

**The Liberty of the Printing Press in
the Context of the Administrative
Discipline Power and the Rules of
Criminalization and Punishment:
Algerian Legislation as a Model**

Journal of Law Journal of Law

Dr. Ahcene Rabhi

Associate Professor

College of Law - University of Sharjah

E-mail: arabhi@sharjah.ac.ae

Dr. Ahmad M. Hayajneh

Associate Professor

College of Law -University of Sharjah

E-mail: ahayajneh@sharjah.ac.ae

Received on: 20\9\2017

Accepted on: 4/2\2018

The Liberty of the Printing Press in the Context of the Administrative Discipline Power and the Rules of Criminalization and Punishment: Algerian Legislation as a Model

Dr. Ahcene Rabhi

Associate Professor

College of Law - University of Sharjah

Dr. Ahmad M. Hayajneh

Associate Professor

College of Law - University of Sharjah

Abstract

In spite of the unanimity of the constitutional and legal provisions in Algeria on enhancing the freedom of the printing press, its practical reality demonstrates that it has, hitherto, undergone the continual inflexibility of the administrative discipline power in one of the stages in either foundation or administration. After much cogitation of the criminal responsibility for the crimes of the press release, it can easily be deduced that the indirect message of the lawmaker aims to restrict the dynamics of this freedom through a condensed mass of the crimes relative to the circulation of news and information.

Keywords: The freedom of printing press. Independent administrative authority. Administrative discipline power. Public order. Administrative oversight. Administrative accreditation. Administrative authorization. Defamation crime. Mens rea. vituperation crime. publicness. Private life. professional ethics.

حرية الصحافة المكتوبة في إطار سلطة الضبط

الإداري والمسؤولية الجنائية

(التشريع الجزائري نموذجاً)

د. أحمد موسى الهياجنة

أستاذ القانون الجنائي المشارك

كلية القانون - جامعة الشارقة

د. أحسن رابحي

أستاذ القانون الإداري المشارك

كلية القانون - جامعة الشارقة

الملخص

على الرغم من إجماع النصوص الدستورية والقانونية في الجزائر على حماية وتعزيز حرية الصحافة المكتوبة، إلا أن واقعها العملي أثبت أنها مازالت حتى اليوم تعاني تقييداً صارماً وتشدداً مستمرًا من جانب سلطة الضبط الإداري، سواء على مستوى الإنشاء أو على مستوى التسيير، وحتى المتأمل للمسؤولية الجنائية المترتبة عن جرائم النشر الصحفي يمكنه أن يستنتج بسهولة موقف المشرع الرامي إلى تأطير هذه الحرية بشكل استثنائي وغير مبرر، لاسيما من خلال توسيع نطاق الجرائم الصحفية على حساب حرية الصحفي في التعبير والرأي، بالموازاة مع تشديد العقوبات الجنائية الملازمة لها بشكل لا يتناسب مع خطورة هذه الجرائم، ولا يضاهيه تطبيق مماثل في الأنظمة المقارنة.

1. Introduction

The liberty of the printing press represents the most significant means of the modern media entitled to exercise the freedom of expression, since it allows to publicize information and news among people related to some cases, topics, problems and great misfortunes. This has usually been done through disseminating the facts, opinions and happenings in appropriate written wordings that give rise to creating the possible greatest degree of knowledge, awareness, realization and comprehension for the categories of the assemblage receiving the information leaflet. The purpose of this process is building up genuine apprehension about all circumstances and national or international facts surrounding them in a highest degree of precision and objectivity as required by professional ethics. Hence, it is stated that “the freedom of printing press has two sides as a coin, where a side represents the public opinion, and the other side represents media”.¹

To attain this noble goal is, in fact, regarded as a gist of the principles emphasized by the international documents of human rights, the theoretical orientations of which have been revolved on three key issues. These issues include the freedom of establishing printing press, the freedom of connection and communication between the printing press bulletins and the community, and ultimately that of printing press bulletins to carry out its activities within the limits of the law and regulations. Although this emphasis makes clear of how much consideration has been given by the international community in relation to the printing press, the national earnest attempt oriented to improve and promote this freedom has been accomplished through the constitutional unanimity upon determining this freedom, even if this is incompatible in one way or another in importance and the approaches of review.²

However, if the freedom is not subjected to objective controls and administrative censorship, it will, then, turn into chaos. To this end, it is a prerequisite that the freedom of printing press shall be governed in the

1. See Article (19) of the Universal Declaration of Human Rights issued by the United Nations' General Assembly on 10th of December 1948, and Article (16) of the Covenant of the Political and Civil Rights ratified on 16th of December 1966. See also Article (32) of the Arab Charter of Human Rights ratified by Arab League on 23th of May 2004.

2. Since the independence day, all Algerian constitutions have unanimously quoted the freedom of printing press, namely, in Article (19) of the Constitution issued on 8th of September 1963, Article (55) of the Constitutional issued on 19th of November 1976, Article (55) of the Constitutional issued on 23th of February 1989, and lastly in Article (55) of the amended Constitution issued on 28th of November 1996.

context of the rules of administrative law by the administrative discipline, empowering the independent administrative authority of media to continually adhere to,³ so as to ensure the legitimacy of this sort of activities. On the other hand, this freedom shall also be subjected to the criminal liability rules ensuing as a result of committing some criminal offences provided in a media statute or penal Act in order to ensure transparency and justice.

From this perspective, it is a must to mention that the tenor of our research sheds light on ambiguous points, and this ambiguity might be ascribable to the knottiness of the subject itself, where the freedom of the printing press has been clinging to the lack and weakness of the judicial and legislative tackling. Additionally, the jurisprudential attempts seeking to give explanation of the topic have fairly been rare and confined to scattered writings stained by vagueness and rare journalistic hints.

For the abovementioned, it is deemed that the legal tackling of the discipline power and criminal liability in the sphere of the freedom of printing press lies in articulating and outlining the freedom of press's legal controls within the framework of criminal and administrative legislation in order for the judicial, legal and administrative panels employing in the field of the printing press to pay attention to the peril of the printing press to the public order, in particular, the public safety. This, therefore, requires it to be cemented with rigorous testamentary censorship as to both establishment and running. The censorship should also be expanded to the proscribed conducts that might be perpetrated against others by the journalistic release. Moreover, in this study we have tried to suggest some amendments to the general statutory system, relevant to this freedom.

These facts pose a substantial question about the competences that the Algerian Media Act enables the power of the printing press discipline for the purpose of organizing the newspapers on the administrative level, whether through the establishing stage or through their running within the limits of legality and justice principles, as well as the suppressive means, the Act laid

3. The Emergence of the independent administrative authorities goes back to the Anglo-American states, where they were born in the United States of America in the name of the independent discipline panels at the time of establishing, by the Congress, the Commission of Commerce among states (ICC) in 1889. Whereas in Britain there was a name of QUANGOS (Quasi autonomous non-governmental organization) at the beginning of the 19th century. In the French legal system, the lawmaker had first used the term of "independent administrative authorities in 1978 on occasion of founding "the National Commission of Media and Liberties".

their foundation to deter journalists and the editors of newspapers embroiled in journalistic release crimes.

To fulfill all the research components, the prevalent methodology followed in our study is the analytical and critical approach that necessitates we bring together the legislative provisions, jurisprudential opinions and judicial judgments for us to analyze and closely examine them in pursuit of knowing the points of shortcomings and lack. We also followed the comparative approach in many cases by comparing among the statutes of deep-rooted countries in organizing the subject of discussion, seeking to improve and close breaks and cases of lack that impede our national legislation.

Therefore, we leaned on an academic plan through which we endeavored to comprehend the topic of the research as far as possible. In part 1, we tackled the oversight of the administrative discipline power over the printing press that expands to include the administrative oversight preceding the stage of establishing newspapers, and oversight following the stage of their operation. In part 2, the study concentrated on the criminal liability ensuing from the freedom of press, through which we have endeavored to comprehend the most serious crimes that may arise as a result of the journalistic release regarded as factitious or out of the limits of a journalist's profession, including trespass on the personal freedoms of the others. Lastly, we produced a conclusion, including the results and suggestions with which we have wound up.

2. Oversight of the Administrative Discipline Power over Printing Press

The discipline power of printing press seeks to strike balance between the freedom of press and public order through promoting the prosperity of this freedom without violating a community's exigencies.⁴ Since the discipline power of printing press is the responsible for the discipline of the printing press sector, it has been entitled with large powers in order to organize and overseeing this freedom whether on the level of the establishing stage or on the level of the operation stage.⁵

4. To found the powers of the printing press discipline is relatively recent even in the comparative systems. It is related to the fast developments of the market, the phenomenon of globalization that has brought about effects aiming to remove the economic obstacles and frontiers, and refusing the direct interventions of a state save for the regulative –characterized- interventions. In the light of these facts, to organize the printing press by an independent administrative authority grants it more freedom and independence than the government.

5. The discipline power of the printing press did not appear in Algeria until at the beginning of 1970s according to the Act No. 07-90, which laid foundation of the High Council of Media shaped to have

2.1. Overseeing the Printing Newspapers at the Establishment Stage

The legal balance the Algerian lawmaker laid its foundation on for the liberty of press on the level of the establishing stage can be achieved through the rigid administrative criteria put into effect to endorse the activities of these means of media in parallel to the guarantees of the legitimacy rubric.

2.1.1. Accredited Administrative Criteria in Establishing Printing Newspapers

The Algerian lawmaker resorted to two dissimilar standards for establishing the printing bulletins which are: the accreditation of the national bulletins and authorization of the foreign bulletins. According to the latter, the disciplinary administration has wide discretion to accept or decline in view of the potential risks of the foreign element, in particular to the public security.

2.1.1.1. Administrative Accreditation of National Newspapers

Most discipline powers have beforehand intervened for enhancing the free exercise of some Media's vocations and activities, trailing and overseeing its activities because of its influence in building the public opinion and specifying its direction, as well as for ultimately striking a balance between the public establishments' prerequisites and the market's needs in a circle of respecting competition and the professional ethics. This forgoing intervention⁶ has a form of individual decisions, including credits that allow for clients to enter into the market and practicing the career pursuant to competitive selection standards.

This principle is also applicable in the scope of the printing press's freedom as it is a constitutionally and legally sanctified freedom.⁷ But this does not impede to impose some restraints upon it seeking to organizing and steering it as long as they do not give rise to curb its foundation and functions. The administrative entity that has taken this mission over might be the

been an independent administrative authority (Article 59 of it), but it did not survive for a long time in the face of the dilemmas of mass media at that time, and it was shortly abandoned by virtue of the legislative decree No. 13-93. Nowadays, the powers of discipline are known as being widely prevalent in Algeria, including diverse economic sectors such as communications, energy, mines, electricity, fuels, water, and insurance. It also ranges to include the administrative public establishments such as mass media according to the Act No. 05-12 that provides to founding two powers of discipline which are: the discipline power of the printing press and that of audible and visible media.

6. Except the Banking Committee, the Competition Council, and the National Agency of Geology and mine oversight that are distinguished with the system of the posterior administrative intervention.

7. This is emphasized by Article (2) of the Media Act that provides: "The activity of media shall be exercised freely according to the rules of this act, legislation and regulation in effect, and according to the respect of the Constitution and the Republic's statutes". It is also quoted in Article (11/1) of the Act itself that provides: "To issue every serial newspaper shall be accomplished freely..."

discipline power of the printing press, given by law the authority of founding and overseeing through issuing the decisions of granting accreditation.⁸ Accordingly, the accreditation is regarded as a legal birth certificate of the publishing establishment as accentuated in Article (13/2).⁹

In the context of carrying out the discipline power of the printing press, this power has had wider competences through which it examines to what extent that the information reported in the permit signed by a newspaper's manager and consigned to the discipline power.¹⁰ In a case of this information being existent, it will grant the publishing establishment an accreditation within 60 days commencing from the date of consigning the permit. If it is proved that a piece of it has fallen down, the discipline power will decline to grant the license in accordance to a justified decision. If the administration refrains from replying within the legal period, this will be considered as a declination as best articulated by the Regulation No. 15 issued by the Ministry of Information and communication dated 15\5\2014.

Therefore, we should emphasize that to submit an application to get an accreditation is not necessarily that this application will be validated, but it might be refused by the discipline power of the printing press unless all pieces of information by law have been met, and in this case the applicant will benefit from the right of appealing before the competent judicial authority. Although the lawmaker prescribes the possibility of lodging a claim for the decision of refusing to grant the accreditation, he did not make clear if it is possible for the applicant whose application was rejected to re-submit another application

8. The Accreditation in the Administrative Law means: "The Approval that the administration has got for allowing to exercise an activity, or benefit from a distinct financial or tax system". Because of its content and procedures of its levying, it is considered the most rigorous method within a list of administrative standards. Jean Claude Venezia le pouvoir discrétionnaire LGDJ Paris 2009 p.44..

9. It provides: "The accreditation is regarded as an approval of issuance". It is noteworthy that issuing periodic newspapers in virtue of the Act No. 07-90 had been subjected to a prior permit submitted to the Republic's Attorney-in-fact, regionally competent according to Article (14) of it.

10. According to Article (12) of the Organic Act No. 05-12, it is possible that the information to be satisfied in the license or application may be divided into the newspaper related information, Release Company related information and investors personality related information. As to the newspaper related information, this information relates to the newspaper's address, the date and place of its issuing, the subject of the newspaper and the language or languages of the newspaper. As concerning the release company related information, the information relates to specifying the legal nature of the company, the capital assets of the company or the company holding the company's subject, and its size and price. Lastly, as to the investors personality related information, the information can be divided into information relating to the person who is in charge of the company, including the name, title, address, and qualification as well as the information relating to the owner, including his name and address.

after correcting the wrongful information or filling in the incomplete ones.

Leaving out this case, there are two occasions in which the law obliges the publishing establishment to re-submit an application for getting a new accreditation that are a case of selling the newspaper or that of waiving it as the selling of the newspaper or waiving it does not exempt the new owner from asking for accreditation as provided in Article (17). Beside those of the occasions hereinabove mentioned, there is a case of the newspaper being refrained from issuing during all of the (90) days.¹¹

It is noteworthy, in a case of changing the information reported in the permit, the discipline power of the printing press should be notified in writing within (10) days following this changing, and the discipline power should abide by bringing forward a document of the correction within (30) days succeeding the date of the notification.

2.1.1.2. Administrative Authorization of Foreign Bulletins

The lawmaker confines the authority of the discipline power of the printing press to granting the prior authorization¹² in one case which is the foreign serial newspapers.¹³ To frame a newspaper as foreign depends, according to the Algerian lawmaker, upon one of the two following standards: the territorial standard that means the center of the publishing establishment is existent outside the national soil with a guarantee of the distribution on the national soil, or the personal standard represented in running the bulletin by foreigners entirely or partly¹⁴ with the existence of its center on the national soil.¹⁵

11. According to Article (12/2) of the Media Act that provides that the accreditation of the publishing newspaper is repealed by virtue of the law in one of the following two cases, namely, the selling of the establishment or a case of the newspaper being halted regularly from issuing for (90) days.

12. The authorization in its wide-ranging meaning is the permit that is given to a person by the administrative or judicial authority to do a specific legal act the person cannot usually do individually owing to his incapacity or the limits of his competences. It might also be defined as “the procedure by which the administration might exercise rigorous oversight over some activities when the latter is subjected to elaborate and detailed study”.

13. According to Article (37/1) of the Organic Act No. 05-12 relating to the media, and this status has been dedicated in Article (57) of the Media Act No. 07-90.

14. As concerning the basic conditions relevant to the boards managing and presiding over a newspaper, they include the condition of adolescence specified by 19 years, that of having the Algerian nationality whether it is original or naturalized, that of having the civil and political rights, rehabilitation condition, that is to say the condition of he not being criminally condemned, and lastly an additional condition relevant merely to foreign newspapers that is to found a foreign newspaper on the national soil is not possible save for those persons having legal status according to the effective legislation related to the residency of foreigners in Algeria.

15. Pursuant to (20/2) of the Act of the Media.

In both cases, the founding of the foreign serial newspaper for distribution inside the homeland is subjected to prior oversight and authorization issued by the discipline power of the printing press for this purpose, protecting the public order with its accustomed conventional components and novel economic effects.¹⁶ However, in this issue we sternly rebuke the lawmaker's approach where he over passed specifying the stipulations and mechanisms of granting the permit, and he must have, at least, explicitly made provisions to authorize this by the regulation.

This exceptional structure in dealing with the foreign release establishments *de facto* represents the approach the bulk of the contemporary systems has adopted.¹⁷ This susceptibility might be explained because of the risks that might be caused by these newspapers and bulletins as a result of their direct connection with the assemblage of readers. This issue was officially penned by the former president of the French Republic "Marshal Petain" by stating: "It has recently been obvious some release establishments founded abroad are exercising an activity different from that one for which they were founded. The risk of these establishments to the regime and national security has already come into effect. Hence, based on the present facts, the die is cast to impose upon the foreign serial bulletins sternly rigorous control".¹⁸

As we have mentioned in the foregoing, it has been concluded that all decisions (accreditation, authorization, and approval) are administrative permits restricted to exercising a codified profession. So, they are considered a preventive legal and administrative means to strike a balance between the principle of freedom and competition. Suffice to say that to entitle the discipline power of the printing press the authority of issuing non-suppressive individual decisions prior to exercising the profession is owing to searching for a good and integrated balance inside the society.

16. Prior accreditation is applicable to all the national and foreign newspapers in a case of being affiliated to the international associations and organizations reviving in the field of printing media, seeking the same goals for the purpose of taking advantage of their experience. This affiliation cannot be achieved, only after getting the minister of the Media's approval who sends for the foreign affairs minister's opinion because of the risks threatening, by these boards, in particular the external security of the country.

17. Voir – Braillons (D), *l'Etat entre le devoir d'informer et le désir de cultiver ses relations publiques*, thèse de doctorat en droit, université de Genève, Suisse, 2014, P389 et s.

18. Official Bulletin No. 16, issued on 6th of April 1939.

2.1.2. The Guarantees Empowered to the Publishing Establishment in Front of the Administrative Discipline Power

Protecting the publishing establishment from the discipline power of the printing press's arbitrariness of its authority, the lawmaker provides for a set of guarantees, some of which are preceding the issuance of the accreditation decision, and the other guarantees should be met after issuing the accreditation decision.

2.1.2.1. The Guarantees preceding the issuance of the Accreditation Decision

In addition to the authority of accreditation carried out by the discipline power of the printing press in conformity with the rules of integrity and adhering to the non-discrimination principle among economic dealers, it should be dedicated to some rules prior to taking the accreditation decision such as the necessity of giving an answer to the application within appointed times and of reasoning the disapproval decision.

A- Binding the Discipline Power of the Printing Press to Deadlines: Releasing any periodic bulletin is associated with getting the accreditation from the side of the discipline power of the printing press. Consequently, in a case of the publishing establishment not getting the accreditation, this will lead to deprive it from entering the profession. In view of the importance of the accreditation decision to the publishing establishment, and of the time factor in the realm of investment, the lawmaker imposes upon the discipline power of the printing press an obligation to give answer to all requests to which they have been submitted whether with either approval or disapproval¹⁹ within the legal deadlines specified with (60) days commencing from the date of consigning the request.²⁰ The law also obliges it, in the case of disapproving of granting the accreditation, to notify the disapproval decision to the publishing establishment within the same appointed time.²¹

19. For the publishing establishment, the acquisition of the moral personality and civil capacity will grow out of its accreditation, and then it could carry out the following: undertaking the process of releasing and distributing the bulletin, court appearance for exercising the rights of the civil party lodging claim for damages befalling its members' individual or collective interests, subscribing insurance for the secureness of the financial risks relating to its civil liability, establishing relations with public authorities, receiving donations and wills from either the individuals or the state, signing any contract or agreement relevant to its aims, opening a bank or mail account to consign its assets, acquisition of real estate or movable possessions for carrying out its activities, and receiving its clientage's subscriptions and incomes relevant to its activities.

20. Pursuant to Article (13/1) of the Organic Act No. 05-12 related to the Media.

21. Pursuant to Article (14) of the Organic Act No. 05-12 related to the Media.

B- Reasoning the Decision of Disapproval of Granting the Accreditation: The reasoning of the administrative decision connotes enunciating its legal basis, pleas, and reasonable grounds as well as its de facto proofs that compel the administrative authority to make a certain decision with respect to a definite issue requiring to be determined. The reasoning is considered the prima facie evidence of the request being thoroughly examined and studied by the administration, and is considered an emphasis that to what extent the request has encompassed the conditions specified by the law.

The prodigious importance characterizing the principle of the decision reasoning urged the lawmaker to have obliged the public administrations to adhere to, and carry it into effect, and this as well was emphasized by the state Council's judiciary.²² However, in contrast, we have not found any effect for this obligation for the independent discipline powers' decisions, including the discipline power of the printing press. Notwithstanding the speechlessness of the lawmaker and administrative judiciary from determining them, we deem that whenever a general provision, stipulating the reasoning of the administrative decision, is found, the abidance by the reasoning principle becomes of the commitments of all public administrations with no exceptions, in particular, those intervening in organizing the rights and freedoms of individuals, otherwise it will be vulnerable to objection for revocation.

2.1.2.2. The Guarantees Succeeding the Issuance of the Accreditation Decision

Not only does the lawmaker oblige the discipline power of the printing press to vindicate the refusal decision of granting the accreditation, but also, he obliges it to notify the concerned of the decision within the legal deadlines by virtue of Article (14) of the Media Act providing as follows: "in a case of refusing to grant the accreditation, the discipline power of the printing press shall notify the concerned of the decision with reasonable grounds prior to the termination of the deadlines appointed in Article (13) above provided...".

22. We find that the lawmaker obliges the public establishments, administrations and institutions to justify their decisions issued against their users. This is emphasized in Article (11) of the Act relating to anti-corruption. Even though the obligation is provided in a special article pertaining to the National Board of Preventing and Combating Corruption, the wording of it is general. What strengthens our argument is the Council of the State's decision in the case of "Union Bank" versus the Algeria Bank governor. Although the rules of currency and loan did not impose the issue of reasoning upon the Financial Committee, the Council of the State ruled contrary to that.

For more details see the Council of the State's Decision No. 13 dated 9th of February 1999 in the case of the consolidation of the Financial Institution Bank in the joint stock company "Union Bank" versus the Algeria Bank governor (unpublished decision) www.conseil-etat-dz-org

Then, the discipline power of the printing press is bound to make a decision in the request to which it is submitted within 90 days as a limit, commencing from the date of its consignment, whether by granting the publishing establishment the accreditation (pursuant to Article (13) of the Media Act) or by refusing to grant it.²³ In the latter case, the responsibility for notifying the decision prior to the end of the term is to be at the expenses of the discipline power of the printing press provided the process of notification is made according to the civil and administrative law of procedures. Thus, it is noticed that the purpose of notifying the decision to the concerned is to enable him to be acquainted with its essential meaning and reasons for preparing his defense in a probable judicial dispute.

With respect to the last issue, we observe Article (14) of the Media Act makes possible for the judicial appealing only against the refusal decision of granting the accreditation as long as it contains the wording of particularization, whereas not a trace have we found of the fate of the other decisions in the judicial appealing, and we believe the silence of the lawmaker does not mean that these decisions have judicial immunity so long as the constitution and the basic legislation provide for the generalization of the judicial oversight.²⁴

This approach was accentuated by the State Council on occasion of his ruling in the appeal submitted against one of the disciplinary decisions issued by the High Council of Judiciary, considering all the administrative-characterized decisions, might be of objection for revocation due to either the violation of law or the deficit of the abuse of authority.²⁵ By adhering to

23. According to Article (13) of the Media Act after the lapse of (60) days determined to give in the accreditation decision alongside the silence of the discipline power of the printing press, the publishing establishment is then considered officially legal, and in this context, the lawmaker's will inclines to restrict the administration authority regarding the period of time during which it should have the final decision about the accreditation request within the known legal terms. Hence, any temporization or delay from its side will bring about positive legal effects on behalf of the publishing, namely, the recognition of its legal capacity.

24. According to Article (143) of the Algerian Constitution of 1996 that brings all the administrative decisions under the judicial oversight, and also Article (152) of it accentuating the competence of the State Council to oversee the decisions of administrative authorities as being at the highest peak of the administrative judicial structure hierarchy. Lastly, according to Article (09) of the Organic Act No. 13-11 relating to the competences and systematization of the State Council that considers the State Council is first competent to judge the objections being filed against the administrative decisions issued by the national public boards.

25. Although Article (99/2) of the Basic Law of Judiciary provides for non-susceptibility of the decisions determining the disciplinary cases to revocation, it provides for its jurisdiction to decide them. For example, see the decision of the State Council No. 172994 dated 27th of July 1998, published

this approach, the State Council has followed in the footsteps of the French administrative judiciary²⁶

If the State Council's decision is issued for the advantage of the publishing establishment, it will obligatorily be given the accreditation receipt by the discipline power of the printing press. In return for that, the publishing establishment can, within three months as a limit commencing from the date of the judicial decision being issued, lodge claim once more against it through the appeal of rehearing before the State Council, but with new rebuttals that have not beforehand been considered. This also is on behalf of the publishing establishment so long as the new judicial appeal submitted by the discipline power of the printing press is not to bring into effect the previous judicial decision relating to the registration of the publishing establishment.²⁷

2.2.2. The Oversight over the Printing Bulletins in the Stage of Operation

The legal relation that connects the administration with the bulletin cannot be specified in steady and eventual loci, but it should be standing and continual in the direction of empowering it to oversee the activities of these gatherings throughout their existence. The administration must permanently have the possibility of carrying out its competences. In part, this is only for dedicating to respecting its decisions, and on the other hand, it is technically indecent that an authority whatever its shape is bound to oversee, but does not intervene save in certain times, and the controlled body simultaneously has the absolute freedom to carry out its activity. Therefore, the dispo power exercises comprehensive administrative control over the printing press: financial control, control over changes, and continual control.

2.2.2.1. Financial Control

All of these circumstances have stimulated the state to lay down a stringent and operative legal system relating to the financial and accounting operation of the establishment.²⁸ This systematization has been consolidated in two

in the State Council Journal, No. 1, Algeria, 2001. Pp. 83, 84. See as well the decision of the State Council No. 182491 dated 17th of January 2000, published in the State Council Journal, No. 1, Algeria, 2003, Pp. 109, 110.

26. (Conseil d'état, le 23 Mars 1998, M.M - 3 Tavernier, Piechota, Gluchowski).

27. Zouaimia (R) les régimes contentieux des autorités administratives indépendantes en droit algérien revue IDARA N 29 Alger 2005 p 10 – 17.

28. Financing the bulletin with the following resources: its capital, revenues related to its activities, donations and wills stipulated they are void of burdens or conditions unless these burdens or conditions are not in contrast with the goals provided in the Basic Law and with the legislation in effect relevant to the establishments. The donations and wills granted by foreign establishments or boards are not

fundamental fields:

First: The subjection of the bulletin to the general accounting rules:

The bulletin represents a private juridical personality, and this, as a general basis, makes it subject to the private accounting rules, but when it benefits from the aids of the state or public bodies, it is then subjected to the general accounting rules. This latter system works on strengthening the basic factors of the public financial control by legal boards founded, in principle, to achieve this role which are: the public inspectorate and the accounting council. The nature of the financial control carried out by these boards is not only related to trailing the regularity of the financial dealings, but also related to the evaluation of appropriateness of the expenditures issued by the bulletin.

1-The subjection of the bulletin to the public financial inspectorate:

The public financial inspectorate aims, a general basis, at making control over the financial and accounting running for the state's private ends in their general concept. But, this does not retard it in stretching out its hands to societal and cultural attributed boards, such as the establishments when the latter benefits from the public aids. Of the features of its interventions are:

It carries out its control periodically. This means that the financial control over the establishments has a regular attribute and is inevitable. It has intervened suddenly (this is the basis) or after the prior notice- rare occurrence. This way in dealing with the establishments makes the latter keep its accounts regularly to be alerted to such sudden interventions. In general, the public inspectorate's interventions aim to succeed in achieving the expertise relating to the bulletin's adherence to the public accounting rules proceeding from checking the flawlessness and regularity of its accounts, and examining to what extent the accreditations and public aids have been used to accomplish the goals for which they have been handed over.

From the practical point of view, *plunging this oversight or control is to be into*(check this) various fields some of which are: reconsideration of the establishment's financial assessment, a request of producing every instrument in writing or probative document relating to the establishment's financial and accounting running, empowering the inspectors in the public financial

accepted only after having the Minister of the Interior's approval. The latter investigates its source and amount. He also makes sure that their aim is consistent with that one provided in the Basic Law relevant to the establishment. Thus, this makes the establishment immune to all fallacies that might find an orifice in the grants and allowances the establishment has got from the state, county or municipality.

inspectorate to send for all the accounting information from the bulletin's administrators either in words or in writing, carrying out any search or field investigation to make sure that the information reported in the bulletin's accountancy is correct, making sure of the flawlessness, completeness and regularity accounts of the bulletin, and investigating the aspects of its outlay.

Lastly, on the heels of every intervention, the inspectors write a report that includes the notices and outcomes concluded, suggestions, and the necessary measures for rescheduling the bulletin's accounts as occasion shall require. This report is notified to the bulletin concerned of the oversight, and to the administrative authority concerned about the bulletin's activity (the minister of the interior or the governor), as well as notifying these reports and studies to the concerned authorities.

2. The subjection of the bulletin to the Accounting Council control:

The accounting council's main task is restricted to undertaking the succeeding control over the financial operations appertaining to the boards subjected to the public accounting rules. It assists, as an exception to the basis, in overseeing the private juridical persons, in particular, the establishments in the following cases:

The First Case is the case of the bulletin benefiting from the financial aids – in the form of subsidies as an example - from the public juridical person. Here, the task of the Accounting Council is concentrated on controlling the outcomes of using these aids, and the lawmaker has recently emphasized by virtue of Article (101/1) of the Act No. 11-99 dated 23th of December 1999, enclosing the Finance Act of 2000 that to grant the establishments public financial subsidies relies upon the results of investigating the aspects of using these subsidies from which they have beforehand benefitted.

The Second Case is the case of the bulletin setting out to levy public donations for enhancing the humanitarian, societal, scientific, pedagogic and cultural cases in the framework of the national solidarity campaigns in which the Accounting Council seeks to make inquiries about the aspects of expending these resources.

The lawmaker's adherence to the correctness and integrity of the establishment's accounting and financial running has actually been achieved through submitting its accounts to the oversight of the expert auditor, accounts keeper or accredited auditor who all are often exercising, by their own

names and under their responsibility, the process of organizing, scrutinizing, analyzing the bulletin's accounts as well as testifying to their correctness and regularity²⁹.

The Accounting Council's interventions aim at overseeing accounts, instruments in writing and probative documents being kept by the bulletin's treasurer and his aide, and be founded on the testimonies of the expert auditor, accredited auditor and accounts keeper. Moreover, the law entitles it to make inquiries counting on the documents or on – site investigation suddenly or after the notification. At the end of its inquiries, if the irregularities relevant to the bad regulation of the financial accounts, it instantaneously notifies the concerned authority and the other competent authorities of this bulletin's activity to undertake the indispensable measures against the concerned bulletin. Nonetheless, if it is proved that the possession or transition of the public monies by the bulletin has been illegal, it will immediately notify it to the competent authority with intent to recovering the due amounts with having recourse to all legal proceedings. It also seeks, as occasion may require, to set a criminal action in motion relating to these facts by forwarding the file to the Attorney-General having regional jurisdiction, and gives the Minister of Justice's attention to these irregularities.

Second: The objection of the bulletin to the special accounting rules:

Due to the fact that the bulletin is a private juridical person, it is bound by law to keep accounts regularly according to the special accounting rules so long as the matter relates to regularizing the accounts of its members' subscriptions, revenues pertaining to its activities, the donations or wills that have been obtained from the other, and lastly keeping the instruments in writing and probative documents, including the aspects of expending and using these revenues.

Because the control over these accounts is not within the competence of both the Accounting Council and the Public Finance Inspectorate, the lawmaker subjects it to the control of the administrative authority concerned of the bulletin's activity. Therefore, the bulletin shall regularly consign a financial report of its money and of its financial status to the governor having regional

29. Cette nouvelle composante de l'ordre public a été dégagée à l'occasion d'une affaire très particulière qui a donné lieu aux arrêts d'Assemblée du Conseil d'Etat du 27 octobre 1998, Ministère de l'intérieur / contre Quotidien Ennahar (requête numéro 1367: Rec. p.372, in RCE 1998, p.878, chronique Amrane (M), la liberté de la presse entre confidentialité et provocation: mode d'emploi pour faire chuter une liberté de son piédestal, in RSDP, N°2, mars 2012, Alger. , p 76.

jurisdiction or the Minister of the Interior for making sure of the correctness and regularity of the account³⁰.

2.2.2.2. The Headway in the Controlling System Pertaining to the Changes

With respect to the way of handling the changes system, it is noticed that the Act No. 06-12 (and on the order of the Act No. 31-90) imposes a set of changes in comparison with the previous communal systematization that seem to be obvious in the following three issues:

1- It subjects the changes affecting the bulletin's structure and machineries to authorization. In the other words, these fresh developments are to be in force only from the date of announcing and notifying the concerned public authority, unlike the former communal systematization, which differentiated between the establishments with a provincial extension and the establishments with a territorial extension whereby the first had been subjected to the authorization system as an administrative standard of recognizing the legitimacy of these changes, whereas the second had been subjected to the accreditation system. Therefore, to generalize the procedure of authorization to the changes system represents a positive headway in favor of the establishment since it disencumbers them from the procedural impediments latent in some of the administrative standards, notably the accreditation and authorization³¹.

2- The former systematization brought about serious legal consequences, often including the punishment of the administrative dissolution, if the bulletin had been remiss in, and procrastinating over, announcing and notifying the concerned authority of these changes. In contrast, the Act No. 31-90 aims to disencumber the establishments from the authority's dominance through abandoning the conventional administrative punishments determined in the case of the delay in notifying the changes.

As concerning the Act No. 06-12, it has been observed that this Act inflicts most severe penalties upon the bulletin in the case of its procrastination of submitting the changes relevant to its basic law and executive boards within the following (30) days to the competent administrative authority. These penalties include an administrative side, which relates to suspending its

30. Cette jurisprudence a été initiée par l'arrêt de Section du Conseil d'Etat du 18 décembre 2009, *Quotidien El Chihab* (Rec. p.693 ; S. 2010, p.9, conclusion. (A.B) ; in RCE 2010, 1, p.20, chronique. D. 2010 p.171, note (M.M) ; note Jurisprudence. arrêt de Section du Conseil d'Etat du 30 juin 2000, *Association nationale de la presse écrite / contre Ministre de l'Information* (requête numéro 22219 :RCE 2001, p.674, chronique. (G.A) ; D. 2001, p.590.

31. Pierre Tifine, *Droit administratif français*, Cinquième Partie, LGDJ, Paris, 2015, p 37 et s.

activity for a time not exceeding (6) months according to Article (40) of it, and criminal penalties, which are in the form of financial fines ranging from 2000 DZD to 5000 DZD pursuant to Article (20) of it.

The former systematization required a maximum limit of legal deadline to notify the competent public authority of the fresh changes specified by (8) days as a maximum starting from the date of the public bulletin ratifying them. Owing to the narrowness of this time limit, the Act No. 31-90 prolonged it to (30) days from the date of ratification in order for the concerned establishment to have an ample time with a view to carrying out the needed legal measures and making the procedures applicable. This new time limit has also been adopted by the Act No. 06-12, particularly Article (18) of it.³²

2.2.2.3. The Long-lasting Control

What attracted our attention in this context are the changes and far-reaching-transformations the lawmaker has brought about in the last amendment with respect to the form and quality of this control, which relate to three key issues:

*The establishments should regularly disclose the information related to the number of employees working for them, the sources of their money, and their financial status to the competent public authority according to the conditions identified by the systematization. The substantial notice that might be posed regarding the previous phrasing relates to the manner to which the lawmaker seeks so as to incarnate this kind of control. Despite the fact that the previous provisions relevant to the establishments concentrated on getting basic information about a bulletin as an initiative from the competent public authority, the last amendment brought about a change in the legal statuses which might be deduced from its expression: “the establishments shall disclose all information”.

*Pursuant to Article (19) of the Act No. 06-12, the establishments should provide the competent public authority with copies of their board minutes, and annual financial and literary reports at the time when a usual or exceptional public assembly is convened within (30) days succeeding the process of endorsing them. In this context, we have not found a trace of this

32. Pontier (J.-M.), La multiplication des polices spéciales : pourquoi ?, JCP G 2012, 2113. - Saint-James (V.), Réflexions sur la dignité de l'être humain en tant que concept juridique du droit français: D. 1997, chronique. p.61. - Théron (J.-P), Dignité et libertés. Propos sur une jurisprudence contestable : Mélanges Mourgeon, Bruylant 1998, p.295. - Vandermeeren (R.), Police administrative et service public : AJDA 2004, p.1916

new identification in the exact words whether it relates to the deadlines or to the scope of the long-lasting and incessant control exercised by the competent administrations to the establishments in all the previous legal instruments in writing.

The communal legal provisions regarding the establishment had involved rigid and rigorous administrative penalties if the bulletin refused to unveil the information required by the competent public authority in opposition to the Act No. 31-90. In the latter, we have touched “a liberal ecstasy” in which it liberates the bulletin from the obligation of disclosing the information, and from the penalties ensuing from the delay in, or procrastination over, taking this procedure. Contrary to its former, the Act No. 06-12 has been oriented to inflicting harsh penalties upon the bulletin in the case of the delay in disclosing the fresh developments and information required by the competent administrative authority whether it relates to the organic aspect, objective aspect or structural aspect, including administrative penalties seeking to suspend the bulletin’s activity for a period not exceeding (6) months pursuant to Article (40) of it, and criminal penalties taking the form of financial fines that range from 2000 DZD to 5000 DZD.

*Unlike the national establishments, an exceptional and privileged systematization has been imposed by statute on the foreign establishments whereby the procrastination of the latter over disclosing to the Minister of the Interior the required information and documents relevant to their activities, financial status, and sources of their financing as well as disclosing the conditions of operating them may result in serious legal effects represented in suspending or recalling their accreditation. This outstanding systematization can be justified owing to the peculiarity of these establishments, markedly those the centers of which are existent abroad. Moreover, to systematize these establishments’ activity cannot be achieved, except when there is a permanent and continual nexus between them and the competent public authority³³.

Not only does the lawmaker settle for vesting the discipline power with a wide range of validities when carrying out the authority of granting the

33. Pour aller plus loin :Achille (N) et Tifine (P), *La police de la presse écrite et la liberté d’information* éd Montchrestien, Paris, 2014, p 14. Delangoire (S), *Concours de polices : l’identification des compétences et moyens des autorités de la police de la presse écrite* :RD Adm, N 1, 2010, Université de Longueuil, Montréal, Canada, p 186. Dreyfus (M), *L’articulation entre les pouvoirs de police générale et de police spéciale en matière de la presse écrite* : PUF, Paris, 2000, p42. - Lebreton (G), *Le juge administratif face à l’ordre moral* : Mélanges Peiser, P.U. Grenoble, 1995, p363. - Ligneau (P), *Le procédé de déclaration préalable* : RDP,N 2, Paris, 1976, p.679.

accreditation, but also he enhances this authority through granting the same board the power to recall this accreditation. For the publishing establishment to get the accreditation does not mean it has slipped away from the power discipline's control. Since the latter has had an aspect of prior oversight alongside that of succeeding oversight that empowers it to recall the accreditation it granted, the publishing establishment is to be disbarred from releasing the bulletin in every case in which it is proved that it has breached the legislative rules legalizing this activity.

Through the process of controlling targeting the establishments, the authority aims at making sure that the work of these gatherings is in conformity with the law, and as consequences succeeding the process of controlling, two types of penalties have been imposed by law, one of which is oriented to the establishment a juridical person, and the other is oriented to the natural persons who are running them. By and large, the end of an establishment's life might often be an inevitable fate when one of the following three reasons has come to surface³⁴:

First Reason: the impossibility of the bulletin's enterprise: the bulletin might be present at some internal clashes among its members, mostly relating to the competition for taking over métiers of the bulletin's administration and management.

Second Reason: the termination of the bulletin's term: the establishment's founders' will might sometimes tend to limit the period of its life precisely in the basic law. Therefore, it is dissolved voluntarily and with a free will when its term has lapsed. But, its dissolution can be revealed administratively by the competent public authority in the case of its delay manifesting it.

Third Reason: the nonexistence of the bulletin's reason: in this context, the bulletin will be voluntarily dissolved because of the discontinuance of the reason for which the bulletin was founded or of the achievement of the goals provided in the basic law.

As a matter of fact, the rules of the Media Act confine the cases of recalling the accreditation in the following two cases:

First: the case of waiving the accreditation:

This is ratified in Article (16) by stating: "The accreditation is insusceptible

34. Sur ce point d'analyse voir: Moreau (J), De l'interdiction faite à l'autorité de police d'utiliser une technique d'ordre contractuel : AJDA, N 1, Paris, 1965, p 93. Péchillon (E.), modalité de Protection administrative contrôle les publications. Les limites d'un pouvoir de police spéciale : Revue Jurisprudence, N1, Paris, 1998, p467.

to waiver in one way or another. Without prejudice to the judicial follow-ups, any infringement on this rule shall give rise to recalling the accreditation”.

Second: the case of not releasing the serial bulletin within a year commencing from the date of the accreditation delivery

The accreditation is considered as a birth certificate for the publishing establishment, and it is its bounden duty to release bulletins that ensue as a result of it being granted the accreditation. Thus, not to release any bulletin throughout a year from the date of granting the accreditation is to lead to recalling it from the establishment as emphasized in Article (18/1). In this case, the accreditation will be stripped of its legal force, if there is no coming-into-force within a year from the date of its delivery.

Despite the fact that the procedure of gaining the accreditation is regarded as a substantial condition to release any serial bulletin, and is obligatory-characterized, the lawmaker does not make clear the legal effect ensuing as result of violating this procedure³⁵ then it will be dispossessed of its legal force.

Notwithstanding the lawmaker’s nonobservance of the publishing establishment’s status after recalling the accreditation, the question remains standing: Does the publishing establishment have the right to re-submit another requisite? And in the case of declination, what are the legal effects resulting from the recalling?

3. The Criminal Responsibility for the Crimes of the Printing Press

The brisk strides characterizing the printing press have currently had a deleterious influence on the quantity and quality of the crimes with which they have been concomitant, to such an extent that it has brought into being an impediment to the listing of them conclusively. For this end, the Algerian lawmaker has codified a part of these crimes in the Penal Act, while the other part has been provided in the Media Act.³⁶

35. Except as provided in Article (42) of the Penal Act No. 05-12 entitling the discipline power of the printing press the authority to hand in notices and instructions to the establishment of media violating its commitments as provided in this Act, one of which is the violation of this procedure with identifying the conditions and terms of undertaking them.

36. In fact, we notice that few acts of contemporary legislation define the media crime. Conceivably, the Media Act in effect in the Democratic Republic of Congo No. 002-96 dated 22th of June 1996 has come to be an exception to the prevalent line, whereby Article (74) of it states as follows: “ The media crime is inserted within the crimes of thought and expression that lies in an illegal conduct, whether

3.1. Printing Press Crimes Provided in the Penal Act

The Amended Algerian Penal Code provides only three crimes that might be perpetrated by printing bulletins, which are: defamation, vituperation and crime of trespassing on private life, to be examined in this section.

3.1.1. Defamation Crime

In this part, we will endeavor to comprehend this crime through specifying its definition and its basic elements.

First: The Definition of the Crime

Linguistically, Defamation implies an acting or instance of *flinging* (check), and is defined by the Algerian lawmaker in Article (296) of the Penal Act as follows: "It is considered a defamation any allegation, or imputation or a fact that does prejudice the natural or juridical persons' honor and consideration, or the body to which the fact is imputed. Publicizing this allegation or imputation directly or by re-publicizing shall be sanctioned even if it is done with skepticism, or intentionally directed to a person or body anonymously, but it was possible to identify both of them through the phrases of saying, yelling, threatening, writing, publications, labels, or advertisements that are the subject of the crime."

In the same stream, Articles (144) repeated, and (146) of the Penal Act turn to the defamation crime directed to the President of the Republic or the other public bodies by using any means of its transmission by radio or television (broadcasting), or by any other electronic or informatics means.

Second: The Crime's Basic Elements

The defamation crime stands up at the time when its two basic elements, the material and the incorporeal, have come to existence.

1- The Material Element:

The material element of this crime consists of three constituents:

***Allegation or imputation:**

Allegation bears a meaning of a narrative account from the other, or making mention of tidings presuming trueness or falseness, while imputation connotes ascription of the matter to the defamed person by affirmation, whether the alleged facts are true or false. Not only can defamation be brought into

it is an acting or abstention from an acting, perpetrated by one of the media means, concealing an encroachment on a private or public interest protected by law, and having a criminal penalty".

being by the firsthand imputation, but also it can be realized by all means of expression even though these means are nebulous or interrogative.³⁷

For the defaming person to impute an ignominious matter to the defamed with his cognizance of it is on an equal footing with imputing it to him by narration from the other, or reiterating it as hearsay. Thereafter, it was judged that it was a defamation who published in a gazette an article he had beforehand published in another gazette, containing a defamation on a basis of that re-publication is considered a new defamation.³⁸

*Identification of the facts:

The Allegation or imputation should be revolved around an identified and certain fact, and this condition is the one that differentiates defamation from vituperation, since if the imputation is devoid of a certain fact, it will be a vituperation not a defamation. So, to ascertain the fact constitutes the basic element in imputation, and in this context, the Algerian lawmaker has adopted a criterion of specifying the fact as a basis for crime apart from its objectivity whether it is true or false pursuant to Article (296) of the Penal Act.

The fact or acting offends honor and consideration because every individual has a right to protect his moral virtue manifest to the people comprehending trust, morals, devotion and loyalty that prompt them to respect and appreciate him. This is the rudimentary reference for the social stature every person has acquired in his societal environment, while the consideration relates to the person's reputation and social stature that include all traits and virtues individualizing his stature among people drawn from his professional, academic, religious and educational status.³⁹

37. See Shaban Makki, *The Private Criminal Law in the Algerian Legislation*, Dar Al-Huda, Algeria, 2009, Pp. 237.

38. Voir Languier (J), *droit pénal spécial*, 2^{ème} édition, Dalloz, Paris, 2016, p56.

In this context, Algeria's Supreme Court ruled that the article that had been published in one of the national bulletins, including a defamation by immoral means perpetrated by a manager of the one of the Capital's hospitals against his colleagues and other clients previously published in another bulletin did constitute a new defamation under pain of Article (296) of the Penal Act because it offended the reputation and consideration of the person concerned, and it was not possible for the bulletin to have shunned itself from the responsibility in consideration of this information being known beforehand by the assemblage. The Supreme Court's decision, the Chamber of Misdemeanors and Contraventions, dated 12th of March 2013 in the case of Mr. (Kh. L) versus Mr. (L. H), File No. 362218.

The Supreme Court's decision published in the *Journal of the Supreme Court*, No. 4, Algeria, October 2013, Pp. 136.

39. See Mohammad Sobhi Najm, *Explanation of the Algerian Penal Act: the Private Section*, 5th Edition, University Prints Office, Algeria, 2014, Pp. 97.

In fact, the considerable comparison between the two sentences has had the contemporary judicial systems relinquish the idea of differentiating one from the other, and both have mostly the same connotation in different contexts even though the jurisprudence detached one from the other by resorting to some of objective criteria, namely the criterion of time linked to the time of the fact happening, and the subjective criterion relating to the fact's perpetrator, as well as in any context in which the phrases of criminalization have overtly been spoken out. From another side, the lawmaker restricts the case in which the defamation crime arises to that of identifying the defamed aggrieved party whether he is a natural or juridical person, and if it becomes impossible or even difficult to identify the defamed person, the crime will then not arise.

**Publicness:*

It means conveying the purport of defamation to the public by all means of media, whether the ignominious phrases and words have been expressed in speech, in writing or by any other means of those of expressing an opinion or notion.

In view of the acute effects upon individuals' life from a professional, societal and legal perspective, the publicness has been tackled by the lawmaker in a number of the legal subjects for assessing its damage. Thus, it might incarnate in more than a mold constituting a standing crime per se, or as one of its elements, or as an aggravating circumstance for the penalty. Additionally, since the publicness is a substantial constituent in the defamation crime's basic material element, the court ought to signalize, and add force to it in the operative part of the verdict so that the latter does not come to be tainted with deficiency in reasoning.⁴⁰

In this context, it is noteworthy that the Algerian lawmaker pretermitted identifying the means of publicness accurately and conspicuously as Article (296) settles, at the outset, for making mention of "to publicize or re-publicize..." then averts this omission by stating "...of saying, yelling, threatening, writing, publications, labels, or advertisements that are the subject of the crime". This fuddle, so to speak, might be assigned to the fact that the rules of this Act in effect were quoted from the French Media Act, by then the lawmaker, in the midst of the quotation process, passed the provision

40. Consult Algeria's Supreme Court (the Chamber of Misdemeanors and Contraventions) dated 29th of September 2011 in the case of Mr. (M. J) versus Mr. (k. N), File No. 353905 (published in the Journal of the Supreme Court, No. 2, Algeria, April 2012, Pp. 61).

of Article (23) of it, identifying the means of publicness, and went directly on to Article (29) parallel to Article (296) of the Penal Act, omitting the French lawmaker's relegation of the means of publicness to Article (23).

2. Mens Rea

For the defamation crime as an intended crime to arise, the general criminal intent is a core premise of it, based on two constituents, which are: knowledge and will, namely, the offender shall have the knowledge of the words content, and the will of spreading them out. In other words, the offender ought to know that his penning and what he publicized in a bulletin may cause harm to the defamed person's honor and consideration, and it is not a prerequisite for the completeness of the crime that the special intent, which is the animus of causing harm to honor and consideration, should be met. Likewise, the impulsive motive has no effect on the arising of the crime.⁴¹

In contrast with the general rule based upon the presumption of bona fide in the wrongdoer, Mala fide is always presumed when committing the defamation crime because the one who defames a person or a juridical body, should prove the correctness of the facts of defamation, and not the defamed party who should burden it. Consequently, the wrongdoer shall bring forward the evidence of his bona fide. In this respect, it is judged that the defaming imputation should arise associated with the animus of causing harm, and it is insufficient to impute a fact affecting honor or consideration to the victim, but, it should be associated with the direction of the wrongdoer's animus to broadcast and spread out matters affecting reputation with intent to abuse.

Third: The Penalty of the Crime Prescribed by law

The defamation's penalty varies according to the body to whom the defamation is turned:

*The Penalty of the defamation committed against individuals:

Article (298/1) inflicts a punishment on the offenders perpetrating the crime of defamation against individuals. As a matter of law, the punishment provided in this instance is the incarceration from two months to six months and the fine ranging from 25,000 to 50,000 DZD, or either of these two punishments.⁴²

41. For more details, see Imad Abdel-Samee' Al-Sayed, *Al-Waseet in the Statutes of the Press*, The Novel Book Shop, Alexandria, 2014, Pp. 235.

Voir également – languier (J), Op. Cit, P.71.

42. It has been noticed that this Article was amended by virtue of the Act No. 06-23 dated 20/12/2006,

As for Article (298 repeated), it provides that if the defamation is turned to one or more who belong to ethnic, sectarian, or religious groups with intent to abet the odium among the citizens or inhabitants, the penalty will be aggravated and extended to fling the offender in jail for a period ranging from one month to a year, and a fine ranging from 20,000 to 200.000 DZD, or either of these two punishments.⁴³

*The Penalty of the Defamation Committed against the President of the Republic and the Official Bodies Until recently the Penal Act had paid no heed to the defamation penalty inflicted upon the official bodies, but according to the amendment of the Act No. 01-09 dated 26/6/2001, the lawmaker added a penalty for this case. It is deemed that the lawmaker did err when he inserted the penalty into the fifth section of the first chapter, including the felonies and misdemeanors against the public order, in particular in the first part pertaining to the crime of humiliation of, and assault on, a civil servant. The lawmaker should, from our point of view, have inserted it into the rules of the first section of the second chapter related to the felonies and misdemeanors committed against persons, exactly in the fifth part tackling the encroachment on persons' honor and consideration, directly after providing for the penalties prescribed to the defamation that is turned to individuals. We say so because the occupants of the public offices such as the President of the Republic and ministers are not considered civil servants in the technical narrow concept for the term "civil servant". Hence, the defamation, which is turned to them is more severe than the defamation turned to another civil servant. It is axiomatic that to bring the political classes under the same retributive system on equal footing to the civil classes is regarded, for us, as bizarre.

By and large, Articles (144) repeated and (146) specified the penalties for the defamation, which is turned to the President of the Republic, bodies, Prophet Mohammad (Peace be upon him), other prophets and the rituals of the Islamic religion as follows:

*The punishment for the defamation turned to the President of the Republic is the imprisonment from three months to one year and the fine ranging from 100.000 to 500.000 (144 repeated), and this punishment is to be duplicated in

and the penalty in the Act of the Media No. 07-90 had been the imprisonment from 5 days to 6 months and the fine ranging from 5000 to 50.000 DZD.

43. Article (298/2) was amended by virtue of the Act No. 06-23, and it is observed that the penalty, pursuant to the Act No. 07-90 was the fine ranging from 10.000 to 100.000 DZD.

the case of recidivism. It is noteworthy that this penalty is the same penalty prescribed for the defamation committed against other official bodies.

The punishment for abusing prophet Mohammad (Peace be upon him) and other prophets, and for the contempt of, or the act of mockery against, the well-known concepts of the Islamic religion or its rituals is the imprisonment from 3 years to 5 years, and a fine ranging from 50.000 to 100.000 DZD pursuant to Article (144 repeated 2).

3.1.2. The Crime of Vituperation

In this connection, we are to specify the import of this crime, and its basic elements.

First: Definition of the Crime

In language, vituperation means reviling, and in usage it is referred to as the outrage of a person's honor and consideration deliberately without including an imputation of a certain fact that contains a vehemence and profligate or filthy utterances such as a thief, lecher... etc. in its judgment, the court should make mention of the words of vituperation, otherwise, the judgment will be tainted with a default of reasoning.⁴⁴

As concerning the Algerian lawmaker, the vituperation is defined in Article (297) of the Penal Act as follows: "it is considered a vituperation every expression or sentence that contains a contempt or libel, not based on imputing any fact". Furthermore, he differentiates between the overt vituperation and non-overt vituperation whereby the first is considered a misdemeanor if it has been committed by any of publicness means, while the second is merely considered a contravention, sanctioned pursuant to Article (463) of the Penal Act.

Comparably, the aspects of similarity and discrepancy between the crime of defamation and that of vituperation become plain. Whilst the material element in both of them is composed of an encroachment on the honor and consideration of an individual, they are divergent from each other at the time when the law stipulates for pinpointing the facts as to the crime of defamation contrary to the other crime. As a result of this comparison, the court shall, in such cases, examine the joint element between both of them

44. See the Supreme Court's Decision (Algeria), The Chamber of Misdemeanors and Contraventions, dated 28th of April 2009 in the case of Mr. (B. S) versus Mr. (A. M). File No. 288386 (A published decision in the Journal of the Supreme Court, No. 1, Algeria, January 2010, Pp. 37). Also, in specifying the concept of the Vituperation Crime, See Mohammad Sobhi Najm, Op.Cit. Pp. 104.

that is the encroaching on one's honor and consideration, then make sure of the certainty or uncertainty of the fact specification, in the dispute instituted before it for determining the final characterization of the crime if it constitutes a defamation or vituperation.

Second: Basic Elements of the Crime

The vituperation misdemeanor constitutes a journalistic crime that arises from the linking up of its material element with its incorporeal one as follows:

1- The Material Element:

In fact, for this basic element to exist, three constituents should be met:

*The expression that outrages honor and consideration (the acting of vituperation): the fiercest wording of vituperation is the one that includes a contempt and insulting words, and the dishonorable expression is all that might lead to degrade the aggrieved party's stature, and cause harm to his honor. On the other side, every ignominious expression unswervingly causing harm to his honor and consideration is considered a defamation. It goes without saying that to determine the nature of the proscribed expression varies depending upon the when and where of its occurrence, and this determination is to be made at the discretion of the competent court that shall refer, in its verdict, to the words of vituperation, otherwise, the verdict will be tainted with a default of reasoning.⁴⁵

*Identification of the aggrieved party: for this crime to arise, the vituperation should be directed to a certain person or more, whether they are natural or juridical. Herein, to identify the aggrieved party by name is, in the absence of stipulation to the contrary, not requisite, and suffice to say, the crime will surely arise as long as it is possible for the individuals or some of them to have effortless knowledge of the person concerned from the phrases of vituperation. On the other hand, the crime will never arise if these phrases are general or directed to imaginary persons not existent in reality.⁴⁶

*The imputation: as mentioned above, the filthy words in this crime do not contain an imputation of a certain fact to the aggrieved person, and the imputation delineated by law in this form is the vituperation crime's earmark that distinguishes it from that of defamation. So, one of the vituperation

45. See Mohammad Sobhi Najm, Op. Cit, P. 105.

46. Shaban Makki, Op. Cit, P. 304.

conditions is to impute a disgrace without specifying a fact, as one casts a slur on another person's reputation by describing him as a robber, embezzler, or briber.⁴⁷

In this context, the two crimes are tending to converge as to the vulnerable persons, including the natural persons by virtue of Article (299) of the Penal Act, and the persons belonging to ethnic groups pursuant to Article (298, repeated), as well as the official bodies pursuant to Article (144) that consist of: the President of the Republic according to Article (144, repeated), prophet Mohammad (Peace be upon him) and other prophets according to Article (144, repeated 2), and lastly the rituals of the Islamic religion in virtue of Article (144, repeated 2).

***Publicness:**

As is true of the defamation crime, for the vituperation crime to arise, the lawmaker stipulates for the publicness clause, which is the same publicness prescribed for the other crime. It is made possible by various means of media, such as writings, photos, or audible and visible instruments, as well as by any other electronic or informational means.

However, the publicness is, herein, not a basic element in the vituperation crime, in which the crime is not to be negated by the absence of the publicness clause, but, it will turn from a misdemeanor into a contravention according to the rules of Article (463/2) of the Penal Act, even though the lawmaker does not refer to the publicness as a condition in Article (297) of the Penal Act unlike the French and Egyptian lawmakers who stipulate for this element in the misdemeanor, believing that this is merely an inadvertence.

1. Mens Rea

On the order of the defamation crime, the vituperation crime is committed with mens rea, which simply takes the form of the general criminal intent with no need for the private criminal intent to be proven. In other words, for the crime to arise depends only upon the inevitability of overtly uttering the filthy words with having knowledge that they might cause damage to the aggrieved person.

Third: The Penalty for the Vituperation Crime Prescribed by Law

Both crimes of defamation and vituperation, being committed by the media

47. Sur ce point d'analyse, voir – Dumas (R), liberté de la presse et droit de la personne, DALLOZ, Paris, 2011, P 436. Voir également -Lemmens (K), op.cit, p 513.

means, bond together as long as the matter relates to the targeted persons, and the penalty varies depending upon the capacity of the crime's victim

*The penalty for the vituperation turned to individuals is imprisonment from a month to 3 months, and a fine ranging from 10.000 to 25.000 DZD, or either of these two penalties.⁴⁸

*The penalty for the vituperation turned to a person or more belonging to ethnic, sectarian or religious groups is imprisonment from 5 days to 6 months, and a fine ranging from 5000 to 50.000 DZD, or either of these two penalties pursuant to Article (298 repeated) of the Penal Act.

*The penalty for the vituperation turned to the President of the Republic is the imprisonment for a period ranging from 3 months to a year, and a fine ranging from 100.000 to 500.000 DZD that should be doubled in the case of recidivism by virtue of Article (144 repeated) of the Penal Act.

*The Penalty for the vituperation committed against the official bodies is the imprisonment for a period ranging from 3 months to a year, and fine ranging from 100.000 to 500.000 DZD according to Articles (144 repeated) and (146) of the Penal Act.

*The punishment for the vituperation committed against Prophet Mohammad (Peace be upon him) and other prophets, and for the contempt of the well-known concepts of the Islamic religion or its rituals is imprisonment for a period ranging from 3 to 5 years, and to pay a fine ranging from 50-000 to 100.000 DZD in virtue of Article (144 repeated 2) of the Penal Act.

It is noteworthy that if the crime of vituperation is perpetrated by a bulletin, it will then be subjected to the special rules prescribed for the crime of defamation, in particular in respect of the criminal responsibility of the manager, and chief editor, of the bulletin, and the punishment prescribed for it, which is a fine ranging from 500.000 to 5.000.000 DZD (Article 144 repeated 2).⁴⁹

48. In case of the absence of the publicness clause, the penalty for the non-overt vituperation is to be a fine from 30 to 100 DZD, and it might include the imprisonment for 3 days as a maximum according to Article (463/2) of the Penal Act. Sur ce point voir: Harat (A), droit de l'information et responsabilité pénale de la presse écrite, 1^{ème} édition, éd El Chihab, Alger, 2013, p 116.

49. Sur ce point d'analyse dans le droit comparée voir – Porta (M), responsabilité pénale de l'éditeur de médias en ligne participatifs, LGDJ, Paris, 2015, p93. Voir aussi: Cornu (D), la responsabilité des journalistes et des média, Librairie de l'institut international des droits de l'homme, Paris, 2009, p 56 et s.

3.1.3. The Crime of Trespassing on the Private Life

Pursuant to Article (93) of the Organic Act No. 12-05, the pressman is required to shun himself from publishing any information or tidings that might lead to degrade a person's stature, diminish his consideration, or take down his dignity and reputation as every individual has his/her private life persistently adhering to being far-flung from publicness, defamation, and journalistic bargains. The individual's private life, family secrets and personal riddles are not matters of importance to the public, and irrelevant to the society's collective system. Thus, getting involved in them or trespassing on their enclosed internal inviolability constitutes a violation of his/her sacred right that is the right to the personal freedom. This freedom, consequently, gives the individual an open space for behaving, saying and acting freely without a constraint or control within the limits of the rules imposed by law, namely, Article (39/1) of the Constitution of 1996 that states: "It shall not be permissible to violate the inviolability of the citizen's personal life and honor protected by law".⁵⁰

Trespassing on the private life arises as a crime when its two basic material and incorporeal elements coalesce into one entity as follows:

1. The Basic Material Element

The completeness of the material element can evidently be seen by synthesizing the two following constituents:

* The acting of imputation:

The acting of imputation in the crime of trespassing on individuals' private life has been actualized at the time when an offender imputes a fact or behaviors considered as secrets per se to a certain person whether the imputation has been made by a journalist or natural person, and whether the news is true or false so long as the legal protection admired by the lawmaker turns to the gist of the crime, notably, the private life of individuals.⁵¹

In this connection, to assert the arising of the crime, the lawmaker has regard to the offender's malice aforethought of causing harm to the inviolability of individuals' private life through tapping, or eavesdropping on, secret or private conversations, or through recording (making a record

50. Voir – Von Plauen (F. B), Op. Cit, P. 137.

51. Abdullah Ibrahim Moh'd Al-Mahdi, Standards of Criminalization and Legitimization in the Crimes of Opinion, PhD Thesis, Ein Shams University, Cairo, 2005, Pp. 269. See Also Shaban Makki, Op. Cit, P. 327.

of a conversation on a special device), or transmission (transmitting the preserved and recorded conversation from the allocation of it being tapped to another allocation) according to Article (303 repeated) of the Penal Act.⁵² The lawmaker then adds a sentence of “without the permission or consent of their possessor”. This connotes that the sphere of the legal protection depends on the possessor’s permission or consent to publicize the tidings of his private life. In this case, it is not a stipulation that the consent be written or take a special form, but it is sufficient for it to be verbal provided that it be explicit beyond a reasonable doubt. Of course, the consent is insignificant unless it emanates from a person having a capacity and capability of discretion, and having a will that should be intact from what mars it.⁵³

* The Subject of Imputation

The right to life encompasses the inviolability of the private life, which means an individual’s freedom is unrestricted and has the right to embrace the approach for his life, with which he is content without the others’ intervention. Furthermore, the secrecy of the private life connotes the right of individual to imparting privacy to the news and information relevant to the inviolability of his/her private life, namely, telephone calls, letters and private photos.

Criminal Intent

Parallel to the other crimes of the press, the incorporeal element in the crime of trespassing on the private life takes the form of the general criminal intent. In this context, proceeding from the wording of Article (303 repeated) of the Penal Act that provides “... each who deliberately causes harm to the inviolability of individuals’ private life...”, it has been considered as one of the crimes being committed on purpose, in which the offender shall know of the content of the transmitted words, and the will of his shall be directed to publicize or broadcast them.

52. For the criminal conduct to arise in this case, it is a stipulation that it be done by using one of the technical devices whatever kind and novel it is. So, the one who is listening secretly to a private conversation without making use of a technical device, or putting it down in writing does not make him/her responsible for the crime. Because Article (303 repeated) of the Penal Act provides as follows “...each who deliberately causes harm to the inviolability of individuals’ private life by making use of whatever technique it is...”, it can be deduced that the sentence of the Article seems to be general for the purpose of keeping up with the technological headways relative to the communication means.

53. voir –Dekker (M), aspects internes et internationaux de la protection de la vie privée en droit Français, Allemand et Anglais, thèse de doctorat en droit, université Panthéon-Assas, Paris 2, 2004, P24 et s.

3. The Penalty Prescribed for the Crime:

The penalty prescribed by law for this crime is the imprisonment for a period that ranges from 6 months to 3 years, and the fine ranging from 50.000 to 300.000 DZD pursuant to Article (303 repeated) of the Penal Act. As for the attempt to commit this misdemeanor or the inchoate offence, Article (303 repeated 1) provides that the penalty prescribed for it is the same penalty as prescribed for the perfect crime. Nonetheless, the victim's condemnation puts an end to the criminal proceedings.

3.2 Crimes of the Printing Press Provided in the Media Act

Having considered the last amendment relative to the media, it has been noticed that the lawmaker turned toward enhancing the restraints upon it, notably those relating to the respect of the society's public policy and instructive requirements that implies the inevitability of engaging the service of the media, whatever that means, in instructing the society. Thus, the lawmaker provides, in the seventh chapter of this Act under the title of "Penal Rules", for some proscriptions he has by now brought under the ban.

3.2.1. Security State Crimes

In the context of protecting the public security, the lawmaker adopts the principle of the restricted media concerning its goal, sought after by preventing the abatement of perpetrating felonies and misdemeanors against the state security or the impingement on, or defamation of, the national defense's reputation, namely through publicizing, or holding a discussion about, the internal martial information having an enclosed and secret nature.⁵⁴

First: The Crime of Incitement to Committing Felonies and Misdemeanors against the State Security

The incitement is a behavior including an immaterial relation, as it were, of cause and effect (casualty), which could lead to create the mens rea nonexistent beforehand to the other, then the latter moves from the quiescent state to the

54. In this regard, what attracts attention is that the Amended and Complementary Act of the Media refers to two analogous conditions. As long as the Act provides as follows: "every means of the Media founded on either an illicit doctrine or unlawful and immoral goal (as provided in Article (5) of the Organic Act No. 05-12, this phrasing, drawn from Article (1) of the French Act No. 1067-86, suggests that the two conditions are a double-faced coin. The term of "public order" actually does not add anything to the term of "illicit object". Concerning this, the French Republic's counselor Rousseau (W) posed the same point, stating in the Constituency Assembly during the discussions about the Act No. 1067-86 that he did not see this as an improvement in the purport.

willful resolve and execution state. For that reason, the abettor or inciter is considered the cause factor from whom the events have been arranged in a series and come successively to the point of the criminal result occurrence.

Following the same pattern, this crime arises by coalescing the incorporeal element into the material one as follows:

1- The Basic Material Element

This basic element is built on the certainty of the incitement acting synchronizing with that of publicness.

***The Acting of Incitement**

Incitement has various connotations such as inveiglement, suggestiveness, steerage and importunateness, all are directed to a person by having influence on his /her passions and innermost feelings. This acting might de facto be done by making use of writing, saying or other means of beguiling him/her into committing the acts composing the crime.

In this context, the incitement could be done directly through founding a direct casualty between the incitement to committing a crime whether it is a felony or misdemeanor, and the crime already committed or being attempted to commit it. For the incitement to be direct, it is not a stipulation that the inciter should identify the intended crime with its basic elements, nor should his forethought be tending to a certain kind of crimes, only it should be sufficient to induce the abetted person to commit the crime.⁵⁵

***Publicness**

As a matter of fact, the incitement provided in the Penal Act is incompatible with that provided in the Media Act whereby the publicness is an incumbent condition for the crime to arise. As long as the incitement is one of the media crimes, it must be done publicly unlike the incitement provided in the Penal Act. Owing to the fact that the media crimes have a special nature, the incitement should be directed to the public whether they are in public areas or public congregations.

2- The Criminal Intent

This crime necessitates a general criminal intent revolving around the leanings of the perpetrator's will toward inciting others to commit felonies

55. Voir – Ferbert (M), la liberté de la presse entre confidentialité et provocation: mode d'emploi pour faire chuter une liberté de sons piédestal, in RSDP, N°2, mars 2012, Bruxelles, P85. Voir également: Cilla Dutuit (S), «personnalisation de l'information, ou sont ses limites?», presse universitaire d'Aix Marseille, Paris, 2013, p 219. Et s

and misdemeanors by using any of the media means, and private criminal intent represented in his animus to cause harm to the state security and national unity.

3- The Penalty Prescribed for this Crime:

In this context, we should draw a distinction between two models:

* The model of the punishment for the perfect crime: the perfection of the crime appears whenever the felony or misdemeanor, which a journalist abetted its commission, has been perpetrated. Herein, the journalist or columnist and the manager of the bulletin, in which the article of the crime was published, shall be punished with the penalty prescribed for the accomplice in conformity with the general rules provided in Article (44) of the Penal Act. The penalty is to be individualized in proportion to the severity of the felony or misdemeanor for which the incitement has been headed.

* The model of the punishment for the attempt to commit the crime: if the incitement does not lead to the commission of the felony or misdemeanor, the penalty that shall be judged is that prescribed in Article (87) of the Act of the Media, which is the imprisonment for a period ranging from a year to 5 years, and the fine ranging from 10.000 to 100.000 DZD, or either of these two penalties.

Second: The Crime of Publicizing the National Defense's Secrets

The Algerian lawmaker proscribes causing damage to, or encroaching upon, the national defense as provided in Articles (65 to 76) of the Penal Act. Foreign to the question of our study is to examine the security state crimes, but their importance appears in their decussation in leaking information or what is the exact counterpart of it preserved as secrets by whatever means they could be perpetrated. Herein, the lawmaker does not specify those means referring to them as absolute. In the same stream, Article (36) of the Penal Act provides that "the right to accessing the resources of the tidings never gives the journalist a permission to publicize or divulge the information whose nature may unveil a secret of the national defense's secrets..."

This crime is grounded, as often as other crimes require, on the material and incorporeal elements as follows:

1. The Material Element

It is the positive acting represented in the publication or broadcasting by making use of one of the means provided in Article (4) of the Media Act No.

90-07 under the condition that the publication or broadcasting is relevant to a news item or document, containing a martial secret.⁵⁶

*The document includes writings, exhibits, graphics, maps and all things containing tidings and information relative to the armed forces with their formations, ordinance martial, locomotion, and officers.⁵⁷

*The martial secret includes military, political, diplomatic, industrial, and economic pieces of information, which are, by their nature, exclusively known to the persons having a capacity, and required to be secret adhering to the interest of defending a certain country.

2. The Incorporeal Element

This crime requires a general criminal intent whereby the wrongdoer's will is headed for committing the criminal act represented in publicizing or broadcasting a piece of news or a document, enfolding a martial secret by whatever means it is.

3. The Penalty Prescribed for this Crime:

By meticulously scrutinizing Articles (67) and (69) of the Penal Act, it has been observed that this crime constitutes a felony if the act, represented in the form of publicizing or broadcasting a document enclosing a martial secret, might give rise to the disclosure of one of the national defense's secrets. Then, in this case, the punishment is to be the imprisonment for a period ranging from 5 to 10 years. Additionally, this crime constitutes a misdemeanor if the act might lead either to the knowledge of a person having no capacity to be acquainted with such secrets, or to the knowledge of the public with no intent to commit espionage or treason. In this case, the penalty will be the imprisonment for a term ranging from a year to 5 years.

3.2.2. Humiliation Crime

It has been observed that the Algerian lawmaker, according to a preponderate view among the contemporary systems, divides the crime into numerous categories accompanied with dissimilar punishments because the essence of

56. In this context, Article (3) of the Media Act as mentioned above provides that: "The right to media shall be exercised freely with respecting the dignity of the human personality and the necessities of the foreign policy and national defense".

57. Voir – Maousse (A), le conflit entre le principe de transparence et la protection des symboles de souveraineté nationale, in chronique sociale de France, Montpellier, 2011, P 270.

the lawmaker's approach lie herein not in the content of the crime per se, but in the targeted party that is the victim. Thus, it has been said that the severity and effect of the crime relate to the importance and stature of the aggrieved party.⁵⁸

First: Definition of the Crime

The root of humiliation can, in language, be found in the verb "humiliate", "to humiliate a person by another means "to abase him or regard him as filthy". In this connection, the Algerian lawmaker tackles the crime in Article (144) of the Penal Act by stating that: "... each who humiliates a judge, employee, public officer, commanding officer, or one of the public force men by saying, gesturing, nodding, threatening, mailing or delivering anything belonging to them, or by non- overt writing or painting during taking over their métiers or on the occasion of taking them over with a purpose of causing harm to their honor, consideration, or respect, considered as due to their authority..."

Second: The Crime's Basic Elements

To characterize this crime, it is essential to highlight the crime's basic elements based on the material basic element accompanying the incorporeal element.

1. The Material Element seems to be inchoate only when both the victim's specialty and the used means have put together.

*The victim's specialty: the lawmaker identifies the aggrieved party's specialty, or more accurately the victim of the humiliation crime, in several scattered provisions to the extent of his persistence in pinpointing its ambit exclusively, dividing it into three categories:

1. The First Category specified, by virtue of Article (144) of the Penal Act includes the judge, public employee, public officer (such as notary and summons server), commanding officer, one of the public forces men (policemen and gendarmes), and lastly sworn member if an offence of humiliation is taken place during a judicial bench session.

2. The Second Category as added by the amended Act No. 01-09 dated 26th of January 2001 for the Penal Act includes: the President of the Republic (pursuant to Article (144 repeated of the Penal Act), the Parliament or one of its two chambers, judicial councils, popular national army, and any other

58. For details of this issue see Khalid Ramadan Abdel-Aal Sultan, "The Criminal Responsibility for the Press Crimes, A Comparative Study" PhD Thesis, Halwan University, Egypt, 2002, Pp. 34.

official or public body (according to Article 146 of the Penal Act).

3. The Third Category as added by the Organic Act No. 12-05 includes the presidents of the foreign countries and members of diplomatic missions accredited in Algeria.

***The Used Means:**

It has been noticed the lawmaker ratifies a dual rule for systematizing the used means in committing the crime of humiliation headed for the three categories aforesaid.

As concerning the individuals provided in Article (144) of the Penal Act, it is unperceivable that the crime in question will arise against them by a means of the television or press as it requires publicness to such an extent that the act will be turned to defamation or vituperation as occasion may require.

As to the individuals provided in Articles (144 repeated), (146) of the Penal Act, and (123) of the Media Act, it is a prerequisite for the crime to arise to be committed by any of publicness means as perceived from the sentence: "... humiliates...by writing, painting, stating, or by any means of transmitting the sound or picture, or by any electronic or informational means".⁵⁹

2. The Incorporeal Element

As a premeditated crime, the humiliation crime requires both of:

- A general criminal intent leaning on the offender's knowledge of the victim's specialty with a direction of his well to perpetrating the criminal act represented in humiliation by one of the media means.
- A private criminal intent represented in the animus of causing damage to the victim's honor, consideration and respect as due to him/her.

Third: The Penalty Prescribed for this Crime

Here, it is crucial to make a distinction between the penalty of the journalist and that of the bulletin. As for the former, the prescribed penalty is to put him in jail for a term ranging from 3 months to one year, and to oblige him to pay a fine ranging from 50.000 to 500.000 DZD, or either of these two penalties.

59. Voir – Cilla Dutuit (S), «information sur les personnalités, personnalisation de l'information, ou sont les limites?», P.U.d'Aix Marseille, France, 2013, P 402. Voir aussi: Koussa (F), mutations de libertés individuelles en Algérie, OPU, 2ème édition, Alger, 2015.

As for the latter, the sole penalty is the fine that should range from 500.000 to 5000.000 DZD. In both cases, the punishment inflicts upon the offender whether the act of humiliation is headed for the President of the Republic (Article 144 repeated), the Parliament, judicial councils, courts, army, or other public bodies according to Article (146) of the Penal Act.

In this context, it is essential to say that the aforementioned fines were triggered by the Act No. 06-23 dated 20 December 2006 as an amendment to the Penal Act. By virtue of Article (467 repeated) of it, the lawmaker raised their lower and upper limits.

3.2.3. The Crime of Causing Damage to the Judicial Secret

In fact, the lawmaker recurrently emphasizes, under penalties prescribed by law, the restriction of the printing press's freedom on transmitting the tidings of the judicial investigations and trials in order to preclude both of the outburst of the incomplete and incorrect information, and the obstruction of justice safeguarding the rights of the criminal action's parties.⁶⁰

First: The Crime of Publicizing the tidings and Documents Causing Damage to the Secrecy of the Investigation and Inquiry

The principle of the investigation secrecy is one of the fundamental principles provided in most statutes of the world for maintaining the seemingly pursuit of the inquiries, and sidestepping the negative influences on their run if they have been unveiled prior to their conclusion. Moreover, it seems obvious that the significance of this principle is for enhancing the right of those who are under suspicion to the presumed innocence whereby every defendant, or every suspect to be exact, is innocent until proven guilty.⁶¹

In Article (11) of the Criminal Procedures Act, the lawmaker accentuates the principle of the secrecy of the preliminary investigation by stating that: "The procedures of inquiry and investigation shall be secret except as otherwise provided by law without damaging the right of the defense. Each who contributes in these procedures is obliged to veil the professional secret under the conditions indicated in the Penal Act and under the penalties prescribed therein". Nonetheless, the lawmaker refers to one exception to this rule the Act No. 06-22 brought into effect in 20/10/2006 makes mention

60. Consult Article (301) of the Penal Act.

Voir également - voir – loi organique N°12 – 05 (op.cit), articles 119, 120, 121 et 122.

61. Voir – loi organique N°12 – 05 (op.cit), article 2 \ alinéa 10.

of it. This Act that relates to the amended and complementary part of the Criminal Procedures Act adds to Article (11) of it the sentence of "... to avoid the outburst of incomplete and incorrect information or to put a limit on the violation of the public order, it is permissible only for the prosecution's representative to disclose to the public the objective elements drawn from the procedures on condition that they do not contain an evaluation of the accusations brought against the persons embroiled in a crime".

For this crime to arise for a certainty, both of the material and incorporeal elements should, on the pattern of other intended crimes, come together in order to constitute a crime as defined by law.

1. The Material Element

This element is grounded on the act of publicizing tidings, information, or documents relative to the subject of the preliminary investigation of, and inquiry into, felonies and misdemeanors by one of the means of the printing, audible or visible media provided in Article (4) of the Media Act.

2. The Incorporeal Element

This crime merely necessitates a general criminal intent constructed on the offender's knowledge that the information and documents he/she has got might cause harm to the secrecy of the preliminary investigation of, and inquiry into, a felony or misdemeanor. Notwithstanding that knowledge, his/her will is headed for publicizing or broadcasting them by any means of the printing, audible or visible media means.

3. The Penalty:

The Act prescribed for this crime a penalty of imprisonment for a term ranging from a month to 6 months, and that of the fine ranging from 5.000 to 50.000 DZD.

Second: The Crime of Publicizing or Broadcasting the Circumstances of a Felony or Misdemeanor

As a matter of fact, Article (90) of the Media Act punishes each who publicizes or broadcasts, by any means, pictures, drawings, or illustrative information narrating all or some circumstances of felonies or misdemeanors as provided in Articles (342-255) of the Penal Act.

1. The Material Element

The criminal conduct should be turned to all or some circumstances of felonies and misdemeanors being run in public trials through publicizing

pictures, drawings, or illustrative facts, and be related to the following two categories⁶²:

- The crimes specified in Article (255-263) of the Penal Act, including: murder, abortion, killing or injuring another with poison.

- The crimes provided in Articles (333-342) of the Penal Act, including: the overt act inconsistent with decency (Article 333), outrage on a minor's decency (Article 334), indecent act (Article 335), rape (Article 336), incest (Article 337), and the abatement of lechery (Article 342).

Despite the lawmaker's approach to ratifying the right to broadcasting the tidings in order for the media to perform its noble message, the legal ban on publicizing what runs during the criminal trials is due to the lawmaker's adherence to protecting the public order, or to not influencing the adverse parties' interest as the publication might contain facts or matters that outrage persons' honor or consideration.⁶³

2. The Criminal Intent

This crime is only based on the general criminal intent represented in the wrongdoer's knowledge of the means he/she has sought, going into all, or some of the, merits of a felony or misdemeanor, and directing his/her will to publicize or broadcast them.

3. The Penalty

By virtue of Article (90) of the Media Act, these acts are punished by the imprisonment for a term ranging from a month to 3 months, and the fine ranging from 5.000 to 100.000.

Third: The Crime of Publicizing the Content of the Enclosed or Secret Hearings' Deliberations

As an exception to the openness of trials considered as a relative principle, the lawmaker proscribes publicizing the deliberations of the judicial benches rendering their judgements if the trial hearings were held closed as provided in Article (92) of the Media Act No. 07-90.

The secrecy of deliberations is regarded as one of the substantial principles of trials. Thus, it is impermissible for the others save for the judges who attend a trial to take part in its deliberations. In a nutshell, the reason of this secrecy

62. Molina Edward, *Mythe et réalité de la liberté de la presse, étude comparative*, thèse de Doctorat en droit, Université de Québec à Montréal UQAM, Canada, 2014, p 56 et s.

63. Voir – Mounier (C), *la publication du nom des auteurs d'infractions par les médias*, presse universitaire de l'UQAM, Montréal, CANADA, 2013, P 76 et s.

is to protect justice lest the judges be reluctant to publicize their attitudes that might affect their future, it is, actually, a secrecy that vindicates the judges' dignity and duty sacredness in the eyes of the general public.

In law, for this crime to arise, the material and incorporeal elements should be met as follows:

1. The Material Element

The publication should be related to the essence of the deliberations of civil and criminal judicial bodies that have decided to hold their sessions closed. The ban takes effect to include the closed deliberations, and exchange of views among the judges of the court before which the lawsuit is brought attaining to a just verdict on matters of fact. So, no matter where it has been held,⁶⁴ the deliberation should be kept a secret in order for its content not to leak out to the adverse parties or the public.

2. The Incorporeal Element

This crime simply requires a general criminal intent constructed on the offender's knowledge that what he/she is publicizing or broadcasting is relative to the content of a judicial body's deliberations while the session is held closed. As to the aberrant will, it should be turned to the act of publicizing or broadcasting.

3. The Penalty

For this crime, the lawmaker provides, as set forth in the concerned Act, for the penalty of the imprisonment for a term a month to 6 months and the fine ranging from 5.000 to 50.000 DZD.

Fourth: The Crime of Publicizing the Procedures Pertinent to the Cases of the Personal Affairs and Abortion

Every journalist is bound not to publicize or broadcast to the general public any judgements he has procured, rendered on persons' personal affairs as this conduct might cause harm to the families' honor and consideration. In this context, the ban on publication or broadcasting takes effect to include every investigation, expertise, report of reconciliation, procedure, or judgement relevant to the lawsuit of divorce, verification of lineage, guardianship, and inheritance as well as the lawsuits of abortion and adultery considered as

64. Voir – Perron (F), «la protection de la personnalité et les médias, une illustration de la rencontre du droit pénal et du droit constitutionnel», thèse de doctorat en droit, université de Fribourg, Genève, 2010, P 183.

being the most severe crimes threatening the entity of family and society.⁶⁵

This crime, as usual, consists mainly of the material and incorporeal elements as follows:

1. The Material Element

This basic element revolves around the act of publication or broadcasting whereby this act should be directed to the procedures of trial, and pleadings or closing arguments of the adverse parties in the cases of abortion and personal affairs. The ban extends to include all procedures aforementioned whether they are determined in the location of the competent court or to wherever the latter decided to move on.⁶⁶

2. The Incorporeal Element

This crime merely necessitates a general criminal intent based on the wrongdoer's knowledge of violating the law by publicizing or broadcasting reports of the judicial items mentioned hereinbefore relevant to the personal affairs or abortion with the direction of his/her will to do commit it.

3. The Penalty

This misdemeanor is punished by the imprisonment for a term ranging from a month to 3 months, and the fine ranging from 2.000 to 10.000 DZD.

Fifth: The Crime of Publicizing the Procedures Content Pertaining to Minors

Article (91) of the Media Act punishes each who publicizes by whatever means with intent to cause harm to the minors any text or illustration having a bearing on the minors' identity or personality unless this publication is allowable according to either an approval of, or an explicit request from, the guardians of the minors concerned.

The latent aim of Article (91) is to shield the child from exploiting his innocence or causing harm to him because of his mental defect that makes him susceptible to be deceived. Actually, the Algerian lawmaker's approach goes along with the international treaties of the child's rights whereby the publication has been legalized in case there is a legal authorization of, or upon

65. The French Act of the Press issued in 29/7/1881 also bans the journalists from publicizing what runs in the cases of divorce, physical breakaway and verification of lineage according to Article (39) of it that is parallel to Article (871) of the Egyptian Pleadings Act, and Article (193) of the Egyptian Penal Act.

66. Voir – Chanteau (I), médias et protection des intérêts personnels, in JCP, N°4, Paris, octobre 2006, P 103.

the request of, the legally competent.⁶⁷

For this crime to be perfect, two basic elements should be proven as follows:

1. The Material Element

This basic element is represented in:

- Publication or broadcasting by whatever means journalists have sought to use.
- Publication should have a bearing on the identity or personality of a minor.
- Failure to snap up an authorization or approval of the legally competent.

In reality, this approach conforms to the general enactment that the delinquent child is a victim of internal and societal factors that affect his capability of resistance and force him/her to deviation. To this end, the procedures of his/her trial must be labeled as a special and auto-nature consistent with the circumstances of the child and the ultimate goal behind the trial of him/her.⁶⁸

2. Mens Rea

This crime is a premeditated one grounded on a general criminal intent that represents in turning the offender's will toward the act of publicizing the identity and personality of a minor with having knowledge that his act is proscribed. Additionally, there is a private intent through which the offender unswervingly aims to cause damage to a minor.

3. The Penalty

This crime is regarded as a misdemeanor punished by the imprisonment for a term ranging from 3 months to a year, and the fine ranging from 5.000 to 100.000 DZD.

4. Conclusion

At the end of this study, it has been concluded that the real status of the printing press's freedom in Algeria has still been swayed in the sphere of an irreconcilable legal system in which there are flexible constitutional provisions that set forth this freedom in the context of the liberal principles aiming to

67. The French lawmaker treats this subject in Article (39 repeated) of the Act of the Press that provides that "It is impermissible to publicize, by making use of writing, press, Radio, Cinema, or other means, all texts or information pertaining to the identity or personality of a minor whose age is less than 18 years, and who has abandoned the family, custodian, or the establishment put in charge of his sollicitousness.

68. Voir – Cornu (D), la responsabilité des journalistes et des médias envers les enfants, librairie de l'institut international des droits de l'enfant, Paris, 2008, P 385 et s.

provide it with furtherance and loftiness. On the other hand, there are rigorous legislative provisions seeking to impose an austere restriction on it. To this end, the advocated approach being followed by the central administration for the purpose of restricting this freedom revolves around two aspects:

From the aspect of hindering the measures of establishing bulletins in view of the criterion adopted to recognize their legality, which is the criterion of accreditation implying the most rigid legal systematization for the freedom, and in view of the complexities of the procedures followed to get the prior accreditation, the bitter truth is that because of the multiplicity of the administrative bodies having decisions on the accreditation request fairly equipped with a collateral bureaucratic system, and because of the wide-range discretionary power these bodies have, this may unfairly result in delaying bringing an approval to a close.

From the aspect of upholding a rigorous controlling system over bulletins during the stage of administration, this controlling system makes the bulletins susceptible to stoppage and closure in addition to bearing the civil and criminal liability. This subtle trialing is represented in making control over the bulletin's financial resources, the amendments to its structural and organic internal regulations, and the legality of the press release. These authorities taken over by the central administration will still have a firm grasp, especially from the perspective of the public order's flexible concept that extends parallel to shrinking the cases of the judiciary's intervention in making control over this concept.

It has also been concluded that the professional bases for a probable classification of the national bulletins were rapidly left destitute of their key characteristics such as objectivity, impartiality, credibility and fairness because of the slippage of the bases and rules governing them from the grip of law and professional ethics to fall into the grip of money and interests on the judicial and administrative levels to such an extent that they have merely become bureaucratic interests that appear in the guise of the private or public law persons.

Therefore, it is believed that to repair the retrogressive state with which the liberty of the printing press in Algeria has wound up necessitates making serious amendments to its legal systematization that should touch on the administrative and criminal levels. It is said so because the egregious truth

that the freedom of information in Algeria is located in the tail of the countries according to 2017 World Press Freedom Index, in which its category is 134.

First: on the Administrative Level

1. The Act of Media characterizes a bulletin as foreign to be afterwards subjected to the national law according to one of two standards which is: the subjective or territorial standard. As to the first standard, the notion is grounded on the issuance and distribution of the bulletin abroad under the supervision of an Algerian administration and editorial staff, whereas the second standard, it seems obvious that to be territorial, it subjects to the central location of the bulletin in Algeria, but under the supervision of a foreign administration and editorial board. This extension in the enforcement of the Algerian Act of the Media might collide with several practical dilemmas, the most important of which is that of conflict of laws. The reason behind this dilemma is that other countries may decide that the bulletins founded on their national soil are subjected to their legal systems despite the fact that their structure and distribution will definitely be abroad. So, we recommend the Algerian lawmaker to waive the subjective standard and stick to the territorial standard for the purpose of pinpointing the realm of enforcing the national Media Act. This trend will actually guarantee the evenhandedness among the countries signed to the Convention of International Right of Correction entered into force Aug. 24, 1962.

2. It has been noticed that that the right of reply is limited to the field of the audible and invisible media and to the Internet. However, it is believed that by reason of the massive technological development in the means of the media, this right has become wider to include what is publicized in the bulletins whether the publication is conventional or via the Internet. Moreover, there is not any aspect of differentiation among the means of the media whether the presentation is made to view in an open space, or on the Internet so long as the nature of the print, the style of writing and the kind of the journalistic item have constituents of the serial bulletin.

In fact, the Algerian lawmaker did not tackle, in the Media Act No. 07-90, the issue of the right of reply via the Internet. Additionally, we have not found any provisions that regulate this right in the novel means of the media. So, the lawmaker is called upon to find a way to get round this shortcoming and bring out new provisions parallel to those of the international conventions.

Second: From the Perspective of the Criminal Responsibility

1. With regard to the responsibility of the printing press, we recommend the specification of its sphere for both of the chief editor and editor of a bulletin in case of not conforming the succeeding publication. That means the publication pertaining to reply or correction to its legal conditions. Bitterly, the lawmaker left out a deep discussion about this issue, and merely tackled the termination of the criminal action ensuing as a result from the crime of deliberate omission to publish the reply or correction prior to setting the action in motion.

2. Pursuant to Article (45) of the Media Act, the scope of the criminal responsibility relative to the printing press is restricted to the statements, opinions, tidings or obloquies. The phrasing of this Article is not applicable to other forms of the journalistic expression such as symbols, caricatures being published in bulletins in spite of their containing defamation, vituperation and mistreatment of individuals. As a result, we recommend an amendment of Article (45) of the Media Act to include all means of the press release in the context of a one retributive policy so long as the limit and aim of publication as well as the nature of damage are one all irrespective of the technical instrument of release.

3. The Media Act did not refer to the criminal penalties in case of recidivism, to be exact in case the bulletin, namely its chief editor and manager, have committed frequent wrongdoings in transmitting the criminal-characterized news despite the fact that this is considered a general rule for all crimes without exception. Herein, we recommend obviating these breakthroughs and shortcomings in the succeeding amendments to the Media Act.

Cited References

A- Books

- 1- Achille (N) et Tifine (P), *La police de la presse écrite et la liberté d'information* éd Montchrestien, Paris, 2014.
- 2- Al-Sayed (I.A), *Al-Waseet in the statutes of the Press*, The Novel Book Shop, Alexandria, 2014.
- 3- Cilla Dutuit (S), «personnalisation de l'information, ou sont ses limites?», *presse universitaire d'Aix Marseille*, Paris, 2013.
- 4- Cornu (D), *la responsabilité des journalistes et des média*, Librairie de l'institut international des droits de l'homme, Paris, 2009.
- 5- Dreyfus (M), *L'articulation entre les pouvoirs de police générale et de police spéciale en matière de la presse écrite* : PUF, Paris, 2000.

- 6- Dumas (R), liberté de la presse et droit de la personne, Dalloz, Paris, 2011.
- Harald (J) – manuel, less enjeux du droit de l’information, LGDJ, Paris, 2015.
- 7- Harat (A), droit de l’information et responsabilité pénale de la presse écrite, 1^{ème} édition, éd El Chihab, Alger, 2013.
- 8- Koussa (F), mutations de libertés individuelles en Algérie, OPU, 2^{ème} édition, Alger, 2015.
- 9- Languier (J), droit pénal spécial, 2^{ème} édition, Dalloz, Paris, 2016.
- 10- Lebreton (G), Le juge administratif face à l’ordre moral : Mélanges Peiser, P.U. Grenoble, 1995.
- 11- Maousse (A), le conflit entre le principe de transparence et la protection des symboles de souveraineté nationale, in chronique sociale de France, Montpellier, 2011.
- 12- Mounier (C), la publication du nom des auteurs d’infractions par les médias, presse universitaire de l’UQAM, Montréal, Canada, 2013.
- 13- Najm (M.S), Explanation of the Algerian Penal Act: the Private Section, 5th Edition, University Prints Office, Algeria, 2014.
- 14- Porta (M), responsabilité pénale de l’éditeur de médias en ligne participatifs, LGDJ, Paris, 2015.
- 15- Shaban (M), The Private Criminal Law in the Algerian Legislation, Dar Al-Huda, Algeria, 2009.
- 16- Thérond (J.P), Dignité et libertés. Propos sur une jurisprudence contestable: Mélanges Mourgeon, Bruylant Paris 1998.
- 17- Tifine (P), Droit administratif français, Cinquième Partie, LGDJ, Paris, 2015.
- 18- Vandermeeren (R.), Police administrative et service public: LGDJ Paris 2004.
- 19- Venezia (J.CL) le pouvoir discrétionnaire LGDJ Paris 2009.

B – Academic theses

- 20- Abdullah Ibrahim (M), Standards of Criminalization and Legitimization in the Crimes of Opinion, PhD Thesis, Ein Shams University, Cairo, 2005.
- 21- Braillons (D), l’Etat entre le devoir d’informer et le désir de cultiver ses relations publiques, thèse de doctorat en droit, université de Genève, Suisse, 2014.
- 22- Dekker (M), aspects internes et internationaux de la protection de la vie privée en droit Français, Allemand et Anglais, thèse de doctorat en droit, université Panthéon-Assas, Paris 2, 2004.
- 23- Khalid Ramadan (A.S), “The Criminal Responsibility for the Press Crimes, A Comparative Study” PhD Thesis, Halwan University, Egypt, 2002.
- 24- Molina (E), Mythe et réalité de la liberté de la presse, étude comparative, thèse de Doctorat en droit, Université de Québec à Montréal UQAM, Canada, 2014.

25- Perron (F), «la protection de la personnalité et les médias, une illustration de la rencontre du droit pénal et du droit constitutionnel», thèse de doctorat en droit, université de Fribourg, Genève, 2010.

C – Academic Articles

26- Amrane (M), la liberté de la presse entre confidentialité et provocation: mode d'emploi pour faire chuter une liberté de son piédestal, in RSDP, N°2, mars 2012, Alger.

27- Chanteau (I), médias et protection des intérêts personnels, in JCP, N°4, Paris, octobre 2006.

28- Delangoire (S), Concours de polices : l'identification des compétences et moyens des autorités de la police de la presse écrite :RD Adm, N 1, 2010, Université de Longueuil, Montréal, Canada.

29- Ferbert (M), la liberté de la presse entre confidentialité et provocation:mode d'emploi pour faire chuter une liberté de sons piédestal, in RSDP, N°2, mars 2012, Bruxelles.

30- Ligneau (P), Le procédé de déclaration préalable : RDP, N 2, Paris, 1976.

31- Moreau (J), De l'interdiction faite à l'autorité de police d'utiliser une technique d'ordre contractuel : AJDA, N 1, Paris, 1965.

32- Pontier (J.-M.), La multiplication des polices spéciales : pourquoi ?, JCP 2012.

33- Péchillon (E.), modalité de Protection administrative contrôle les publications. Les limites d'un pouvoir de police spéciale : Revue Jurisprudence, N1, Paris, 1998.

34- Saint-James (V.), Réflexions sur la dignité de l'être humain en tant que concept juridique du droit français: 1997,

35- Zouaïmia (R) les régimes contentieux des autorités administratives indépendantes en droit algérien revue Idara N 29 Alger 2005.

D – Relevant Acts

36- Universal Declaration of Human Rights issued by the United Nations, 10th of December 1948.

37- The Covenant of the Political and Civil Rights ratified on 16th of December 1966.

38- The Arab Charter of Human Rights ratified by Arab League on 23th of May 2004.

39- Constitution issued on 8th of September 1963.

40- Constitutional issued on 19th of November 1976.

41- Constitutional issued on 23th of February 1989.

42- Constitution issued on 28th of November 1996.

43-The Organic Act No. 05-12 dated 12/1/2012 Relevant to the Media.