change caused by criminal behavior in the external world [13]. It is a physical reality resulting from another physical event and is linked by causation. This outcome represents the harm resulting from the perpetrator's behavior, and the law considers it when determining the existence of a crime [14]. This outcome is realized through actual physical harm and the infringement on the right which is protected by the law [15]. Without it, neither the material element nor the crime is established. The material outcome constitutes an essential element of the material component of the crime, and without it, the crime does not stand [16]. For instance, in the crime of murder, the criminal outcome is death, and in theft, it is the removal of money from the possession of the owner. Without death, there is no murder, and without the removal of money from the owner's possession, there is no theft.

However, criminal outcomes in this sense are not present in all offenses. In simple negative offenses, there is no material change in the external world caused by criminal behavior. For example, when a judge refrains from ruling on a case according to Article 136 of the Penal Code, or when a person who attended a birth fails to report it, as per Article 442(3) of the Penal Code, there is no material change resulting from these offenses. The question then arises: why don't these offenses involve criminal outcomes, and how can this issue be resolved?

A recent trend in Italian jurisprudence suggests considering the outcome in the legal sense. What does it mean to consider the outcome in the legal sense?

1.3.2- The Outcome in the Legal Concept

A novel legal concept has emerged in Italy, suggesting that the criminal outcome is not the material effect resulting from the perpetrator's behavior, but rather a legal concept involving an infringement on the right or interest protected by the law. This infringement can take the form of harm to this right or interest in the form of a direct and immediate assault, resulting in material prejudice [17], or it can take the form of a potential and indirect threat to this right or interest [18].

For example, murder constitutes a direct and immediate assault on the right to life. On the other hand, carrying and possessing weapons, in principle, are not offenses and do not require permission or a license from the authorities. However, the legislator restricts the carrying and possession of weapons with a license from the authorities. Punishment is imposed on anyone who carries or possesses a weapon without such a license because carrying and possessing weapons, in and of themselves, pose a risk to the lives and safety of individuals, as well as to property and public safety. In this way, the criminalization of carrying and possessing weapons is not due to it being an assault on a right or interest in itself or a crime in its own right. Instead, it is criminalized because it constitutes a danger to the lives and safety of individuals, property, and public safety, with the possibility of being used in offenses such as murder, assault, theft, or other offenses.

Therefore, the criminal outcome in the legal sense is the effect resulting from criminal behavior, which may take the form of the material outcome resulting from an assault on rights and interests protected by the law or the form of a potential and indirect threat that endangers these rights and interests through potential assault [19].

By adopting the criterion of the threat faced to rights and interests protected by the law as a criminal outcome in formal offenses, it becomes evident that these offenses consist of several different categories, all sharing the element of outcome based on the element of danger. These categories will be discussed in the following subsection.

2- Categories of Formal offenses

Researchers often group several heterogeneous categories of offenses under the classification of formal offenses, all of which share the element of results based on danger. These offenses include preventive offenses, negative offenses, attempts, and the crime of intentionally exposing others to danger. Therefore, we divide this section into four subsections:

2.1- Preventive offenses

Criminal law does not only intervene to deter and punish the perpetrator when they harm social values and interests. It also intervenes beforehand when these values and interests are threatened by the danger of an attack before any harm occurs. This is the principle of criminal policy where the legislator works to protect society from crime before it happens. The legislator criminalizes certain actions that pose a threat to rights and interests protected against assault. These offenses are often referred to as preventive offenses or offenses that act as obstacles because they prevent and hinder the commission of a more serious and dangerous crime [20].

The legislator's aim with preventive criminalization is to strike at the perpetrator as soon as they commit an act that threatens the right or interest protected by the law, considering this potential threat as an actual violation of that right or interest [21], regardless of any criminal result. The law punishes the criminal behavior in itself when it represents a potential threat or assault against this right or interest [22]. Unlike material offenses where the legislator aims, through criminalization, to deter and punish the perpetrator after the commission of the crime and the appearance of its results.

For example, the possession of a weapon is criminalized under certain law, even if mere possession is not a crime in itself. It is criminalized because it poses a threat to rights and interests protected by the law. Therefore, carrying and possessing a weapon without a license is prohibited because it can be used in offenses such as murder, assaults, and others.

Furthermore, the legislator generally does not punish thoughts and intentions. However, it criminalizes and punishes criminal agreements under the provisions of Article 176 of the Penal Code. According to this article, "Any association or agreement, regardless of its duration and the number of its members, made for the purpose of preparing or committing offenses against persons or property, constitutes a criminal conspiracy that forms as soon as the common intent to commit the crime is formed." While thoughts and intentions are generally not considered offenses, agreeing to commit offenses is punishable because it represents a threat to rights and interests protected by the law.

In this way, offenses such as attacking the authority of the state, violating national territorial integrity, and other offenses such as begging, counterfeiting of currency and securities issued by the state, forging and imitating national seals, stamps, marks, and impressions, and false testimony, explicitly provided for and punishable by law, are all formal offenses falling within the category of preventive offenses. The legislator's goal in criminalizing them is to prevent and hinder the threat of aggression against these rights and interests, regardless of any criminal result [23].

2.2- Simple Negative offenses

In criminal texts, the general rule is that they prohibit more than they command. Therefore, most offenses are positive offenses, where the material element consists of positive behavior performed through a deliberate bodily movement. These are often referred to as positive or commission offenses. However, there are exceptions where the law orders specific actions, and anyone who takes a negative stance and refrains from performing them is subject to punishment. These are known as negative offenses or offenses of omission [24]. Negative offenses can further be classified into negative offenses with a result and simple negative offenses.

Negative offenses with a result are known as offenses of omission by abstention. These are offenses where mere abstention alone is not enough for their commission; it must lead to a result in the material concept [25], meaning it must cause a change in the external world. The same principles that apply to positive offenses with results [26], also apply to these offenses, and they are not considered formal offenses. They should be excluded from this discussion.

The focus here is on simple negative offenses, which are defined as offenses where the only requirement for their commission is the omission to perform the action prescribed by the law. These offenses are unique because they do not result in any criminal material outcome or produce any changes in the external world [27].

When a crime is committed, nothing remains unchanged in reality [28]. Even formal offenses like arson, which are considered committed when the fire is set in the intended place, signify that the flammable material has been placed where it was not before. Similarly, the crime of endangering a child, which occurs by leaving the child in a deserted place, shows that the child has been moved from their natural location to a place that poses a risk to their life or physical safety. Likewise, the crime of possessing a prohibited weapon is established when the weapon is in the possession of an unauthorized individual, demonstrating a change in ownership.

However, simple negative offenses are the only offenses that do not lead to any change in the external world. Their commission depends solely on refraining from taking the action mandated by the law [29]. offenses such as a spouse refusing to pay court-ordered alimony, failure

to deliver a minor to the person entitled to custody, a judge's refusal to rule on a case, failure to provide assistance to a person in danger, and a witness refusing to give testimony as required by law fall into this category.

Even though the act of omission in these cases does not constitute a crime in itself, and the situation remains unchanged as it was before the omission without any increase or decrease[30], the legislator criminalizes and punishes these actions. This is because they pose a threat to the rights and interests protected by the law, endangering their loss or damage. This categorization places them under the category of offenses involving danger and formal offenses [31].

2.3- Attempts

An attempt refers to initiating the execution of a crime and striving to achieve the criminal outcome without reaching it due to reasons beyond the perpetrator's control. In legislative and jurisprudential terms, this is referred to as "attempt." Algerian law addresses attempts in Article 30 of the Penal Code, which states that an attempt is: "Every attempt to commit a crime, starting with the commencement of execution or through actions that undoubtedly lead directly to its commission, is considered as the crime itself if it does not fail or only fails due to circumstances beyond the control of the perpetrator, even if the intended goal cannot be achieved due to a material circumstance unknown to the perpetrator." In essence, all forms of attempts to commit a crime mentioned in this article are punishable.

There are three forms of attempts defined within this context:

- Suspended offense: This is when the perpetrator begins to execute the offense but stops voluntarily due to external circumstances or reasons that prevent them from completing it. For example, if the perpetrator is discovered by the property owner or neighbors, this situation is also known as an incomplete attempt [32].

- Frustrated offense: In this form of attempt, the perpetrator initiates the offense and continues executing it until all necessary criminal activities have been exhausted to achieve the criminal result. However, the desired outcome is not achieved. For instance, if someone fires a gun at another person but misses, this is considered a frustrated attempt [33].

- Impossible offense: This type of attempt involves the perpetrator exerting all necessary criminal activities to achieve the criminal result, but they are unable to do so due to a material circumstance beyond their control [34]. Impossibility can be absolute when the means used for the offense are entirely unsuitable for its commission. It can also be relative when the means are suitable but are not used correctly [35]. For example, in cases such as abortion (Article 304 of the Penal Code) or poisoning (Article 260 of the same Code), the legislator did not criminalize attempts that are impossible in an absolute sense, whether due to the subject matter or the means used.

Generally, the legislator only intervenes with deterrence and punishment when there is harm to social values and interests. However, when the legislator criminalizes and punishes attempts, it is based on the idea that initiating the execution of a offense in itself poses a threat to the rights and interests protected by law, even if the intended goal cannot be achieved due to external circumstances. Therefore, these attempts are treated as independent formal offenses.

2.4- The offense of Deliberate Endangerment of Others

This offense is defined as follows: the failure to take precautions, exercise due care, negligence, or a breach of a commitment made by the perpetrator, falling between old criminal negligence and probable intent [36]. It is considered one of the innovations in the French Penal Code of 1994, as Article 223-1 states: "An act that exposes others immediately to the risk of

death or injuries that inherently lead to disfigurement or permanent disability through a clear and intentional breach of a specific duty of caution or safety imposed by law or regulatory provisions shall be punishable by one year of imprisonment and a fine of 15,000 euros*."

This offense has evoqued jurisprudential debate regarding its nature due to the ambiguity of the text that criminalizes it. Some think it as an intentional offense, while others see it as non-intentional. Some argue it is a material offense, while others consider it formal. Additionally, some argue it represents a return to the concept of probable intent. Though the legislator does not combine probable intent with direct intent. He stipulates it between the two intents, as aggravated fault [37].

In reality, this offense involves with the concept of probable intent. But, simple negligence or lack of precautions, where the perpetrator is unaware of the risks, deliberate endangerment presupposes that the perpetrator is aware of the risks while committing the act. For instance, a driver who intentionally runs a red light, killing a child crossing the road, is fully aware that their deliberate action exposes others to danger. This error can be seen as both an aggravated form of negligence and non-intentional offense, as it does not depend on the resulting outcome. So, this category is considered as formal offense [38].

Certainly, the Algerian legislator inspired the provisions of Article 290, from his French homologue, his states: "Anyone who intentionally and conspicuously violates a duty of caution or safety imposed by law or regulations, thereby directly endangering the life or physical safety of others, shall be punishable by imprisonment for a term of 6 months to 2 years and a fine of 60,000 DZD to 200,000 DZD."

The penalty increases to imprisonment for 3 to 5 years and a fine of 300,000 DZD to 500,000 DZD if these actions occur during quarantine periods or during natural, biological, technological, or other disasters. The legal person who commits the offense defined in this article shall be punished according to the provisions of this law.

Through this article, the Algerian legislator defines the crime of endangering others as the intentional commitment of an act that violates the duty of caution and care as prescribed by law or regulations. The perpetrator is fully aware that their act poses a direct risk to the life and safety of others. This crime carries a punishment ranging from 6 months to 2 years of imprisonment and a fine of 60,000 DZD to 200,000 DZD.

The Algerian legislator has adopted a concept that combines fault with expectation or foresight and probable intent. Probable intent refers to the perpetrator's intention to commit the criminal act and the expected consequences, even if he did not desire these consequences [39]. Nevertheless, they continue the act until the expected outcome, which they could have avoided, is realized [40]. These two aspects can be combined into a single incident, categorizing it as non-intentional offenses according to a narrow interpretation of the law. However, proponents of equality between probable and direct intent consider it an intentional crime. They adhere to the theory of "knowledge" in defining criminal intent, where it suffices for the perpetrator to intend to commit the act and expect the serious consequences. If these consequences occur, criminal liability that follows [41].

Thus, both the Algerian and French legislators have considered the crime of deliberately endangering the lives and physical safety of others as an Independent, non-intentional crime that blends with probable intent. This unique characteristic sets it apart as the only non-intentional crime that does not require a material result, and it is subject to a severe penalty. This is aimed at punishing the perpetrator for their deliberate recklessness and endangerment of the lives and safety of others, whether it be a construction company manager requiring workers to operate

without helmets and safety nets or a transportation company head instructing a driver to ignore rest times [42].

Substantially, both French and Algerian legislators intended to establish a general rule for a category of offenses falling under the description of deliberately exposing the lives and safety of others to risk through intentional violation of duties of caution and safety imposed by law or regulations. In reality, the Algerian legislature aimed, in particular, to deter violations related to quarantine measures for combating the COVID-19 virus, as well as the alarming increase in traffic accidents and their casualties. The scope of applying this crime is expanding from violations of traffic rules to labor regulations and inadequate medical treatment, obligating officials and managers of economic enterprises to adhere to the required caution and care while carrying out their activitie [43].

Conclusion:

Formal offenses constitute a category of heterogeneous offenses, where we find, for example, the crime of failing to provide assistance to a person in danger (Article 223-6 of the Penal Code), conspiracy (Article 412-2 of the Penal Code), and the crime of endangering others (Article 223-1 of the Penal Code). Despite the few commonalities among them, they are classified as formal offenses. Sometimes, they do not align with the classic definition of formal offenses, which consist of acts that do not infringe upon protected rights and interests and do not cause any harm. They are not inherently criminal, but the legislator criminalized them based on their shared element of danger that threatens these rights and interests regardless of their criminal consequences. They have become offenses by virtue of the law, and jurisprudence has given them the name "formal offenses." These offenses have been categorized and classified into several homogeneous categories: preventive offenses, negative offenses, attempted offenses, and deliberate endangerment of the lives and safety of others. After analyzing and discussing them, the following conclusions have been reached:

1) There is no commencement in formal offenses; either they are complete or they do not occur.

2) There is no withdrawal in formal offenses; any withdrawal in these offenses is considered mere repentance not legally recognized because the crime is considered complete once the execution begins, regardless of the criminal result.

3) If a material result arises from formal offenses, it disappears and is replaced by an aggravated circumstance, replaced by another, more severe crime. For instance, the crime of driving under the influence, punishable under Article 67 of Law 01-14 dated August 19, 2001, as amended and supplemented by Law 04-16 related to the regulation of traffic movement, safety, and security, leads to an accident causing bodily injuries or fatalities. In such cases, the crime of driving under the influence disappears, and it is replaced by the crime of unintentional bodily harm or unintentional homicide, with an increased penalty according to Article 290 of the Penal Code.

4) In some cases, when the result arises from preventive offenses, the offender's legal status changes not through addition but through replacement. The preventive crime disappears in favor of another more serious crime. For example, possession or carrying of a prohibited weapon without a license, which might be used in committing a more dangerous crime, is considered a preparatory means for offenses against life or bodily integrity. Originally, this stage is not punishable, but the legislator punishes this exceptional case.

5) The uncertainty in defining the standard for formal offenses based on behavior or outcome, coupled with varying definitions according to their categories, makes their determination nearly impossible.

In summary, formal offenses are a unique and complex category of offenses that challenge traditional definitions and concepts of criminality. They are a product of legislative intervention aimed at addressing specific risks and dangers to society. The classification and analysis of these offenses reveal their intricate nature and the challenges they pose to legal scholars and practitioners.

Citations:

1- Simon Husser, L'infraction formelle, Mémoire Master 2 de droit pénal et sciences pénales, Université Pantheon-Assas, Paris II, Année universitaire 2015-2016. p 12 . https://docassas.u-paris2.fr. le 01/07/2023 à 14 :39 .
2 - Jean Pradel, Droit pénal, Introduction général, 9ème édition, Cujas, Paris p 411.
3- W. JEANDIDIER, DROIT PÉNAL GÉNÉRAL, 2e éd, Éd. Montchrestien PARIS 1991 p 269
4- Simon Husser, *op. cit* 18-19
5- W. JEANDIDIER, DROIT PÉNAL GÉNÉRAL, 2e éd, Éd. Montchrestien PARIS 1991 p 269 .
6- Simon Husser, *op. cit* 18
7- مأمون محمد سلامة ، قانون العقوبات القسم العام، جـ 3، سلامة للنشر والتوزيع، القاهرة- مصر، 2018 ص 117.
8- Gaston Stefani, Georges Levasseur, bernard bouloc, Droit pénal général , Précis Dalloz , Paris ., 1978, p 218
9- مصطفى العوجي، المسؤولية الجنائية في المؤسسة الاقتصادية ، مؤسسة نوفل، بيروت، لبنان 1982 ص 103.
10- نفسه ، ص 104.
11- Jean Prade , op.cit, P 429.
12- مزياني عمار، الجرائم المادية والمسؤولية الجنائية، مقال منشور بالمجلة الجزائرية للحقوق والعلوم السياسية، الصادرة بتاريخ 2022/12/01 عن كلية الحقوق، جامعة تيسمسيلت، الجلد7، العدد 02 ص: 18-34 .
13- محمد زكي أبو عامر ، قانون العقوبات -القسم العام- دار الجامعة الجديدة ، الإسكندرية ، مصر 2015 ص 116.
14- عمر السعيد رمضان، شرح قانون العقوبات، القسم العام، دار النهضة العربية ، القاهرة، بون سنة نشر، ص 164.
15- رضا فرج، شرح قانون العقوبات الجزائري، الشركة الوطنية للنشر والتوزيع، الجزائر، 1976 ص 213-214.
16- مأمون محمد سلامة ، المرجع السابق ، ص 152.
17- عمر السعيد رمضان، المرجع السابق ، ص160- 161.
18- محمد صبحي نجم، قانون العقوبات -القسم العام- دار الثقافة للنشر والتوزيع عمان الأردن، 2006 ص 212.
19- نظام توفيق المجالي، شرح قانون العقوبات -القسم العام- دار الثقافة للنشر والتوزيع، عمان ، الأردن 2017 ص259
أنظر أيضا: عبد الله سليمان، شرح قانون العقوبات- القسم العام- جـ 1 الجريمة، دار الهدى، عين مليلة، ص 125.
20- شريفة سوماتي، التجريم الوقائي في السياسة الجزائية، مجلة صوت القانون، المجلد السادس، العدد 02 نوفمبر 2019 جامعة خميس مليانة، الجزائر، ص 1199
21- محمود نجيب حسني، شرح قانون العقوبات،القسم العام،ط 8، دار النهضة العربية، القاهرة 2018 ،ص 337 .
22 - W. JEANDIDIER, op.cit, p. 265.
23 - W. JEANDIDIER, op.cit, Ibid, p 266 .
24- رؤوف عبيد، مبادئ القسم العام من التشريع العقابي، ط 3 ، دار الفكر العربي، القاهرة، 1966 ص 168- 169.

25- عز الدين الديناصوري، عبد الحميد الشواربي، المسؤولية الجنائية، جـ 1، دار الأهرام، القاهرة 1922 ص 140

26- نفســـه، ص 375-376.

27- Jean Pradel , o.p cit, P 399.

28 - W. JEANDIDIER, o.p cit, p 270 , 265.

29- محمود نجيب حسني، جرائم الامتناع والمسؤولية الجنائية عن الامتناع، دار النهضة العربية، القاهرة 1986 ص 334

30- محمود نجيب حسني، جرائم الامتناع ، 335.

31- رضا فرج، المرجع السابق ، ص 214.

32- محمد صبحي نجم ، المرجع السابق، ص 230.

33- إيهاب عبد المطلب، الموسوعة الجنائية في شرح قانون العقوبات، المركز القومي للإصدارات القانونية، المجلد1، القاهرة 2018 ص512.

34- رضا فرج، المرجع السابق ، ص 275.

35- عبد الله سليمان، المرجع السابق ، ص 151 ، 153 .

36- Benoit Chabert, Pierre-Olivier Sur, droit pénal générale, Dalloz , Paris , P 54.

37- Gaston Stefani et autres, p 247

38- طباش عزالدين، تعريض حياة الغير وسلامته الجسدية للخطر، مجلة الدراسات حول فعالية القاعدة القانونية، مخبر البحث حول فعلية القاعدة القانونية ، كلية الحقوق والعلوم السياسية جامعة عبد الرحمن ميرة، بجاية، الجزائر، المجلد 05 العدد 02-2021 ص 9 .

39- رؤوف عبيد ، المرجع السابق ، ص 248.

40- عبد الله سليمان، المرجع السابق ، ص 238 .

41- رؤوف عبيد ، المرجع السابق ، ص 249 .

42- Benoit Chabert et autre, op.cit, p 54-55.

43- Benoit Chabert et autre, op.cit, p 55.