



Received 24/04/2022

Accepted 06/09/2022

## *The Legal System used for the Suspension of Press Institutions Activity.*

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### *Abstract*

*Suspending the activity of press organizations is contrary to the idea of freedom of the press and the media. It results in the dismissal of dozens of journalists. Legislation varies in procedures for disrupting such activity in normal or exceptional circumstances. This study attempts to present the legal procedures to be followed to issue a decision to suspend the activity of press institutions, and examples of several legislations that have regulated the issue will be referred to.*

*Keywords: Freedom of the press, freedom of information, press activity, press institutions.*

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## 1. Introduction

It is well established that the function of administrative control over the activity of media institutions extends beyond merely imposing procedures. As a result, governments opted for a cessation to media operations.

In this respect, and depending on the conditions of the country, the operation of the media institution may be disturbed according to circumstances, be they normal or exceptional.

### ***Statement of the Problem:***

Encounters with interrupting newspaper institutions have demonstrated that many regulations allow administrative authorities the power to disrupt press organizations, which begs the question: What is the legislative framework that governs the disruption of press institutions' operations?

### ***Rationale of Study:***

The government may opt to disable press institutions, particularly when they propose suspect issues, break societal standards, or create detriment to public order, as this research paper will seek to elucidate.

### ***Methodology of the study:***

To address this issue, this study opted to take an analytical and comparative approach to the various laws that regulate the premise of disrupting the activity of press institutions, by breaking it down into two key elements:

First: Aspects of disrupting the activity of press institutions under normal circumstances.

Second: The manifestations of disrupting the activity of press institutions under exceptional circumstances.

## **2. First: Aspects of disrupting the activity of press institutions under normal circumstances**

The forms of the media institutions activities disruption, whether written, oral, or visual, vary according to the type of the action taken against it. It is demonstrated that the license holder has waived in any manner, the Algerian legislature has established the possibility of removing the license or accreditation.

According to Article 16 of Law 12-05 on Information: "The accreditation is not waived in any way.

Without prejudice to the judicial follow-up, every breach of this provision shall result in the withdrawal of the accreditation."

Additionally, that the periodic circular has not been issued within a period of one year from the date of its delivery.

Article 16 of Law 12-05 on Information states that "The accreditation is not waived in any way. Without prejudice to the judicial follow-up, every breach of this provision shall result in the withdrawal of the accreditation"

Furthermore, the Egyptian legislator made the license invalidated if the newspaper was not issued within three months of receiving the license, or if it was not issued regularly within six months, with the understanding that proof of the irregularity of the newspaper's issuance is established by a decision of the Supreme Council of the Press, and the decision is announced to the person concerned.

In the same line of thought, and according to Article 48 of the 1996 Press Regulations Law: "If the newspaper was not issued within the three months following the license or if it was not issued regularly within six months, the license shall be considered as if it had not been issued, and the issuance of the newspaper is considered irregular if it is achieved without an acceptable excuse not to issue half of the imposed issue. It was originally issued within a period of six months, or the period of occultation during this period is longer than the period of successive issuance. The proof of irregularity in the issuance of the newspaper shall be by a decision of the Supreme Council of the Press, and the decision shall be announced to the person concerned."

In Lebanon, according to Article 43 in the Lebanese law of publication; any press publication issued prior to obtaining the license and presenting either the permit or the monetary or banking guarantee is immediately suspended by a decision of the Minister of Information, and its copies are confiscated, its owner is sanctioned with a minimum fine, and the license is revoked for a year. Its responsible manager is barred from taking responsibility for any other publication during this period.

One may also face a confiscation or "ban from circulation" decision, which is a judgment issued by the administration that aims to restrict the sale or distribution of a specific number of issues of the newspaper due to the publication of articles or news that endangers public order.

Within this context, French law recognizes two forms of confiscation in French law. Confiscation for establishing a crime is judicial. If the confiscation is designed to avoid disruptions in public order, it is administrative

The French legislator adopted this division based on the ruling issued in the Frampar company case, which concludes in the fact that the director of security in the Algiers region confiscated several French newspapers, namely: Le Monde- France Soir- Paris Presse. However, the court did not consider this and decided to annul the confiscation decision because it violated the authority. (State Council, Assembly, of June 24, 1960, 42289, published in the Lebon collection)

As a result, the investigating judge has the authority to confiscate four issues of the newspaper upon cancellation of the administrative or judicial deposit; or when it has committed a number of offenses.

This text is referred to in Article 51 of the law of July 29, 1881 on the freedom of the press: "Immediately after the indictment, the investigating judge may order the seizure of four copies of the offending writing, newspaper or drawing.

However, in the cases provided for in the first to third and fifth paragraphs of article 24 and in article 37, the seizure of writings or printed matter, placards or posters, takes place in accordance with the rules enacted by the code of criminal procedure. »

It is without a doubt that precluding the circulation of the newspaper after it has been printed and prepared for distribution and sale in general, and in France in particular; This newspaper will suffer a significant loss, resulting in the aggravation of its debts and the multiplication of its obligations, which it will be unable to meet. The only commercial or industrial business that sells its product at a loss is a journalistic enterprise.<sup>1</sup>.

It is worth noting that the French judiciary<sup>2</sup> has played an important role in controlling the prevention of national newspapers from circulating - as we will present to it - which has achieved a balance between the necessity of protecting public order, which is what they are based on. In addition to that, the management and freedom of the press in general, and the freedom of newspapers to circulate in particular, imply that a number of requirements must be followed in order for the confiscation to be effectively carried out.

Three conditions must be met in order for the administration to order the confiscation of the newspaper:<sup>3</sup>

**First:** The newspaper must contain what constitutes a threat to public order, and that is self-evident, since the public order of the state is superior to anything else, and there is no doubt that the administration is the one who has the ability to assess whether the newspaper contains a threat to public order or not.

However, this does not mean that the administration is alone in this, without the presence of a commentator on it or oversight. The judiciary represents the best supervisor over the actions of the administration, including what it decided to reject the lawsuit filed by those in charge of the newspaper “L’ Action Française” and the validity of what the party concluded. The administration prevented the newspaper from threatening public order and containing the newspaper's headlines encouraging violence.

**Second:** The inability to ward off the danger, which assumes that the consequences of threatening public order by the newspaper will not be able to ward off its danger. This is an obvious condition, since if the management authority finds out that it will be able to ward off this threat, it is not allowable to resort to confiscating the newspaper. .

An example of this is the decision to support the contested judgment issued by the Administrative Court in Paris to cancel the decision of the administration to confiscate a French newspaper on the grounds that if the law gives the administration the right to confiscate when the security situation is threatened. It must first prove the existence of the required situation; otherwise, it is denied the legal grounds for confiscation.

**Third:** The confiscation must be commensurate with the threat to public order; this condition is rudimentary for the enforcement of the confiscation by the administration, including what it stipulated that the newspaper whose numbers were confiscated may claim compensation, not because of the confiscation only, but because the confiscation has a nature. This procedure should be adopted to an appropriate extent that requires time and place.

To sign the decision to confiscate newspapers in Algeria, the governor can depend on Decree 83-373, which defines the governor's authority in the sphere of security and public order<sup>4</sup>.

In Morocco, According to Chapter 77 of the Royal Decree relating to the Moroccan press, the Minister of the Interior may order the administrative seizure of every issue of a newspaper or periodical that would prejudice public security. The other prescribed along with the texts in force and in the cases stipulated in the two previous sections, the newspaper or the periodical bulletin might be prohibited by a decision of the Prime Minister<sup>5</sup>.

As for the Palestinian legislation, According to Article 47 of the Palestinian Publications Law, it grants the competent authority the power to seize and confiscate all printed copies issued on that day<sup>6</sup>.

The procedures exacted on periodicals and newspapers may also include the decision to suspend the media institution, and it is worth noting that Algerian law gives the authority in charge of the written press the authority to suspend publication if the certified accounts for the previous year are not published within thirty days, even if the thirty-day period has passed<sup>7</sup>.

This is referred to by Article 30 of Law 12-05 related to information: “The periodicals must annually publish the account balance certified for the previous year through their pages.

In the event of failure to do so, the written press control authority shall issue a notice to the periodical to publish the outcome of its accounts within thirty (30) days.

In the event that the outcome is not published within the aforementioned deadline, the written press control authority may decide to suspend the publication until its status is settled.

Based on Article 103 of Law 14-04 related to audiovisual, its counterpart in the audio-visual field, i.e. the audio-visual control authority, may, after notifying the licensing authority, immediately suspend the license without prior notice and before the decision to withdraw it, in the following two cases<sup>8</sup>:

- When breaching the requirements of defense and national security.
- When there is a violation of public order and morals.

Knowing that according to Article 104 of the same law, this license is withdrawn by decree, based on a reasoned report from the audiovisual control authority<sup>9</sup>

Moreover, in Palestine, as stated in Article 47 of the Palestinian Publications Law, the court can order the temporary suspension of publication for a period not exceeding three months<sup>10</sup>.

To recapitulate, law in the United Arab Emirates, Kuwait, Qatar, the Sultanate of Oman, the Kingdom of Saudi Arabia, and the Kingdom of Morocco empowers the administrative body to suspend the publication administratively from getting a previous license or permission. As a result, all Arab legislations have shared a common feature: the expansion of the administration's authorities in the matter of administrative control and the

disruption of the newspaper. In fact, this a violation of the principle of prior judicial control, any act of the administration as long as it relates to the basic freedoms of individuals, and it adopts the arbitrary system that gives the administration powers of infringement on individual rights<sup>11</sup>.

Some legislations, such as the Bahraini and the Egyptian, considered that the ruling of convicting him or the editor-in-chief would be a justification for the court to suspend the newspaper.

In this context, and based on Article 75/1 of the aforementioned Bahraini Press, the Bahraini legislator considered that judging the editor-in-chief or the responsible editor<sup>12</sup>; in a crime committed by means of the newspaper, the court may rule to suspend the newspaper for a period not exceeding six months. This is what the Egyptian legislator decided, according to the text of Article 200 of the Egyptian Penal Code in Article 200 of the Egyptian Penal Code. The latter stipulates the possibility of suspending the newspaper for a month. This is applicable to newspapers that are published three times a week or more, for a period of three months, for weekly newspapers, and for a period of one year in other cases, in the event that the editor-in-chief of a newspaper, the responsible editor, the publisher or the owner of the newspaper is sentenced in a felony committed by means of the aforementioned newspaper, or in one of the crimes stipulated in Article 179 penalties, or Article 308 of penalties<sup>13</sup>.

### **3. Second: The manifestations of disrupting the activity of press institutions under exceptional circumstances.**

Given the constraints that have affected all rights and freedoms, including media freedoms, all legislations agree that the regulation of media activities may be harsh in extreme circumstances<sup>14</sup>. This is despite the fact that recent trends in the field of media activity have been stabilized when the media are not subject to previous oversight by the authority, and this censorship is not accepted in all cases, even in exceptional circumstances such as cases of war and emergencies, except reluctantly and in the narrowest limits.

The French legislator granted the President of the Republic the power to confiscate newspapers when the country passes under exceptional circumstances. Perhaps the legal basis for this is Article (16) is contained in the French Constitution issued on October 4, 1958. The latter states that “if republican regimes become the performance of the exploitation of the homeland or the integrity of its lands or the implementation of its commitments, the international community is under grave and immediate danger, and as a

result the constitutional public authorities have ceased to perform their duties as usual". The President of the Republic shall take the measures dictated by these circumstances, after consulting with the Prime Minister, the President of the National Assembly, the Senate, and the Constitutional Council in an official capacity, and informing the people of this by letter. The purpose of these procedures must be to enable the constitutional public authorities to carry out their mission as soon as possible. The Constitutional Council is consulted with regard to these procedures, Parliament meets under the law, and the National Assembly may not be dissolved during the exercise of these exceptional powers.<sup>15</sup>

The wording of Article 16 of the French Constitution issued on October 4, 1958 is as follows :

"When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the execution of its international commitments are threatened in a serious and immediate manner, and when the functioning of the constitutional public powers is interrupted, the President of the Republic takes the measures required by these circumstances, after official consultation with the Prime Minister, the Presidents of the Assemblies as well as the Constitutional Council. He informs the Nation by a letter."

These measures must be inspired by the desire to provide the constitutional public authorities, as soon as possible, with the means to accomplish their mission. The Constitutional Council is consulted about them, and the Parliament meets of plain right. The National Assembly cannot be dissolved during the exercise of exceptional powers.

After thirty days of exercise of exceptional powers, the Constitutional Council may be seized by the President of the National Assembly, the President of the Senate, sixty deputies or sixty senators, for the purpose of examining whether the conditions set out in the first paragraph remain met. It decides as soon as possible by means of a public notice. It carries out this examination as of right and makes a decision under the same conditions after sixty days of exercise of the exceptional powers and at any time beyond this period.

On the other hand, the French legislator decided under the French Code of Criminal Procedure that the director of security in the event of crimes (felonies - misdemeanors) affecting the internal and external security of the state, as well as in cases of urgency, can take the necessary measures to prove these crimes. The matter must be presented to the prosecution within twenty-four hours. That is because the legislator has empowered the administration, represented by the director of security, to confiscate the newspaper in the

event that it affects state security, and the authority of the security director ends at that point. This is because he remains a tool of authority, and the matter enters the arena of the Public Prosecution. If the Public Prosecution believes that there is no reason to proceed with the confiscation procedures, it may order the release of the confiscated copies. Those affected by the confiscation procedure may submit the matter to the civil judiciary based on the occurrence of a violation of the right of property especially if they demand the Public Prosecution to release, the newspaper and the latter rejects it.<sup>16</sup>

On the other hand, in the Kingdom of Saudi Arabia, the Publications Law allows the prohibition of newspapers from being published in the event of exceptional circumstances<sup>17</sup>. Hence, the wording of Article 31 of the Saudi Publications Law: “Newspapers are prohibited from publishing in exceptional circumstances after the approval of the Prime Minister.”

In Qatar, the Minister of Information can, in exceptional cases where the public interest requires taking urgent measures, stop the issuance of the press publication; provided that the decision period does not exceed three months<sup>18</sup>.

This is confirmed by Article 25 of the Qatari Press and Publication Law: “In exceptional cases where the public interest requires urgent measures to be taken, the issuance of the press publication may be suspended by a decision of the Minister of Information for a period not exceeding three months.”

It is a positive position that counts for the Qatari legislator, because the legal text regulating these cases remains open without restriction; which would harm the media establishment on the one hand, as well as serious abuses that may befall media professionals.

As for Algeria, the level of suspending activity media institutions and ending their activities reached a great extent, especially during the black decade, and the interaction it witnessed between the authority and media institutions that proliferated after the adoption of media pluralism. This marked the starting point for the media’s interaction with security news and the position of the Islamic Front. The beginning was through the issuance of Presidential Decree 92-44<sup>19</sup> containing the declaration of a state of emergency and supplemented by Presidential Decree 92-320<sup>20</sup>.

Whereas Article 3 of it stipulates that “measures may be taken to suspend or close the activity of every company, agency, institution or authority, whatever its nature or

jurisdiction, when these activities endanger public order, public security, the normal functioning of institutions or the higher interests of the country.”

The aforementioned measures are taken through a ministerial decision for a period not exceeding six (6) months, and may be the subject of an appeal according to the conditions and modalities stipulated in the legislation in force.

Since this period, several newspapers have been subjected to suspension of activity or seizure of their publications. For instance, Al-Khabar newspaper headquarters were searched - without a search warrant – followed by the arrest of the general director, editor-in-chief and six journalists, just for publishing an advertising statement affiliated with the Islamic Salvation Front calling on the elements of the army to rebellion and disobedience<sup>21</sup>.

During this particular period, the Ministries of Interior and Communication shared the arrest decisions, which included several decisions, foremost of which were: Algiers Al-Youm<sup>22</sup> and Le Matin, the weekly As-Sah-Afa<sup>23</sup>. However, this was not the end matter. On June 07, 1994, a joint ministerial decision was issued between the Ministry of Culture and Communication and the Ministry of Interior and Local Authorities. It stipulated the establishment of a media cell in charge of relations with the media to prepare and publish official statements related to the security situation, provided that these statements are published by the Algerian News Agency only, and all media outlets are committed to what is issued by it.<sup>24</sup> This decision prompted the Ministry of Interior to issue a statement confirming that the measure is not intended to restrict media activity or freedom of expression and the press, but rather to put an end to the behavior of some newspapers, which, according to the statement, were propaganda for terrorist acts and incitement to violence.<sup>25</sup>

#### **4. Conclusion :**

Journalists throughout the world continue to face infractions and pressures as a result of their job, which opposes the whims of authoritarian rulers in the majority of those nations. In this case, the choice was made between imprisoning journalists and disrupting the activities of press institutions. This final action is seen as one of the most significant threats to media freedom, as it has rendered a considerable number of journalists unemployed.

Disabling press institutions is a clear statement of a violation of journalists' economic and social rights, which is a serious indication that undermines the profession. The continued

closure of press institutions and the expulsion of journalists is a dangerous indicator that threatens the guarantee of media pluralism, which is one of the foundations of modern democratic practice.

In this regard, it is vital to reevaluate different legislation and media regulations, particularly in the Arab world, because the majority of them do not keep pace with current democratic advances and do not fit to modern trends in the field of defending human rights and public freedoms. As a result, any reform initiative requires a review of the procedures for disrupting honest and respected journalistic institutions, as well as the provision of effective protection guarantees to them, so that suspension becomes an exceptional measure subject to strict conditions, whether in normal or exceptional circumstances.

It may be argued that the disclosure of the publicity file by various state entities has become necessary, especially in light of the denial of press institutions of assistance supplied by one of the governmental institutions.

Following that, state agencies, both official and unofficial, are required to work to raise the value of "positive self-censorship" by strengthening the professional ethics system and giving powers to professional disciplinary councils established by media professionals to impose their guardianship on them, as an alternative to judicial follow-up, knowing that these councils are established by media professionals. The councils have the authority to develop codes of ethics and codes of professional behavior, and it is their job to compel the search for ways to embody these standards and the result is the necessity of having its mandatory value on the part of the media professionals themselves.

What makes a difference, in our viewpoint, is the necessity of consolidating the independence of the press councils, including the authority to control media activity, from the authority of the information ministers, who have broad powers in the field of media control. It is supposed to be at the core of the powers of these councils, and this is in parallel with granting them full powers to approve what they deem appropriate of disciplinary systems against media professionals. On the same line of thought, these authorities must exercise control over the extent to which media professionals exercise their full rights, particularly those connected to social ones. We believe that these areas provide a fertile ground for the violations to which media professionals are subjected.

## **5. . Notes**

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<sup>1</sup> TOUSSAINT (N): l'économie de l'information. Paris. P.U.F. 1987. p5.

<sup>2</sup> BONNARD (P): la nation d'ordre public en droit administratif. This is the case. Paris. L.G.D.J. 1982. P13.

<sup>3</sup> Hussein Abdullah Qaid, Freedom of the Press, A Comparative Study in Egyptian and French Laws, Dar Al-Nahda Al-Arabiya, Cairo, 1<sup>st</sup> Edition, 1994,

<sup>4</sup> Decree No. 83-373 of May 28, 1983 determining the powers of the Governor in the field of security and the maintenance of public order, J.R. No. 22 issued on May 31, 1983

<sup>5</sup> Chapter 77 of the Royal Decree relating to the Moroccan press

<sup>6</sup> Article 47 of the Palestinian Publications Law.

<sup>7</sup> Article 30 of Law 12-05 related to information: "The periodicals must annually publish through their pages the account balance certified for the previous year.

In the event of failure to do so, the written press control authority shall issue a notice to the periodical to publish the outcome of its accounts within thirty (30) days.

In the event that the outcome is not published within the aforementioned deadline, the written press control authority may decide to suspend the publication of the publication until its status is settled.

<sup>8</sup> Article 103 of Law 14-04 related to audiovisual.

<sup>9</sup> Article 104 of the same law.

<sup>10</sup> Article 47 of the Palestinian Publications Law.

<sup>11</sup> Abdullah Khalil, Towards a working draft for media reform in the Arab world, a preparatory regional assessment workshop for the World Summit on the Information Society, Tunis, April 9-10, 2010, p. 18.

<sup>12</sup> Article 75/1 of the aforementioned Bahraini Press, Printing and Publishing Law: "If the editor-in-chief or the responsible editor is convicted of a crime committed by the newspaper, the court may rule to suspend the newspaper for a period not exceeding six months."

<sup>13</sup> See Article 200 of the Egyptian Penal Code: If the editor-in-chief of a newspaper, the responsible editor, the publisher, or the owner of the newspaper is sentenced in a felony committed by the aforementioned newspaper or in one of the crimes stipulated in Articles 179 and 308, the ruling shall suspend the newspaper for a period of one month for the newspapers that are issued Three times a week or more, for a period of three months in the case of weekly newspapers, and for a period of one year in other cases. If one of the aforementioned persons is convicted of a crime committed by the newspaper other than the crimes mentioned in the previous paragraph, an order may be issued to suspend the newspaper for a period not exceeding half the period prescribed for it.

If the penalty is passed for a second time in a crime mentioned in the second paragraph that occurred during the two years following the issuance of a previous judgment, an order may be issued to suspend the newspaper for a period equal to the period of the penalty stipulated in the first paragraph.

If a penalty is passed for a third time in a crime mentioned in the second paragraph that occurred during the two years following the issuance of the second judgment, the newspaper shall be suspended for a period equal to the period stipulated in the first paragraph.

<sup>14</sup> Laila Abdul Majeed, op. cit., p.43.

Laila Abdel Meguid, Media Legislation, Bachelor of Mass Communication Program Lectures, Cairo University Open Media Center, 2005, [www.ou.cu.edu.eg](http://www.ou.cu.edu.eg).

<sup>15</sup> ART 16 Constitution of October 4, 1958: "When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the execution of its international commitments are threatened in a serious and immediate manner and that the functioning of the constitutional public powers is interrupted, the President of the Republic takes the measures required by these circumstances, after official consultation with the Prime Minister, the Presidents of the Assemblies as well as the Constitutional Council.

He informs the Nation by a message.

These measures must be inspired by the desire to provide the constitutional public authorities, as soon as possible, with the means to accomplish their mission. The Constitutional Council is consulted about them.

The Parliament meets of plain right.

The National Assembly cannot be dissolved during the exercise of exceptional powers.

After thirty days of exercise of exceptional powers, the Constitutional Council may be seized by the President of the National Assembly, the President of the Senate, sixty deputies or sixty senators, for the purpose of examining whether the conditions set out in the first paragraph remain met. . It decides as soon as possible by means of a public notice. It carries out this examination as of right and makes a decision under

the same conditions after sixty days of exercise of the exceptional powers and at any time beyond this period.

<sup>16</sup> Muhammad Omar Hussein, *Freedom of the Press in Egypt and the Role of the Judiciary in Protecting it*, Ph.D. Thesis, Faculty of Law, Cairo University, 1999, p.100

<sup>17</sup> Article 31 of the Saudi Publications Law: “Newspapers are prohibited from publishing in exceptional circumstances after the approval of the Prime Minister.”

<sup>18</sup> Article 25 of the Qatari Press and Publication Law: “In exceptional cases where the public interest requires urgent measures to be taken, the issuance of the press publication may be suspended by a decision of the Minister of Information for a period not exceeding three months.”

<sup>19</sup> Presidential Decree 92-44 Containing the Declaration of a State of Emergency JR, No. 10, Year 29, issued on February 9, 1992 AD,

<sup>20</sup> And supplemented by Presidential Decree 92-320 A.D., No. 61, Year 29, issued on August 12, 1992 - And it was decided to cancel it by virtue of Order No. 11-01, J.R. No. 12, year 48, February 23, 2011

<sup>21</sup> Association of Algerian journalists, *this press that we clean up*, Algeria, 1993, p.13

<sup>22</sup> The Official Gazette carried the content of both the decision of the Ministry of Communication and Culture suspending the issuance of Algeria today and the decision of the Ministry of the Interior containing the suspension of the daily *Le Matin*, *Lanción*, Algeria today Issue 76 of October 21, 1992. See the appendix

<sup>23</sup> For reference only, this satirical weekly has not re-published since the decision to suspend it for the second time on August 19, 1992 (the first comment was made on February 19, 1992) by the Ministry of Interior, see: Ministry of Communication, Annual Report for the year 1994, p.04.

<sup>24</sup> Radwan Boudjemaa, journalist and press reporter in Algeria, *SigComm for Studies, Publishing and Distribution*, Algeria, 2008, p.146.

<sup>25</sup> Brahim Brahimi, *the right to information put to the test by the single party and the state of emergency*, Ed SAEC Liberte, 2002, p.185