
PRESS FREEDOM IN ALGERIA, A DELICATE BALANCE

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An independent judiciary and a free press are the foundations of modern democracy as limits to the monopoly of political power. The independence of the judiciary is the guarantee of the effective protection of rights and freedoms. Through a free press, freedom of speech, which is the natural extension of political pluralism, becomes a reality.

In spite of this complementarity between judicial power and what we refer to as the fourth power, the reality is quite different. The difficulty of their coexistence is not only due to the different rules that govern them but also, and even more so, to the obstacles thrown up against such freedom. For the simple reason that the press rejects this corollary, considering itself to be the “watchdog” of democracy and the avowed critic of the acts of the public authorities. It goes even further by challenging the presumed independence of judicial power on the grounds that the latter cannot go any further than the fact of being an instrument in the hands of the public authorities, thereby concealing the damage that such dependence presents for the principle of the separation of powers so dear to Montesquieu.

The relationship between judiciary and press is therefore doomed to clash: on the one hand, when the judiciary wields its power in cases of press abuses; on the other, when the press takes an interest in judicial affairs in contravention of the rules established by the legislator. These rules are considered by press professionals as a hindrance to them doing their job, on the understanding that the rule of law falls within the domain of the legislature.

Liberty, we should remember, “consists of the power to do anything that does not injure others. Accordingly, the exercise of the rights of each man has no limits except those that secure the enjoyment of these same rights for the other members of society. These limits can be determined only by law” (Article 4 of the Declaration of the Rights of Man and the Citizen, 1789). Article 11 of the 1789 Declaration, positing the principle of freedom of speech, also sets out its necessary limit, in response to the potential abuses of such freedom in cases determined by law. Article 19 of the International Covenant on Civil and Political Rights of 1966 demands, in respect of freedom of speech, that “the exercise of the rights [...] carries with it special duties and responsibilities. It may therefore be subject to

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certain restrictions, but these shall only be such as are provided for by law and are necessary: for respect of the rights or reputations of others; for the protection of national security, public order, or of public health or morals” .

In Algeria, thanks to the political reforms post-October 1988, the advent of political pluralism and the democratisation of public life, press freedom came into being in the 1990s. Accordingly, a number of daily press publications were founded, constituting a so-called private press as opposed to the so-called public press, given that the latter remained under the guardianship of the public authorities.

Law 90-07 of 3 April 1990, in its Articles 3, 26 and 36, devoted to the freedom of the right to information, specifies that this freedom must be exercised in respect for the dignity of the human person, the constitutional rights and liberties, the confidentiality of the judicial investigation and inquiry, as well as the imperatives of foreign policy and national security.

The difficult relations between the press and the judiciary are related to the fledgling experience of the press, the insufficient training of journalists and the absence of credible information outlets, which led to suspicion, incomprehension and, especially, interference with the impartiality of the judiciary in protecting the confidentiality of investigations and the principle of the presumption of innocence.

This issue can be found essentially in the treatment of criminal cases under investigation which, on the other hand, complies with restrictive rules dictated by the Code of Criminal Procedure.

Infringements of the principle of the confidentiality of investigations

Whenever an investigation is opened, the magistrate, required to respect the confidentiality of investigations, communicates only with the criminal investigation department, the public prosecutor's department and the parties (the accused, the victim and their counsel, witnesses and expert witnesses). At this stage in the proceedings, the journalist's work is limited: he cannot access information except through press releases issued by authorised persons, who are the magistrates of the public prosecutor's office and are, themselves, required to be discreet as to the disclosure of information.

The restrictive rules are relaxed to some extent when the trial is held in public, except in cases in which public order is at issue or with a certain category of justiciable, such as minors, and in cases in which express authorisation is required.

Infringements of this principle are sanctioned by the Code of Information, for anyone who publishes any information or document infringing the confidentiality of investigations and the preparatory inquiry and deliberations of the courts, where these are ordered to be held in camera.

Accordingly, whenever a case is covered in the media, the journalist is in possession of information obtained through means of investigation or his

own sources of information, which is generally gleaned from the parties in the proceeding.

But, by becoming involved in the machinery of the judiciary, the press treats the confidentiality of investigations with disdain and replaces it with its own investigations, targeting in most cases the suspect or the accused.

Therefore, the judge in charge of the judicial investigation is bound by the confidentiality of the investigation, whereas the journalist who communicates directly with the public occasionally sets himself up as judge. As for the justiciable citizen, he sees his presumption of innocence scorned by denunciation in the media and then by custodial measures, put on remand under judicial control which, in some cases, become sentences even before the trial has been held.

Infringements of the principle of the presumption of innocence

In Algeria, the principle of the presumption of innocence is enshrined in Article 45 of the 1996 Constitution – revised and adopted by the referendum of 28 November 1996 – which states that “Any person shall be presumed not guilty until his culpability is established by regular jurisdiction with all the guarantees required by the law.”

Algeria’s attachment to this fundamental principle resulted in the ratification of the Universal Declaration of Human Rights of 10 December 1945 and the International Covenant on Civil and Political Rights of 16 December 1966.

The importance of this principle is to guarantee the presumption of innocence of any person, from his arrest to the final verdict and sentencing, maintaining his honour and dignity and protecting his private and professional life equally from interference from the media and the suspicion of guilt most frequently inferred by proceedings during the phase of preliminary inquiries and judicial investigations.

The constitutional guarantee of the presumption of innocence is not always respected by the journalist, who relates the facts without taking every precaution necessary, such as the recourse to nuance and subtlety and, in particular, the use of the conditional mode instead of the infinitive, giving barely a thought to remembering the principle of the presumption of innocence. All of which may overwhelm the judicial investigation and apply pressure to the correct application of justice.

Current legislation and offences committed by the press

Current legislation, strengthened by the most recent amendments, makes an offence committed by the press an offence under common law. The offence committed by the press is qualified as an offence affecting public order. Whether in terms of prosecution, investigation or judicial procedure, it is not subject to any particular rules.

The Criminal Code

Offences related to the press are provided for and punished by the provisions of the Criminal Code, amended and completed by Law 06-23 of 20 November 2006. To the offence of defamation and insult has been added the offence of affront, thereby exposing the author and the publication to new criminal liabilities.

The three new provisions governing offences committed by the press have been incorporated under Title 1, Chapter 5, Section 1: affront and violence to servants of the state, and under Title 2, Chapter 1, Section 5: affront to honour, consideration of the private life of persons and the disclosure of confidential information.

Indeed, the provisions of Article 144 and subsequent Articles show that the legislator considers that affront, as an attitude disrespectful to a person representing a public authority, is committed through words, gestures or threats in writing or images, which have not been made public and that the offence is aimed directly at the person. Conversely, offences committed by the press such as defamation and insult are conditional upon the criterion of being made public and the fact that their author addresses his words directly to the public.

The offence of affront is an offence that affects public order, which dispenses with the condition of charges being pressed. The public prosecutor's office has the opportunity of prosecution and the journalist risks being found guilty without being entitled to know the identity of his victim, without being entitled to establish the passages in his writing and, should he repeat the offence, he is at risk of seeing his sentence doubled. These three offences, affront, defamation and insult, are brought together in the same provision of Article 146 of the Criminal Code, whilst the constitutive elements and the sanctions differ from one offence to another. In more concrete terms, the author of the same press article may be prosecuted for the three offences provided for and punished by the aforementioned provisions. If the journalist is prosecuted for one of these offences, he does not have the benefit of guarantees, more especially in the case of defamation.

New Information Code

Article 2 of organic law 12-04 of 12 January 2012 on the provision of information stipulates that the provision of information is an activity freely exercised within the framework of the provisions of that organic law, the prevailing legislation and regulations and this in respect of:

- The constitution and the laws of the republic;
- The Muslim religion and other religions;
- National identity and unity;
- Requirements of public order;
- Economic interests of the country;
- Duties and obligations of the civil service;
- Right of the citizen to be informed in a full and objective manner;
- Confidentiality of the judicial investigation;
- Pluralist nature of trends of thought and opinions;
- The dignity of the human person and individual and collective freedoms.

Title 9 of this law deals with offences committed in the context of journalistic activity, in Articles 119 to 125. Article 126 deals with the offence committed by a journalist in exercising his profession. The suppression of the custodial sentence as a result of such offences is not a major step forward in the opinion of the majority of information professionals. Indeed, orders to pay fines ranging from 25,000 to 100,000 dinars still leave the journalist liable to a criminal sentence subject to the rule of personal detention and inclusion in the criminal records files. Accordingly, the new Information Code lists five offences, three of which are related to judicial proceedings: infringements of the confidentiality of the investigation, the publication of trial deliberations where proceedings have been ordered to be held in camera, the publication of the circumstances of certain crimes or offences, and affront to foreign heads of state or members of diplomatic missions.

While defamation, insult and affront are provided for and punished by the Criminal Code, other offences such as disclosure of state secrets or apologies for a subversive act are liable to custodial sentences or even long-term imprisonment. The fact that these offences are included in the Criminal Code and not in the new Information Code constitutes a fresh restriction to press freedom, given that the offence committed by the press continues to be an offence under common law.

Absence of the rule on the exception of truth

The journalist, under Algerian law, cannot avail himself of the rule of the exception of absolute truth, which is not provided for in the texts governing press offences and, failing that, of being able to refute the defamatory nature of the accusations. He is required to answer for his entire article, which becomes the material evidence of the offence: it is no longer the accusation which is defamatory in the eyes of the law, but the article as a whole.

The previous Information Code 62-01 of 6 January 1982, well before the advent of political and media pluralism had provided for the rule of the exception of truth in its Article 126, which stipulated that "proving the truth of the defamatory fact is free". Article 121 of the same Code set out a principle strengthening press freedom since it considered criticism of the functioning or management of public services as not being constitutive of the offence of defamation.

As it is impossible to oppose this universal rule, the journalist is condemned, even if he can provide proof of the veracity of his allegations, to being subject to potential prosecution. The only defence left to him is to persuade the magistrate of his good faith (bad faith in matters of publication is always presumed). He must prove that he acted with prudence, with no intention to harm, that the aim sought by his publication was legitimate.

In conclusion, a legislation impregnated with these principles would guarantee minimum freedom for the press in order for it to be able to inform without let or hindrance and without censorship and reconcile the two great principles of freedom and responsibility. The law ought also to be completed with a code of ethics and professional practices governing the rules with which the journalist ought to comply in order to provide information wholly independently, in line with the principles of truth and rigour.

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