Criminal liability for media offenses

Kadi Amina[1], Mebarki Djamel Eddine Lazreg[2]

[1] Djillali Liabes University, Sidi Bel-Abbès (Algeria),kadi.amina1989@yahoo.com

[2] Djillali Liabes University, Sidi Bel-Abbès (Algeria),mebarki.jamel32@gmail.com

Abstract:

The exercise of a journalist's freedom of journalism is an inherent principle, and may thus be in danger to the interests of both the individual and society. The function of journalism requires a working group in an interdependent fabric and diverse activities, all of which combine to bring this work into existence. The problem of identifying persons responsible for the abuse of freedom of the press poses legal difficulties, as a result of an infringement of a legally protected interest, that require criminal liability. The regulation of criminal liability provisions for press publishing offences is of great importance, as the determination of criminal liability is no longer easy because of press regulation

Keywords: Responsibility, Contribution, Media Offences, Press Freedom, Media Law.

Tob Regul Sci. ™ 2023;9(1): 2773-2794
DOI: doi.org/10.18001/TRS.9.1.191

Introduction :

Undoubtedly, the press is a tool for expressing public opinion that only cares about obtaining knowledge. Therefore, it is more appropriate to recognize human freedom in thinking and creating opinion and criticism, which is a necessary freedom for him and his nature, as he accompanies it and it accompanies him in life. Handcuffing a person's tongue and restricting his freedom to think and express his opinion by holding his tongue and preventing him from avoiding the various events of life and what is happening in it of various matters and various affairs. Because the restriction and chaining of thought only appears in the dark age in which the atmosphere of tyranny prevails, which narrows the areas of action, thinking and creativity for individuals.

Also, freedom of expression is the first human right, and it is one of the basic pillars on which the democratic system is based. Which are considered modern means for the individual to express his opinion and express it publicly, and this media may include prejudice to the consideration and reputation of people and their honors that are protected by law.

If the press goes beyond freedom of opinion and expression, it will have entered the scope of what is prohibited, and freedom, whatever its subject, does not mean attacking or harming others, or destabilizing the systems on which the foundations of the state are built, and which the group accepted as a means to ensure its progress and prosperity. Therefore, the criminal law, the

media law, and some complementary laws came into play. Not to abolish freedom of opinion, but to place it within its natural and reasonable limits, given that freedom and responsibility are inseparable, and therefore it was necessary to establish a legal framework that regulates journalistic practice within the framework of respect for other basic freedoms, including freedom of expression, taking into account the difference and disparity in looking at it on the grounds that it is not Only legal systems govern these rights and freedoms, but also religious and political concepts.... For this reason, various governments have sought to impose many controls on the flow of information, news, and opinions to support a set of public interests of the state.

It should be noted that the media crimes of broadcasting are more than ordinary crimes committed by the press, as they only exist as an act punishable by law, and can be dispersed by another means, and its perpetration by the press is the one that is overshadowed by the nature of the journalistic crime.

Therefore, the questions that are raised, which represent the essence and basis of this research, are:

-If there are elements involved in media crimes, then we have to ask about the rulings that these crimes have in common?

-And to what extent can the rules of criminal responsibility be neglected in media crimes? So how to do and exempt from it? How was this responsibility regulated in press crimes, given the involvement of more than one person in the journalistic work? What are the justifications for deviating from the general provisions of criminal responsibility in this type of crime? And what are the proposed solutions for that.

-And to what extent can the right to criticize and publish news be accepted as a reason for permissibility in journalistic practice?

The first topic: the symptoms of applying the general provisions of criminal responsibility in media crimes

The departure of journalistic work from the scope of the controls specified in the legislation and laws regulating it may result in the criminal accountability of the journalist, and the latter cannot, according to the opinions of some jurists and some legislations, be subject to the general rules of responsibility, but rather it must be subject to a special regulation for legal considerations. Journalism as a profession assumes the intervention of many people, which increases the difficulty of finding the perpetrator, as well as the presence of a large number of writings and press articles that are not signed by their authors, and with the recognition of professional secrecy by law, which prevents the knowledge of the perpetrator.

The first requirement: the large number of those involved in the preparation and publication of the publication

The work performed by the press, represented in the publication of newspapers and magazines, is not accomplished without the participation of several activities in editing, printing, selling and distribution.(1).

Publication in general is supposed to cooperate on several people: the author, the publisher, and the printer, in addition to other people who interfere, so their intervention expands the circle of publishing, and thus expands the scope of those who are responsible, such as distributors, sellers, advertisers, and posters. Therefore, the first factor of criminal self-responsibility in the field of journalism appears to be the multiplicity of those involved in a necessary manner in achieving publication.(2).

Given the diversity of the purposes of the newspaper and the different issues it deals with, and the multiplicity of workers in editing and preparing it as a whole, it needs a presidency that avoids chaos and guarantees unity of management and the editorial line from which it derives its strength and influence. So that the mind does not find it difficult to consider it criminally responsible for what happened through the newspaper, which is punishable by law because it is able at least to prevent the occurrence of the crime(3).

Therefore, some legislation called for not issuing the newspaper unless it had the owner of its policy and administration written on it. He is the director or editor-in-chief, and this writing should be in each of its issues, and it is good what the Algerian legislator did in Organic Law No.12-05 related to information in Article 26 thereof: "... the following must be indicated in each issue of the periodical:

- The name and title of the director in charge of publishing, the title of editing and administration, the commercial purpose and address of the stamp, the periodicity of the publication and its price, the number of copies of the previous withdrawal, which is the same text that was under the previous Law No.90-07 in its Article 23. The Algerian legislator also stipulated in Article 27 that: "Of course, it is not possible to do so in the event of non-compliance with the provisions of Article 26 above, and the printing officer must notify the written press control authority of this in writing.

The authority to control the written press can decide according to the issuance of the publication until it matches it.

The second requirement: the system of nominative writing

We find that a large number of journal articles are not signed by their authors; Which indicates the problem of anonymity, and this is another difficulty in identifying the persons responsible for the crime.

Anonymity in writing or writing under pseudonyms means the freedom of the journalist to write news or opinion without mentioning his name, and therefore the newspaper is free to publish

that without specifying the name of its author or owner, and according to that, the journalist has the right to write whatever articles he wants in which he expresses his opinions without revealing his identity to the reading public, but he must inform the publishing director automatically or in writing of his true identity before publishing his work. This is according to what the Algerian legislator stated in the article86 of Organic Law No. 12-05 related to media (4).

Anonymity is a fact that represents an obstacle when searching for the source of this writing, and it has become a matter of controversy and controversy. Everyone from his point of view defends it and supports it with arguments. Some of them advocate this system and believe that it is more in agreement with the freedom of writers to express their opinion, in addition to that, articles that do not bear a signature It has a stronger influence because it expresses the opinion of a group of journalists and is characterized by objectivity, as it does not include what is included in the articles signed by its writers of personal references and subjective impressions, and sees another trend(5)He argues that signing articles is what achieves the fame of journalists, links them with readers, and motivates them to feel responsible and to take care of what they write.(6).

As for the Algerian legislator, he followed what the Egyptian legislator did, as the signature of the author of the article is not required, just as the editor-in-chief is not obligated to disclose the identity of the author of the article. The author's true identity(7).

The third requirement: the confidentiality of editing

The press in general aims primarily at the media, and for this purpose information is collected from various sources, and the supply of information to the press depends sometimes on the source verifying that his name has been concealed, and the secret of the investigation does not only mean that the editor has the right not to disclose the name of a writer The article is even broader than that, as it also means that the journalist has the right not to disclose his news sources(8)However, the editor-in-chief has the right and even the duty to verify the authenticity of the news and its sources, and he may refuse to publish it if he is not sure of its authenticity.

Regarding this, Professor Tariq Sorour says: "This confidentiality is not absolute. If the journalist is obligated to maintain the confidentiality of his source, except that he may find himself forced to disclose this source if a crime occurred from it that resulted in incorrect facts or false news, then newspapers are committed to the duty of care." dealing with the news and scrutinizing the documents that fall into their hands."(9).

As for the Algerian legislator, and through Organic Law No12-05 related to the media stipulates that the journalist has the right to access the source of the news (10), with the exception of the following cases:

-When the news relates to the secret of national defense as specified in the applicable legislation

-When the news clearly affects the security of the state and/or national sovereignty.

-When the news relates to the secret of research, judicial investigation, and a strategic economic secret

-When the news is likely to affect the foreign policy and economic interests of the country.

The second topic: the basis for organizing criminal responsibility in media crimes

The judiciary and legislation have found solutions to regulate criminal liability for journalistic crimes on the basis of the actions of others, as some of the judiciary tended to interpret it also on the basis of the thought of administrative submission, saying that the responsible person only accepts in advance submission to the obligations imposed by the laws on him related to his activity, and accepts accordingly Therefore, you bear all the consequences of breaching these obligations, and among these consequences is the criminal liability that is achieved through this negligence.

The legislation also created solutions to interpret responsibility based on the assumption to regulate criminal responsibility in media crimes due to the large number of those involved in the processes of authorship, publishing, printing and distribution, and the secret nature of some of these operations, which makes criminal responsibility mostly difficult.

All this prompted the legislator in some countries to direct all his attention to the person who controls the means of publishing, and these solutions based on the assumption are of three types: joint liability - liability based on negligence - and successive (gradual) liability.

The first requirement: judicial solutions to regulate criminal responsibility in media crimes

In this section, we discuss the idea of legal representation in the first section, and the idea of administrative submission in the second section.

Section One: The Idea of Legal Prosecution (*Representation Legal*)

The basis for this idea, which was made as a basis for interpreting criminal responsibility for the act of others, is to consider the person who initiated the act constituting the crime as a representative in the eyes of the law of those responsible for it.(11).

Whereas, in application of this, if the crime occurred from the first - the journalist - then it is attributed to the second - the person in charge of the newspaper - and it was considered a crime.

Here, the director - in charge of the newspaper - is considered the negative party in committing the crime if he refrains from carrying out the duty of supervision and control, i.e. preventing the commission of the journalistic crime.

However, this idea was criticized, and it can be summed up in the fact that the Penal Code does not know such representation in bearing criminal responsibility and punishment, and that legal logic strongly rejects the saying that some people act on behalf of others in committing crimes,

and in bearing criminal responsibility for them. In addition, this saying involves, in fact, a flagrant violation of the principle of personal responsibility and punishment. On the other hand, in the relationship between the one who initiates the execution of the crime and the other person responsible for it.

Accordingly, the person addressed by the legal rule does not legally have the right to transfer his capacity as a manager or responsible for the crime to another person, in order to get rid of criminal responsibility, and thus escape punishment, because it is the law that conferred on him this capacity.(12).

Also, if establishing the civil responsibility of the subordinate for the act of his subordinate on the idea of legal representation did not receive support from the jurists of Sharia and law, saying that the representation is not in material actions. How is this prosecution fit to adapt criminal responsibility for the act of others or to explain it?

Hence, it is not appropriate to attempt to explain criminal responsibility for the act of others on the basis of the idea of legal representation(13).

In fact, the French judiciary that approved this idea misunderstood the criminal responsibility for the act of others, because the law obliges a specific person whose intent to direct the letter on the basis that he monitors the activity of another person, while informing him of all the circumstances that prevent this activity from leading to the crime - the journalistic crime - Or even if he breaches his commitment by refraining from control and supervision, this reluctance is a crime whose material pillar is reluctance or abstention, and it is a negative behavior from which the will and its moral pillar may not be absent. till then.

However, he could have directed her to fulfill this obligation, and his responsibility - in charge of the newspaper - in this case would result from an unintentional crime.(14).

The second section is the idea of administrative subordination.*Soul Volontaire*)

It was prevalent among some French judiciary to say that the texts that determine the criminal responsibility of a person for the act of others, but decide his responsibility assumed as a result of the assumption of the moral element before the responsible person - the manager - whether this element took the form of criminal intent or the form of unintentional error - negligence -, and that this responsibility It came in contradiction to the general provisions, which stipulate that a person is only asked about the act that is proven by conclusive evidence that he has committed it.

Some members of the judiciary believed that the idea of administrative subordination explains the criminal responsibility of a person for the actions of others.

The idea of administrative submission can be defined in acknowledging the criminal responsibility of a person for the act of others, as everyone who undertakes the management of a project, and everyone who practices a different profession, but accepts in advance submission to

the obligations imposed on him by laws related to his activity, and accordingly accepts bearing all the consequences. breach or failure to fulfill these obligations(15).

In application of this, it introduces the concept of projects - the industry of journalism and newspapers - just as journalism is a profession like other professions.

Among these results, especially the criminal responsibility that is achieved by this breach or failure to fulfill it, and on this basis the official - who is the director of the newspaper here - is considered personally and criminally responsible for the violations and criminal acts committed by the journalists.

In fact, criminal legislation, in general, refuses to take material responsibility alone as a basis for establishing criminal responsibility, and therefore it assumes the freedom of the person in his choice and in his behavior, just as he is not responsible for the act that occurred except for its perpetrator, or whoever was an accomplice to this perpetrator, and this means that the material act The person who constitutes the crime is not criminally assigned except to the person who committed it, given that criminal responsibility is personal(16).

And this responsibility, given that it means the ability to bear the result of the work and be held accountable for it, and it cannot in any way accommodate the interpretation that the French judiciary went to; As it is not the fruit of the administrative tendency, but rather it is a legal effect that results from the realization of the elements of the crime according to its legal model, without the will of the perpetrator being involved in arranging this effect and a difference between the direction of the will of the perpetrator to the crime, which is undoubtedly recognized by the law, and the direction of this The will to bear criminal responsibility for this crime, which has no legal value(17).

This idea - the idea of administrative subordination - was not unanimously agreed upon by the French judiciary or the majority of it, and it is considered a violation of the principle of personal responsibility and punishment, which contradicts the true concept of criminal responsibility.(18).

The second requirement: legislative solutions to regulate criminal responsibility in media crimes

In this section, we discuss the joint liability in the first section, the liability based on negligence in the second section, and finally the successive or progressive liability in the third item.

The first subsection: joint liability (*Responsibility for Solidarity*)

The idea of joint liability is based on holding the director or the publisher permanently criminally liable for the crime by describing him as the perpetrator of it, based on the fact that it does not occur except by the publication that either of them undertakes.(19).

If another person contributes to this publication with one of them, he will be responsible in accordance with the general rules, whether he is an actor or a partner.

In confirmation of what was previously mentioned, Professor (Patrick Auvet): "Criminal responsibility in the written press is based on the first level on the publishing director, even if his actions are foreign to the concept of the journalist, because his main activity is managing the newspaper."[20]. The French legislator approved the idea of joint responsibility and described it by Professor (Garraud): "It is simpler, closer to science, and farther from control than other ideas or doctrines, which give the press an excellent position that distances it from the possibility of applying the rules of participation established in the Penal Code."[21].

And Professor "Abdul-Majid Al-Shawarbi" defends the idea of joint responsibility, emphasizing by saying: "The responsible person must be taken from among those who represent the newspaper, and let him be the editor-in-chief, and thus it is possible to reconcile the demands of the vital press with the demands of justice and the requirements of the provisions of the Penal Code."[22].

Section Two: Liability Based on Negligence (*Responsibility for negligence*)

According to this idea, the publishing director, the publisher, the editorial manager, the responsible editor, or the printer, is held criminally liable for a special crime that differs from the publishing crime itself. The existence of a publishing crime is evidence of the negligence of the official in his job[23].

However, this idea must be imprisoned on the basis that the editor-in-chief or the responsible director is questioning about intentional responsibility, that is, he is asking about an intentional crime while he is being questioned as an original perpetrator of the intentional crime that was committed in his newspaper.

How can we explain this deliberate negligence?

It is unreasonable to ask a person about an intentional crime and explain this responsibility by saying that he was negligent in performing his job. This idea could have been accepted if the crime attributed to the editor-in-chief or the responsible editor was an intentional crime.

This idea was adopted by German legislation[24] And the Austrian who considers that the author is primarily responsible for publication crimes, and if he did not know or was known while he was absent, the publisher or printer is asked about his own crime based on negligence in verifying the identity of the author for the crime that occurred by way of publication.[25].

However, this criminal liability based on negligence cannot be based on the fact that proving the negligence of the official in charge of censorship is not sufficient to hold him accountable for the crime of publishing, as negligence is considered a form of unintentional error, and intentional

publishing crimes require the presence of criminal intent or negligence and willfulness are two opposites.

Section Three: Criminal responsibility based on succession (*Responsibility in the cascade*)

This idea is based on limiting the officials in the eyes of the law and arranging them in a specific way, so that no one is asked of them as long as there is someone else whom the law has given him in the arrangement, so where the author is not known, the responsible publisher or editor is asked about his crime, and if this or that is not found, the character is asked Thus, the responsibility shifts from the shoulders of the people who contributed to the preparation of the publication to the shoulders of those who worked to promote it, such as advertisers, distributors or sellers.(26).

The Algerian legislator took it under the old law - Media Law No90-07- Similar to the French and Egyptian legislators, with some differences regarding the first official, some of them define him as the publishing director, editor-in-chief, or article writer (27), while those in the lowest order, such as the publisher, printer, and distributor, are asked as partners if they are not asked as actors.

The criterion for determining criminal responsibility according to this approach is the presence or absence of one of the persons whom the legislator has placed in a specific order, but the general principles require determining criminal responsibility according to the importance of the role played by the offender, which makes progressive liability critical in this respect, and Article18 of the Belgian Constitution issued on 07/02/1830 is a source of the idea of succession in criminal responsibility (28).

On the other hand, this idea contradicts the principle of personal criminal responsibility, which requires that there is no crime without a moral element, nor criminal responsibility without error. And given that the idea of successive responsibility was severely criticized by many jurists on the basis that it took from the effects of the old ideas of objective responsibility, which means attributing a punishable result to a specific person without requiring his will to intervene in it, a part of jurisprudence tried to mitigate the severity of this system, so he went to the assumption that the person responsible for the publishing crime had the criminal intent; That is, with the director, editor-in-chief, or publisher(29). In the sense that the legislator has established a legal presumption against each of them that does not accept proof of the contrary, so that he cannot get rid of responsibility by proving that he was absent at the time of publication, or that he did not see the article containing the crime, or that he delegated someone else to monitor what was published. The responsibility of the editor-in-chief, publishing manager, or official is based on a legal assumption that he has seen everything published in the newspaper, and that he has appreciated the responsibility that may result from publication, even if he has not actually seen it.(30).

In fact, the determination of this responsibility came in contradiction to the general principles that require that a person is only responsible for the work that is proven by direct evidence that he has actually done it.

The third topic: the reasons for the absence of criminal responsibility in media crimes

Criminal responsibility may be negated for several reasons, some of which are personal and others objective. On the one hand, criminal responsibility is negated in the event of personal reasons and is settled with liability barriers. It strips the will of the offender of legal value, so the offender is not asked about the crime he committed, and on the other hand, criminal responsibility may not take place due to the availability of Objective reasons are called reasons for permissibility, and they are reasons that remove the unlawful quality of the act in order to become permissible and legitimate.

The aim of the law behind this is to protect the various interests related to individuals and society. Naturally, these interests are in diversity and conflict, which must be differentiated between them, and to give protection to the interest most worthy of care.

Hence the criminal jurisprudence or response that the barriers to responsibility (such as young age, insanity, involuntary drunkenness, moral coercion and the state of necessity). They agree with the causes of permissibility in that they prevent the person from being punished, but they differ with them in that they are of a personal nature and relate to the same person whose will has been stripped of value and legal weight, so only the person who has it benefits without the rest of the contributors to the crime. Permissibility is of an objective nature related to the criminal act itself and stripping it of its illegal character.

And if the impediments to liability do not raise special problems in media crimes, then the focus in this section will be on the reasons for the permissibility of crimes committed by means of press publication.

The first requirement: what is the right to criticism (*The Right of Criticism*)

The right to criticism is one of the aspects of freedom of opinion and expression and one of its applications, as it allows individuals to participate in public life and contribute to discovering and identifying existing defects, by publishing opinions and working on evaluating the various actions that concern society, as well as pointing out their imbalances and standing at their shortcomings. The right to criticism is nothing but an opinion expressed by the critic about a matter related to the public interest. Thus, the right to criticism is a tool for reform and access to what is better in the future. The basic principle in criticism is that it is permissible.

It is clear from the foregoing that the right to criticism is a necessity that must be exercised within fields and according to conditions. We will discuss all of this in the following sections:

Section one: The right to criticism and its scope

The right of criticism that is permissible for individuals is considered one of the ways to contribute to building societies, and it is guaranteed not only to journalists but to all citizens on an equal footing.

The first item: the definition of the right to criticism

Criticism means that a person is dealt with by commenting or judging a specific incident or behavior, and since the criticism of the behavior or incident may require that the critic deal with the person to whom the action or incident is attributed, the criticism was permissible, because it aims to achieve the public interest, even though this comment or incident The judgment may affect the critic's handling of his actions in his honor and consideration as long as it is done in good faith(31).

It is intended to express an opinion on a behavior without directly affecting the person of its owner(32)Or work with the aim of defaming him or degrading his dignity. If the criticism exceeds this limit, it must be punished as a component of the crime of insult, defamation or insult, as the case may be.(33). This right - as part of freedom of opinion - is guaranteed to all, and therefore it can be exercised through newspapers and all other media.

Publishing news may be mixed up with the right to criticize a lot, so Professor Medhat Ramadan distinguishes between publishing news and permissible criticism by saying: "Publishing news means informing the community of certain facts without the journalist interfering in commenting on them, as commenting on them takes them out of the scope of publishing news." to the scope of criticism, however, there may often be an overlap between publishing news and criticizing it.(34).

The second item: the field of permissible cash

Criticism, no matter how judgmental, commentary, or evaluative it may be, can intervene in several fields, such as the literary, artistic, philosophical, or political field, or in the field of scientific, historical, or economic research. It seems that the limits of criticism differ from one field to another. If the right of criticism is preferred in the field of debate and discussion of ideas over the individual's right to his honor or consideration, then this is different in the field of economic discussion, where it is allowed only within very narrow limits. He finds his reason that criticism in this area is based in most cases on serving the purposes of his personality.

And individuals may be subjected to criticism in more than one field, so if the individual is subjected to criticism in the political field, then this is less in the field of historical criticism, especially if it is within the field of scientific research.(35).

The second section: the conditions for the right to criticism

Whatever field the critic deals with, the right to criticism requires several essential conditions, including those related to the incident that is the subject of criticism, others related to the means of criticism, and finally what is related to the intention of criticism.

The first item: the subject of criticism (*The subject of the Critique*)

The subject of criticism requires the availability of two elements: to be a fixed fact, and to be of social importance.

First: the fixed fact

What is meant by this is the existence of a Muslim subject to which criticism is answered[36]Therefore, criticism should respond to an incident that is known to the public and is true, that is, in conformity with reality. If that incident did not exist, as if it had been issued without basis, then the deed of exemption from liability is lost[37]But if the incident is unknown, then it is not permissible to be the subject of criticism, unless the person has the right to reveal it in accordance with the conditions of the right to publish the news mentioned above.

Secondly, the social importance *(The Social Importance of the Faitt)*

It is not enough for the right of criticism to be established that the incident subject to criticism be fixed and known to the public. Rather, this incident must have a social significance that justifies its evaluation, and this condition imposes itself. As the news that lacks social importance may not be published, and it derives from that that the incident was not of interest to the public, because commenting on it removes criticism from its constructive function, and the incident subject to criticism acquires its social importance from its association with the interest that concerns the public, such as everything related to the state. government, local administration, education, economic or social affairs in general.

The second item: the means of cash (*The Medium of Criticism*)

The means of criticism must meet two conditions: the first is that the means is an opinion or comment based on the incident that is the subject of criticism, and the second is that the critic uses an appropriate phrase that is supported by the incident that is the subject of criticism.

First: opinion or comment (*Opinion or Commentaire*)

The opinion or comment must be legitimate, i.e. one of the opinions permitted by law and be limited to the limits of the incident being criticized.

1. **Legality of opinion or comment:** The freedom of opinion or expression is not absolute. There are topics on which opinions or comments may not be expressed in order to achieve another interest that is more worthy of protection. For example, the text of Article119 of Organic Law

No. 12-05 related to media, does not allow a journalist to publish or broadcast in any media any news or document that harms the confidentiality of the preliminary investigation into crimes (38).

2. **Restriction of opinion or comment to the incident subject of criticism:** The critic, when conducting the criticism process, must be based on the established fact and be confined to it, i.e. the opinion must be focused on the incident connected to it. In order to make it easier for the public to be independent of what has been written, and no matter how free the critic is to express his opinion, in the field of criticism, the opinion or comment must be based on the incident that is the subject of criticism.

Second: the use of appropriate phrases (*The use of an Appropriate Expression*)

Permissible and constructive criticism requires that the critic, when expressing his opinions and comments, use appropriate and appropriate phrases to achieve the legitimate aim of criticism. If the journalist exceeds his limits and uses the expressions of slander and defamation, he goes outside the circle of permissible criticism, and from that he must be punished as a component of the crime of insulting, insulting or slander, as the case may be.(39), and thus criminally ask.

The Egyptian Court of Cassation decided that: If the press had the freedom to criticize the government's actions, to show its readers what went wrong in the conduct of those carrying the burdens of the matter, and to express its opinion on everything that covered public conditions. However, it is not permissible for her to deviate from the circle of criticism that the law allows - no matter how wrong the critic is in it - to the circle of defamation based on attributing shameful and shameful facts, and for which the law requires punishment.(40).

The French judiciary confirmed in this sense in a ruling issued inAugust 10, 1993, where he argued that although every journalist has the right to freedom of criticism, this does not allow the use of insults and contempt for the purpose of harm and defamation (41).

Third item: good faith (*good faith*)

For the validity of permissible criticism, it is required that the critic be in good faith, which requires the availability of two conditions: aiming to serve the public interest, and believing in the validity of the opinion or comment made by the critic.

First: Aiming to serve the public interest (*Public interest insurance*)

Seeking public benefit and targeting it is the goal for which the right to criticism is decided, by expressing a constructive opinion that benefits and guides the community, and this condition is closely related to the condition that the incident subject of comment is of social importance.

Secondly Belief in the validity of an opinion or comment made by a critic.***The Sincerity***)

The principle is that the journalist exercises his right with the expectation of honesty and good faith in his journalistic practice, and he strives to achieve the goal for which the right was legislated, but this presumption is simple and it is permissible to prove its opposite and prove his bad intent.(42).

The condition of good faith is one of the prejudices related to the facts and cannot be approved by a fixed rule, but it is necessary for the critic to be a believer in his conscience that he is correct so that he can enumerate his criticism emanating from good faith, and that the value of the things he attributed is sufficient. However, if the slandering journalist was in bad faith, and his stabbing was intended only for defamation, defamation, and personal grudges, then proof of the validity of the facts of slander is not accepted from him, and he must be convicted even if he can prove what he was slandered. It's like getting money.

But if the same article and what follows it includes a drawing and other phrases whose purpose is to defend a public interest, and others whose intent is defamation, then the court may balance the two intentions and estimate which of them prevailed in the same publisher.(43).

In the end, the matter is up to the subject court to balance the effect of what the journalist wrote in good faith and what he wrote in bad faith.

The second requirement: the right to publish

The press is the eye of society and its tool in monitoring, detecting deviations, and revealing the truth to the public. The function assigned to the press in general includes the dissemination of news. This is an original function assigned to the journalist by society, and the right of the media to publish news derives from the freedom guaranteed by the constitution and various laws. In publishing news, it is necessary to look at the facts in the place of publication and the extent to which they enjoy social importance and thus fall under the banner of the public interest.

Publishing news means informing the community of certain facts without the journalist interfering in commenting on them(44)In fact, the right of the journalist to publish the news is not illuminating to him, but it is the right of the public to know what is going on around him(45). However, the journalist, in his actual practice of his work, may sometimes involve infringement of the rights of individuals, which may not be transgressed or infringed upon.

The exception is deviating from this rule that necessitates punishment, so the condition for punishment is the publication of false news, and that the publisher is aware of this lie and deliberately publishes what is false, and the falsehood of the news must be proven in itself. The appellant knew that he lied in the ruling, otherwise he was a minor because he did not memorize the elements of the crime(46).

The one who protects the journalist when publishing the correct news is that he has evidence to prove the authenticity of the news at the time of its publication, and that he sought the duty of objectivity.

And since the reason for the permissibility of publishing news is the use of the legally established right represented, as was said previously, the right to inform and inform the public, however, the use of this right is subject to a number of conditions.

The first section: the conditions for the permissibility of publishing news

For the publication of news to be permissible, four conditions must be met, namely: that he respond to news that the law does not prohibit the publication of; obligation to observe the truth; that there is a social benefit to the news for the audience; And the presence of good faith in the journalist. All of this will be dealt with in separate articles.

The first item: to respond to news that the law does not prohibit publishing

Since the freedom of information flow is considered a prerequisite for the freedom of the press, the legislator may consider that some information may not be published, either because public opinion has no interest in knowing it, or that there is an interest more worthy of care than the interest achieved by publishing, and that is in specific circumstances and cases. The Algerian legislator prohibited the publication of its news, and gave this prohibition - and the importance it achieves - priority over the freedom to publish news, an example of which is the ban on publishing national defense secrets(47)...etc, and everything related to the private life of the individual.

The second item: Commitment to observing the truth

The journalist must abide by observing the truth, accuracy and objectivity in publishing the news, as well as verifying the truthfulness of the content and source of the news, and abide by the principles and values enshrined in the constitution and the provisions of the law.92, Paragraph 01 of the Organic Law 12-05 related to the media: "The journalist must ensure full respect for the ethics and morals of the profession during the exercise of journalistic activity" (48).

The third item: That there be a social benefit to the news for the public

In addition to the news being truthful, its publication must also achieve a social benefit, whether the whole society or a group of it. Moreover, the judiciary in France recognized that the right to publish news does not allow newspapers to publish articles that would harm the reputation of others without achieving any benefit for the reader.(49).

Fourth item: availability of good faith

The journalist or the publication of the news must have good faith; In the sense that he aims by his action to achieve the public interest and not merely desire defamation, revenge, harm or extortion.

And if good faith is one of the delicate issues, then the judge must realize it through the circumstances surrounding the case and the external manifestations of the news from the way and manner of presenting the news, and the extent of its objectivity.

The third requirement: challenging the actions of the public position or its ruling

Various legislations have made challenging the actions of the public servant or his rule, or as French jurisprudence calls it, the payment of the truth[50](***The exception veritatis***)[51]Earning an exemption from criminal liability, through which it allows the journalist to evaluate the work of the public office to the extent that it does not lead to abuse in the use of the right to publish, the right of opinion and its expression, on the basis of the priority of the public's right to know and its right to information, and its preference over the right of those with a public interest in the employee and the job And the detection of deviations, defects and shortcomings that they face.

Therefore, the appellant considers the actions of the public employee or those in his status as a reason for permissibility that strips the act of its illegal character, and therefore does not constitute a crime if it occurs and several conditions are met, including what is related to the slander against him, others related to the incident, and finally conditions related to the appellant.

The first section: the document of permissibility and its cause

Challenging the actions of the public servant or those in his position means attributing the slanderous journalist evidence of the validity of what he slandered, and presenting it to the court so that it adopts it without any doubt as the best that a person can possess to justify his slander, and French law has permitted - according to Article35 of the Press Law - Proof of the authenticity of the incident attributed to others, even if the matter is related to an ordinary person, but the law excludes three matters from this: matters related to private life if they are not related to the public interest, acts that have occurred more than ten years since their occurrence, and acts For which an amnesty or rehabilitation was issued (52).

The Egyptian legislator assigns the reason for permissibility to the text of the article302 of the Egyptian Penal Code (53), which gives the right to challenge the actions of the public employee or those in the same category.

As stipulated in the French press law for the year1881 in Article 35 as amended by Decree of 05/06/1944, and this is in contrast to the Algerian legislator who did not expressly stipulate that an appeal against the actions of a public employee or those in his position be considered a reason for permissibility.

Nevertheless, it is agreed upon in jurisprudence that the person who shows the deviation of the public servant and those in his position from the duties dictated by his job performs a service to the community. In order to be able to avoid any danger that might threaten his interest on the one hand, and to punish the deviant employee for the violations he committed on the other hand, and then he is not asked about what his act includes of slander against the public employee because the legislator prevails over the public interest over the private interest, in addition to that the right of Challenging the actions of a public servant may be based on the right of criticism, which is considered one of the applications of using the right.

The second subsection: the conditions for allowing the appeal against the work of the public employee and the like

It is permissible to challenge the actions of a public employee or a person of a public capacity or assigned to a public service if it occurred in good faith and did not go beyond the duties of the position, representation or public service, provided that the truth of each act attributed to him is proven.(54)And in order to allow an appeal against the actions of the public employee or those in his position, conditions must be met related to the slander and those entitled to it, and opinions related to the incident, and finally conditions related to the journalist's appeal.

The first item: the conditions related to the objectionable

The Egyptian legislator chose among the members of society this sect whose actions can be challenged, given the connection of their actions with the interests of individuals and the nation, so they are of a general character defined by Article144 of the Algerian Penal Code, in its fifth chapter, section one, entitled: "Insult and assault on employees and state institutions"; Which states: "...anyone who insults a judge, employee, public officer, commander, or a member of the public force…", as well as persons with a representative capacity as defined by Article 146 of the Algerian Penal Code (55).

Therefore, the Algerian legislator has neglected the reasons for legalizing slander against the public servant or whoever is in his position when he decided to protect him from insult and assault.

And the Algerian legislator did not follow the Egyptian legislator, who decided on the legality of publishing facts that are considered defamation against the public employee, because of his job according to Article302 of the Egyptian Penal Code.

The second item: the conditions related to the incident

He finds that the incident is a matter of honor or respect so that it can be proven, and that it is related to the work of the position, representation or public service, and the employee has two aspects in his life, the first is related to the work of the position, representation or public service; This aspect is the right of the public to know in order to influence the public interest, and the

second aspect is private and related to his personal life. And this aspect does not interest the public.

There can be no justification for the journalist to seek help because of permissiveness if the incident does not affect the honor or consideration of the victim, and what is meant by honor or consideration of persons is the position and the social position that a person enjoys in society, and it depends on what characterizes the person and among other members of society so that it is determined Its literary and social center, and is crystallized through family, economic, social and functional relationships(56).

Therefore, it must be a legitimate incident according to the origin, that is, this incident should lead to the punishment of the victim, or it should lead to contempt for the people of his country, and it should also be detrimental to one of the social values.

Second: The incident must be related to the work of the public office

Employees enjoy their human rights guaranteed by the constitution, including the right to a private life(57)However, there is difficulty in defining the boundary between what is considered to be within the scope of private life and a journalist is permitted to publish it, and what is considered to be within the scope of private life and is not permitted to be disclosed.

Item Three: Conditions related to the appellant

In addition to the previous conditions, two conditions related to the challenged journalist must be met, namely: that the perpetrator be of good faith, and that he proves the facts that he attributed to the public employee or the like.

First: The appellant must be of good faith

Good faith is considered an essential condition for recognition due to the permissibility of challenging the actions of people of public capacity by the journalist, and the latter is required at least to believe in his conscience the validity of what he attributed so that it can be considered issued in good faith, and that the amount of matters attributed to the employee is a sufficient estimate, and from So, good faith consists of three elements; Which:

-That the journalist believes in his conscience that the attribution he assigned to the public servant is correct;

-and to adequately assess the matters attributed to the employee;

-And that his criticism be in the public interest and not just for defamation and defamation.

Second: The appellant must prove the facts he attributed to the public servant or the like

The journalist must prove all the facts that have been attributed to the slander against him, and the fulfillment of this condition requires that the journalist be able to prove all the facts that he

has published if they are multiple. That is, it includes all the incidents of defamation that he ascribed to the victim, one fact at a time. It is not sufficient for the slanderer to have proven an incident in order to invoke the reason for permissibility if he cannot prove the other facts ascribed to the victim in all its objectives.

If the slanderer proves facts other than those he ascribed to the victim, he does not benefit from permissiveness, and the burden of proving the validity of the facts ascribed to the public servant rests with the accused, and this is done by all methods of proof.

The French legislator stipulates that in order to legalize defamation against a public employee, the journalist must prove the authenticity of the defamation attributed to him in accordance with the text of Article35 of the Press Law of 1881, while French jurisprudence and jurisprudence settled to legalize defamation, that the journalist proves good faith, that is, his belief in the validity of the defamed facts, provided that his belief is based on reasonable reasons, and that the intent of publishing these facts is to achieve a public interest.

By ignoring the reasons for permitting criticism of the employee inadvertently or intentionally and not approving slander like most legislation, the Algerian legislator must include articles and introduce texts that permit appeal and allow criticism of the work of the public employee, and everyone who is in his position, taking into account the aforementioned conditions and controls, and this is all protection The employee has the right to make mistakes and deviate from the legal limits, and thus harm the public interest on the one hand, and on the other hand, the right of the journalist to criticism, guidance, counseling, and detection of errors, and the right of the individual to knowledge and information, and thus considering this as one of the means of control.

Conclusion :

The Algerian legislator did not adopt a single approach in revealing criminal responsibility for media crimes as an essential element in the material pillar of media crimes. Writing an article, news, drawing, or comments in all media outlets are, in fact, acts from the point of view of the legislator, which he may consider criminal at times, and he may see them as non-criminal acts at other times, according to the legal requirement, and hence the direct link between the media and those legislations, as publishing crimes are that. The type of crimes related to ideas, beliefs, doctrines, and principles of all kinds and forms, which are committed through the media, and the abuse of media freedom results in civil or criminal liability, or both. To arbitrariness, as for the idea of the journalist's criminal responsibility in media crimes, it is often linked to human rights and freedom, the most important of which is freedom of opinion and expression, as the latter is the basis of journalistic work.

It is evident from this critical, inductive, and evaluative study that the Algerian legislator did not adopt a single approach in defining many matters, especially the means of publicity as an

essential element in the material pillar of media crimes, and when looking at some legal texts, we notice the Algerian legislator's lack of interest in developing a general and specific formula for the means of expression. Publicity, although it is an essential element in all media crimes, there is no need to distinguish between the crimes stipulated in the Media Law, the Penal Code, and some complementary laws.

In addition, the legislator added insult to injury when he canceled the provisions of the media law90-07, as he had to keep its provisions and replace what should be deleted, given that this law is the most regulating of all Algerian laws related to the media, including Organic Law No. 12-05 related to the media, as the latter is the new thing that he came up with. The deletion or prohibition of custodial penalties, and this law is devoid of rules that deal with progressive liability, especially the progressive liability that the legislator used to take in Articles 41 and 42 in light of Information Law No. 90-07 (repealed).

In the end, I can only say that the press is tested by freedom, and freedom is tested by responsibility, and responsibility is tested by applying the law of the informed legislator and the insight of the careful judge.

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