

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

Nacereddine Guellil ⁽¹⁾

⁽¹⁾ University of Mhamed Bougara in Boumerdes, (Algeria)
n.guellil@univ-boumerdes.dz

Received
26/04/2025

Accepted
26/07/2025

Published
31/10/2025

Abstract:

This paper addresses the penalties enforced by Algerian law and names the moral persons bearing a penal liability. Usually found in different laws, these penalties are Algerian, which maintained in line with the changes in the domestic laws despite severe criticism by jurisprudence and justice and the denial of recognizing and enshrining the penal liability of the moral persons. Given the increasing number of right persons in Algeria and their impact on the social, political, and economic spheres, this paper marks a fresh beginning in exploring the nature of the moral persons who have a penal liability, which calls for sanctions appropriate for their specificity and landscape.

key words:

Algerian law - penal liability - moral persons - legal sanctions - jurisprudential critique-

¹ - Corresponding author: Nacereddine Guellil

introduction:

The penal liability has so long been evoked for the natural persons because the penal capacity that includes the awareness and will is undoubtedly found in the natural discerning person, and because the law generally addresses these people and shows the dos and don'ts. Due to the jurisprudent disagreement on the nature of the moral personality, there was a disagreement on the possibility of evoking the penal liability for the moral person, mainly after that the majority of domestic laws acknowledge this person's civil liability. The need to expand the civil liability of moral persons and apply the penal liability on them in domestic laws is prompted by the fact that the majority of domestic laws and judicial systems enshrine and apply civil liability on them.

The significance of this study is in the fact that the subject of the penal liability of the moral persons has seen the light after it has been only jurisprudent ideas and opinions. Thus, after a long struggle and debate, the penal liability of the moral persons has been applied in many domestic laws, including the Algerian. However, we still face difficulties due to the specificity and uniqueness of the moral persons. In this regard, some are subject to the general laws while others are subject to the private. Besides, they have a specific nature and need specific sanctions, making it difficult to decide the penal liability.

This question has gained high importance now, mainly under the social, economic, and technological development, and under the increasing number of moral persons (national and international corporations, associations, etc), which must be subject to law, mainly due to the inefficiency of the civil liability of the moral persons. In this context, it is necessary to enshrine the penal liability of the moral persons and adapt it to the big changes in the Algerian society. Based on what was said, we raise the following problematic, "who are the moral persons that may be subject to the penal accountability in the Algerian law? To what extent can the penal liability of the state and its entities be evoked? What are the penal sanctions that can be raised against the moral person in the Algerian law?"

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

To study this topic and answer the problematic, we used the analytical method through analyzing the legal texts to make measurements, the opinions and rulings of Algeria's and other nations' highest courts. Additionally, we identified the concept of moral persons and the penal liability that can be evoked against them. In so doing, we divided the study into two chapters; the first is about the penal liability of the moral person in jurisprudence, justice, and law, while the second is about the identification of the moral persons with a penal liability and the sanctions that can be evoked.

Section I: The penal liability of the moral person in jurisprudence, justice, and law

A harsh jurisprudential and legal debate has been raised to discuss the penal liability of the moral person due to the difficulty of evoking it and of identifying its bases and the sanctions that can be ruled. However, many domestic laws, including the Algerian, recognized it after different obstacles.

A) The penal liability of the moral person in the jurisprudence:

We shall study the stance of jurisprudence towards the penal liability of the moral person.

1- The origin of moral liability and the definition of a moral person:

In order to cover the research topic, we must identify the aspect by identifying the moral person and demonstrating the origin and acknowledgement of the moral person's criminal liability.

1.1- The definition of the moral person:

Previously conferring the jurisprudential debate on the penal liability of the moral person in the domestic law, we must define the moral person. The latter is a group of people who, together, have an independent personality with the same features and characteristics of the legal personality. The moral person can acquire rights and obligations in the scope of his aim. In addition, he has the right for litigation, a location, and a representative that expresses his will. Examples include the associations, institutions, and the civil and

commercial corporations¹. Besides, he is defined as a set of funds and persons that have a specific aim and are given a legal personality by the law to achieve the aim². Furthermore, some define him as a coalition of persons or funds with a legal personality and independent entity. He is considered as the natural person regarding the rights and duties, and may be a state, a public institution, an independent department, a municipality, an association, a trade union, a corporation, etc.

1.2- The genesis of the moral person:

In most states, justice and jurisprudence see that the moral persons are questioned for their actions that cause harm to others; raising the civil liability. However, the jurisprudent views differ regarding the penal liability of the moral person. This disagreement was clear in the 2nd congress on the penal law in Bucharest in 1929, which was culminated with the recognition of the material capacity of the moral person, without any legal volume for the penal responsibility. The issue of the moral person's criminal liability was covered at the 07th Congress in Athena in 1957, when investigating the modern trends in defining the commissioner and partner of the crime. The congress decided that only the human is entitled to acquire rights and obligations, unlike the moral person who cannot be accused of crime. In this regard, the natural persons who legally represent the moral person are questioned. However, with the widening activity of the moral persons currently, and with the need for suspension or control of such activity, the congress adopted protective and precautionary actions that do not infringe on the criminal accountability of individuals on behalf of others for offenses they personally engage in³. Nevertheless, the view of the jurisprudence in the 20th century is divided, despite that the

¹ See: Mohamed Al Fadel, *the general principles of the penal law*, library of the University of Damascus, Damascus, Syria, Vol. 04, 1965, p. 406.

² See Salim Sammoudi, *the penal liability of the meal person: a comparative study between the Algerian and French laws*, al Houda house, Ain Mlila, Algeria, 2006, p06.

³ See, Sami Jad Abderrahman Wassel, *the state terrorism in the light of the rules of the general international law*, Arab Renaissance house, Cairo, Egypt, Vol. 01, 2003-2004, pp. 430-431.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

opposition is gradually decreasing and the penal liability of the moral persons is gaining acceptance¹.

2- The jurisprudential trend that opposes the penal liability of the moral person:

The classical school rejects the notion of penal liability for legal entities. It confines penal responsibility to individuals and views the legal entity as merely "a presumption". Thus, it sees that only the natural person may have the legal personality thanks to his will that helps acquire rights and afford obligations². In fact, the moral person is a metaphorical entity with not will, as its criminal acts are attributed to its representatives. The French cassation court enshrined this principle³. The supporters of this school rely on different arguments, as follows:

- The moral person is an allusion with no independence and personal will. He is a mere legal assumption with no will, free choice, and discernment. In this regard, there is no error with no criminal will. The lawmakers refrain from imposing sentences until they examine the individual aspects of the offense, specifically the psychological factors of the offender and the intent behind the crime. The ethical individual lacks a personal will⁴.
- Questioning the moral person goes against the principle of jurisdiction. The authority granted by the law to a moral entity is restricted to the purpose for which it was created; this concept is referred to as the principle of jurisdiction⁵.

¹ See: Thierry Garé & Catherine Ginester . *droit pénal . procédure pénal* – édition dalloz .paris 2000 . p 178

² See: Mahmoud Suleiman Moussa al Mortajaa, *the penal liability of the moral persons, a detailed comparative study*, Magister thesis in penal sciences, Faculty of Laws, University of Benghazi, Libya, 1983, p. 66.

³ The French cassation appeal enshrined this principle in two decisions, stating that: "Une personne morale ne peut encourir de responsabilité pénal même pécuniaire" See Salim Sammoudi, *op. cit.*, p. 07.

⁴ See Rana Ibrahim Suleiman al Attour, *the penal liability of the moral person*, journal of Damascus for economic and legal sciences, Damascus, Syria, Vol. 22, issue 02, 2006, p. 343.

⁵ See Sami Djad Abderrahman Wassil, *op. cit.*, p. 432.

- Holding a moral entity accountable for criminal responsibility contradicts the principle of personal accountability for punishment, as it is not possible to sanction the moral person for a crime that was committed by a natural person. In addition, evoking a common liability would indirectly be unjust to innocent people, i.e., the moral person would be sanctioned while he is far from the crime¹.
- Most of the sanctions set by the penal laws are devoted for the natural persons and cannot be applied on the moral².

Thus, the attitude of the opponents can be accepted, leading to a set of outcomes, as follows:

- It is necessary to sentence each member of the moral person who is proven guilty; leading to the issuance of different sanctions with the difference of the actors.
- The moral person cannot be questioned about the fines issued against its members.
- The penal case cannot be raised against the moral person³.

3- The trend advocating for the penal liability of moral entities:

A different perspective that promotes the penal responsibility of moral entities has arisen. This viewpoint challenges the conventional notions of penal liability. This perspective has become the prevailing stance in contemporary legal thought. Proponents of this viewpoint believe that the framework of moral entities' activity has grown, raising the need for limiting or suspending the activity if it endangers the security and the prevalent systems of the community. In addition, they see that it is necessary to penally question, sue, and sanction these persons if they violate their obligations⁴.

This school argues that:

- The existence of this personality as an independent entity proves its independence, subjective interests, and will, primarily based on

¹ See Rana Ibrahim Suleiman al Attour, *op. cit.*, p. 343.

² See Salim Sammoudi, *op. cit.*, p. 10.

³ See Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, p. 101.

⁴ See Sami Djad Abderrahman Wassil, *op. cit.*, p. 434.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

acknowledging the capacity of the moral individual to bear civil liability.¹

– The belief that the penal questioning of the moral person goes against the principle of jurisdiction is inexact because this principle has no relation with the legal existence of the moral person nor with his ability to commit crimes; rather, its importance is limited to the identification of the activity licensed for the moral person².

– It is not true to say that sanctions can be enforced only against the natural person because they may be adapted to the nature of the moral person, such as the dissolution, monitoring, shutdown, scope restriction, fine, or seizure to deter and reform. In this regard, these sanctions would affect the activity of the moral person and push its members to respect the law³.

Thus, the attitude of the opponents can be accepted, leading to a set of outcomes, as follows:

- It is possible to evoke the penal liability of the moral person.
- It is possible to impose penal sanctions on the moral person, such as fines, dissolution, etc⁴.

B) The penal liability of the moral person in justice:

After tackling the jurisprudential attitudes and the debate about the penal liability of the moral person, We will concentrate on how comparative justice views the penal responsibility of moral entities.

1- The perspective of the Algerian legal system:

Amongst the political, social, and economic changes in the world, the Algerian legislator issued penal laws to question the moral person (amending the penal law on 10/11/2004). Thus, the Algerian law adopted the principle of questioning the moral persons. Examples include the penal prosecutions against Société Générale and its

¹ See Ahmed Abderrahim, *the penal liability of the moral persons: a comparative study, research submitted under fulfillment of a degree in the general law, Faculty of Laws, University of Aleppo, Syria, 2004*, p. 18.

² See Sami Djad Abderrahman Wassil, *op. cit.*, p. 435.

³ See Rana Ibrahim Suleiman al Attour, *op. cit.*, p. 345.

⁴ See Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, pp. 107-108.

representatives due to the infringement of Algerian legislation (breach of Order 96/22 concerning the regulation and laws governing banking and the transfer of capital to and from Algeria), in addition to different monetary fines issued by the supreme court on 28/14/2011¹.

2- The attitude of the French justice:

In a decision on 10/01/1929, the French cassation court decided that outside the exceptional cases provided for by the law, it is not legal to penally question the moral person. It adds that the natural persons who committed the crime are to be questioned instead². As a result, French jurisprudence has clarified the potential for holding a moral entity accountable for criminal actions. Nevertheless, it may adopt a broad approach in interpreting the exceptions to this rule. The exceptions encompass what was outlined in the ruling of May 5, 1945, regarding media and journalistic institutions. Indeed, these legal provisions illustrate the position of French law concerning the principles of criminal liability and show its belief that the will and freedom must be proven to issue a personal sanction. This reflects the assumption theory that suits such circumstances. The French courts had first adopted this theory and refused the penal liability of the moral person³.

As a result of the rise in the number of legal entities and their expansion, the French judicial system was compelled to adopt a new concept concerning the criminal responsibility of these entities. This concept was recognized by the French Supreme Court in several rulings, including the ruling from January 28, 1954. A vigorous discussion regarding the scope of criminal liability for legal entities was brought before the Constitutional Council, which delivered its

¹ See Ali Bakhouché, *the penal liability of the moral person, journal of the supreme court*, issue 02, 2012, pp. 71-87.

² See Nesrine Radounae, *the penal liability of the moral person: comparative study in the light of the comparative penal law and the new French penal law, research submitted under fulfillment of a degree in the penal law, University of Damascus, Faculty of Laws, 2004*, pp. 18-19.

³ *Ibid*, p. 20.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

notable ruling on July 3, 1982, affirming that there is no constitutional principle preventing the imposing of fines on legal entities.¹

3- The attitude of the English justice:

The penal liability of the moral person went through two phases in the British justice. First, the assumption theory was adopted, making the justice not question the moral person, as he is an unreal person that cannot commit crimes. In this regard, in one of the famous cases in 1701, Lord Hault issued the principle that an entity or a group that makes a moral person cannot be penally questioned. Towards the conclusion of the 18th century, the advent of modern scientific discoveries alongside the rise of various entities and organizations led to the acknowledgment of the penal responsibility of moral persons. In 1842, English justice held the Birmingham and Bicester Mail Way Company accountable for failing to complete a specified task².

4- The attitude of the US justice:

The US justice adopted the principle of penal liability of the moral person. In this regard, it evoked the liability of the corporations for the crimes due to not repairing roads and building bridges. The main decisions include the one issued by the Supreme Court in Massachusetts in the case of *Vommen weath vs. Proprietors of now bed for bridge*, where the Court fined the corporation for not building a bridge and for negatively affecting navigation. In addition, on 18 May 1928, the Court of New York sentenced *Condian Fertra Pror Company* to a monetary fine, stating that the company can be penally questioned for the actions of its agents if they commit unlawful dangerous actions³.

C) The criminal responsibility of legal entities in law:

A significant portion of contemporary domestic legislation acknowledges the criminal responsibility of legal entities, particularly with the evolution of litigation procedures and criminal sanctions that correspond to the nature of such entities, alongside the responsibility

¹ See Rana Ibrahim Suleiman al Attour, *op. cit.*, p. 342.

² See Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, pp. 184-185.

³ *Ibid.*, pp. 186-187.

of the natural person representing the legal entity or one of its employees, provided that the conditions for the crime are established.

1- The perspective of the Algerian legislator: Following independence, the Algerian legislator was influenced by the French legal system, mainly that the French law had so long been applied in Algeria until 1966 (the date of issuing the Algerian penal law). Thus, the Algerian legislator did not change the basic attitudes set by the French. The legislator in the penal law of 1810 did not acknowledge the penal liability of legal entities based on the classical theory, which upholds the principle of personal accountability and views only natural persons as subject to legal action. However, lately, the Algerian legislator has recognized the penal liability of the moral person¹ due to the economic, social, and political changes and the big increase of the number of moral persons. In this regard, the Algerian legislator did not amend the other legal texts to suit the nature of the moral person. Therefore, many problems were faced when enforcing the laws². We must point that the legislator has explicitly recognized the penal liability of the moral person in some private laws³.

2- The attitude of the French legislator:

After the French revolution, the previous French penal law adopted the penal liability of the moral person, such as the provinces, cities, and villages. However, after the start of the revolution, the penal law of 1810 did not provide for the penal liability of the moral persons.

¹ The Algerian legislator recognized the penal liability of the moral person by Law 04/15 of 10/11/2004, which supplements and complements Order 66/156 on the penal law, and by Law 04/14 of 10/11/2004, which supplements and complements Order 66/155 on the penal procedures law.

See Salim Sammoudi, *op. cit.*, pp. 21-22.

² *Ibid.*, p. 23.

³ The Algerian legislator had explicitly recognized the penal liability of the moral person in some private laws, including:

- Articles 02, 03, 13, 14, and 15 of Order 95-06 of 25/01/1995 on the competition, which provided for the penal liability of the moral person and the relevant sanctions.
- Articles 01 and 02 of Order 96-22 of 09/07/1996 on combatting the violation of the law and regulation of banking and the inward and outward movement of capitals, which provide for the penal liability of the moral persons and the relevant sanctions.

See Order 95-06 and Order 96-22.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

During the 20th century, some private laws were issued recognizing the right to question the moral persons only in exceptional cases. Thus, the notion of inability to penally question the moral person was enshrined¹. A prime illustration of the French acknowledgment of the existence of the moral person can be found in Article 01 of the law of 05 May 1954², which regulates the journalistic institutions.

However, the French legislator had later adopted the penal liability in the new penal law of 1992, which came into force on 01 March 1994. In this context, in his work “Droit pénale et procédure pénale . L’emprunt de criminalité”, Jean-Claude Soyars sees that crime is the basis for the liability³. Thus, under the current French penal law, the moral persons and the general law subjects, regardless their nature, can be penally questioned –as a general rule- for the crimes committed. Nonetheless, the French lawmaker has exempted the state and local authorities from being classified as general legal entities that can be held accountable, as provided for in paragraph 02 of Article 121 of this law, which was criticized by some jurisprudents under the claim of inequality before justice; some other jurisprudents defended this exception relying on the notion of the state sovereignty⁴.

3 -The perspective of the English legislator

The criminal responsibility of legal entities has undergone two stages in British law. Initially, legal entities were not held criminally liable due to the prevailing assumption theory in legal, judicial, and

¹ *The old French penal law before the French revolution had enshrined the penal liability of the moral persons, such as the provinces, villages, and cities. For instance, the regulation of 1670 showed the procedures to be followed when suing these groups, in addition to the sanctions to be sentenced, such as fines, exclusion of privileges, and removal of buildings and walls. This text was general and covered the public and private moral persons. The Monarch and Paris Parliament had, in many occasions, imposed collective sanctions in cities, such as Toulouse and Montpellier.*

See Mahmoud Suleiman Moussa al Mortajaa op. cit., pp. 177-178.

² *See Georges LE Vasseur ET Paul doucet . Droit Penal General . Edition Cujas Paris . France . 1969 . p. 204.*

³ *See Salim Sammoudi, op. cit., p. 16.*

⁴ *See Sami Djad Abderrahman Wassil, op. cit., p. 441.*

jurisprudential matters, and because the range of criminal offenses was restricted to illegal and immoral acts, such as homicide and theft; therefore, legal entities were excluded¹. Subsequently, the English legislature acknowledged the criminal responsibility of legal entities. English law was among the earliest to accept the criminal liability of moral persons; in 1889, a legislative interpretation was enacted, stating that the word “person” in all legal contexts includes moral persons unless otherwise specified. This demonstrates a clear acceptance of the principle of criminal liability for moral entities, which has recently been implemented.²

4- The attitude of the Arab laws:

Some Arab laws recognize the penal liability of the moral persons while others do not. For instance, the Egyptian did not issue any text that recognizes it, and provides that out of the exceptional cases, it is not possible to penally question the moral persons, and that the crime commissioner from his agents and members is to be questioned instead³. In contrast, the Jordanian legislator acknowledged the criminal responsibility of legal entities in Article 74 of the penal code, influenced by the Anglo-Saxon legal system. The same principle is found in the Syrian penal code, specifically in Article 209, and similarly reflected in the Lebanese penal code in Article 210⁴. In 1988, a committee of ministers from the European Council recommended that legal entities should face criminal liability and penalties when the nature and magnitude of the crime necessitate it.⁵

¹ See Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, pp. 183-184.

² Article 30 of the English penal law of 1989 provided for the rulings of the penal liability of the moral person.

See Sami Djad Abderrahman Wassil, *op. cit.*, p. 438.

³ See Ahmed Abderrahim, *op. cit.*, p. 19.

⁴ See Rana Ibrahim Suleiman al Attour, *op. cit.*, p. 345.

⁵ See Frédéric Desportes & Francis Le Gonnehec . *Le Nouveau Droit Pénal* . Tome 1 . *Droit Pénal General* . 5eme Edition .Edition Dominos . Paris . France. 1998 . P 570 .

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

Section II: The identification of the moral persons with a penal liability and the applicable sanctions

Due to the differing opinions in jurisprudence concerning the characteristics of legal entities, there has been a debate over their recognition in terms of criminal responsibility, particularly following the widespread implementation of civil liability in various domestic laws. Legal entities come in various forms and differ significantly. Furthermore, some are governed by general law while others fall under private law, which complicates the determination of criminal responsibility for legal entities within domestic law and the relevant penalties.

A) The identification of legal entities with criminal responsibility

As previously mentioned, there is a big debate about the nature of the moral persons with a penal liability, as we shall discuss.

1- The types of the moral persons:

To identify the moral persons with a penal liability and investigate the possibility of penally questioning them, we must study the types of moral persons in the domestic laws.

1.1- The general moral persons:

We can distinguish two types:

1.1.1- The territorial moral persons (state, provinces, Wilayas, and municipalities):

The state is one of the general moral persons that have a personality, which ensures its continuity regardless the types of governments in rule. This is known as the unity of the state despite the different political systems¹. In Algeria, the government is defined as the centralized administrative structure, which includes the Presidency of the Republic, the Prime Minister's office, various ministries along with their external agencies, and the Wilaya directorates and their associated departments. As for the local communities, they refer to the Wilaya and the municipality².

¹ See Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, p. 66.

² See Salim Sammoudi, *op. cit.*, pp. 36-37.

1.1.2- The facilities moral persons:

This refers to the public facilities, which the law grants the moral personality because their management and nature need administrative methods that differ than the general administrative methods. The facility moral personality takes different forms, such as the public institutions, the public entities, and the public corporations¹. The Algerian Law 88/01 of 12/01/1988 on the direction of the institutions that are subject to the public general law provides that these moral persons are public institutions with administrative, commercial, or industrial nature.

1.2- The private moral persons:

They are the legal persons who are subject to the private law. They are divided into:

1.2.1- The groups of persons:

This refers to the gathering of a number of moral or natural persons based on a common goal. The gatherings may target profits, such as the case of corporations, while others may target social or cultural goals, such as the associations².

1.2.2- The group of funds:

This refers to the moral persons that include funds devoted for a given purpose³. Its main aspects include the Waqfs⁴ and the private companies¹.

¹ See Mahmoud Suleiman Moussa al Mortajaa op. cit., pp. 66-68.

² The groups of persons are divided into two classes:

- The corporations: Article 416 of the Algerian civil law states that they are a contract by which two or more natural or moral persons, and two wills, unite and commit to achieve a given economic goal through providing a share of the capital or work, and dividing the outcomes, including gains and losses.

- The associations: They are non-lucrative groups of natural or moral persons for a given period to achieve social, cultural, sport, and other goals, far from the political and commercial goals. The Algerian legislator regulated the associations by Order 04/12/1990 on the associations.

Ibid., p. 37.

³ See Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 70.

⁴ The Waqfs system is derived from the Islamic Sharia. It may be permanent according to the conditions, and is considered a moral person. See Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 70.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

2- The moral persons with a penal liability:

After identifying the moral persons in the domestic laws, we must identify the moral persons with a penal liability in the domestic laws.

2.1- The penal liability of the private moral persons:

There are no objections against the recognition of the penal liability for the private moral persons, such as associations, companies, or any facility because the private moral persons target private interests and may commit crimes during their work². Thus, many laws, including the Algerian, explicitly provide that the private moral persons are penally questioned³.

2.2- The penal liability of the facilities moral persons:

There is no obstacle in recognizing the penal liability of these persons, as they have economic, social, commercial, banking, and other activities that may witness criminal actions⁴. In this regard, the new French law adopted the penal liability of the moral persons, whatever their characteristics, excluding the state, local assemblies, and municipalities⁵.

B) The scope of the state's criminal responsibility:

The legal framework has examined the potential for invoking the state's criminal responsibility and raised questions about the state being a commissioner of, or partner in, a crime, and whether it is possible to achieve the goals of the penal policy if the state's liability is evoked. These questions did not raise disagreement because it is

¹ *The private company emerges when one of the persons devotes a sum of money for a permanent or unlimited period to achieve benefits. For the founders, this work is like a donation, gift, or testimony if devoted to a moral person, such as when a person bequeaths building a given facility for the Wilaya.*

See Salim Sammoudi, op. cit., p. 37.

² *See Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 83.*

³ *For instance, according to Article 51 Bis of Law 04/15 of 10/11/2004, which supplements and complements Order 66/156 on the Algerian penal law, all the moral persons are penally questioned for the crimes mentioned in the law regardless their shape or goal.*

See Article 51 of Law 04-15, which supplements and complements Law 66-156 on the Algerian penal law.

⁴ *See Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 82.*

⁵ *See Salim Sammoudi, op. cit., p. 29.*

difficult to imagine that the state may commit a criminal project that allows questioning it. However, in case this happens, the penal law would not be sufficient; rather, it would be necessary to prosecute the persons that dominate and manage the state. The same applies to other territorial persons. In this context, the rulings of the French cassation court confirms this view, as it refused the absolute penal accountability of the state¹.

Consequently, the majority of national laws, including those in Algeria, do not include the concept of criminally prosecuting the state, local authorities, and legal entities governed by general law². Nonetheless, some, such as the French laws, make an exception by addressing the criminal responsibility of local communities (the municipality), as the French law provides that the penal liability of the municipality cannot be evoked unless regarding the activities they governmentally do³. This exclusion is based on different considerations:

1. The notion of sovereignty as a basis to deny the state liability: this means that the state has privileges in managing all its institution thanks to its exclusive privileges. Thus, the sovereign state cannot be punished.
2. The state's monopoly of the right to raise sanctions: the state is the only party that can raise sanctions. Thus, who can punish the only party that has the right to punish? Can the state punish itself?
3. The different tasks and jurisdictions: the state has exclusive privileges that pushed the legislator to exclude it from the penal

¹ *The main decisions of the French cassation court show that the penal chamber decided on 11/08/1848 that the state can never be a commissioner of a misdemeanor or crime.*

See Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 81.

² *Article 51 Bis of the Algerian law 04.15 of 10/11/2004 that supplements and complements order 66.156 on the Algerian penal law provides that the state, the local communities, and the moral persons subject to the general law are not penally liable.*

³ *See Rana Ibrahim Suleiman al Attour, op. cit., p. 355.*

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

liability and made it impossible to raise penal sanctions. Rather, the liability is civil in case it causes harm to others¹.

C) The sanctions that can be raised against the moral person:

Legally speaking, the penal liability is the person's commitment to a penal procedure due to a criminal behavior according to the penal law. The sanction is the general legal effect resulting from violating the regulations and laws². We shall discuss the penal sanctions applied on the moral persons, mainly after the objections to the notion of the penal liability of the moral person.

1- The sanctions applied on the moral persons:

It is not logical that a moral person is sentenced to death, prison, or arrest. This notion dominated the 2nd international congress on the penal law in Athena in 1929. There, an absolute refusal of the penal sanctions on the moral person was decided. In this regard, preventive measures were preferred because they suit the nature of the moral person and can achieve their goals³. The sanctions against the moral person include:

1.1- The dissolution:

It is the equivalent of death sentence for the natural person, and is the harshest sanction against the moral⁴. The Algerian legislator provided for this sanction and gave it the compulsory nature in some cases, and the optional in others⁵.

1.2- The fine:

It has a high importance and a palpable role in the penal system. It deters the crimes that target material benefits, such as the economic and fiscal ones. Thus, there is no problem regarding the application of

¹ See Salim Sammoudi, *op. cit.*, pp. 32-33.

² Ali Sirano & Amel Abderrahim Othmane, *criminology and punishment*, Arab renaissance house, Cairo, Egypt, Vol. 01, 1980, p. 342.

³ Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, p. 250.

⁴ Nesrine Radouane, *op. cit.*, p. 76.

⁵ Article 18 bis of law 26-03 of 20-12-2006 that supplements law 04.15 of 10/11/2004 that supplements and complements order 156.66 on the penal law provides for the sanctions applied on the moral person in the misdemeanors and crimes, such as the optional dissolution in paragraph 02 and the compulsory in paragraph 05.

the fine on the moral person. The comparative law subjects the moral person to this sanction because it suits his nature¹. It is about obliging the moral person to pay an amount of money to the state budget. The Algerian legislator provides for this sanction in the penal law or in the private laws².

1.3- The shutdown:

Shutting down the facility aims at ending the activity of the moral person. The shutdown may be partial or complete, permanent or temporary, based on the crime. Most of the domestic laws, including the French and the Libyan, rarely opt for this sanction³. The Algerian legislator provided for the compulsory shutdown in some cases and for the optional suspension in some other cases in the articles about misdemeanors and crimes committed by the moral person⁴.

1.4- The seizure:

¹ Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, p. 252.

² Paragraph 01 of Article 18 bis of law 26-03 of 20-12-2006 that supplements law 04.15 of 10/11/2004 that supplements and complements order 156.66 on the penal law provides for a fine against the moral person that is 05 times more than for the natural person.

Article 24 of order 05/06 of 23/08/2005 on combatting tax evasion provides for sentencing the moral person that commits crimes to a monetary fine that is 03 times more than the fine ruled against the natural person. If the sanctions for the natural person is the permanent detention, the moral person that committed the same crime is sentenced to a monetary fine of 50.000.000 to 250.000.000 AD.

Article 05 of law 04-18 of 25-12-2004 on the prevention of drugs and combatting the illegal drug dealing provides for sentencing the moral person that commits the crimes mentioned in Articles 13 to 17 of the same law to a monetary fine that is 05 times more than the one sentenced against the natural person.

See Salim Sammoudi, *op. cit.*, pp. 62-63.

³ The French penal law provided for the full and temporary shutdown. If the period exceeds 02 years, the facility must be sold in auctions. The original owner of the facility may request a license from the head of the court to restore the facility, and must pay the wages of the employees during the first 03 months of shutdown.

In addition, the Libyan law provided for the shutdown.

Mahmoud Suleiman Moussa al Mortajaa *op. cit.*, p. 254.

⁴ Article 18 bis of law 26-03 of 20-12-2006 that supplements law 04.15 of 10/11/2004 that supplements and complements order 156.66 on the penal law provides for sanctions against the moral person. In this regard, paragraph 02 provides for the optional shutdown of the institution or of one of its branches for a period of less than 05 years while paragraph 04 provides for the compulsory shutdown.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

It is about nationalizing the private property. It is an in-kind sanction applied on the locations and tools of the crime¹. In the economic laws, it is an additional sanction, In line with the penal law, which aligns with the characteristics of economic offenses.

The sixth international congress on penal laws convened in Rome suggested this penalty as long as it does not infringe upon the rights of others². The Algerian legislator provided for this sanction against the moral person³.

2- The preventive measures against the moral person:

The preventive measure is a set of procedures that aim at deterring a hidden criminal will⁴. It is the second tool for the penal policy. Its importance lies within the fact that it targets the inefficient social task of the sanction. The 2nd international congress on the penal law held in Bucharest in 1929 recommended issuing preventive measures, instead of sanctions, against the moral person⁵. However, this trend was not accepted because the preventive measures do not substitute or cancel the traditional sanctions. Therefore, the 07th international congress on the penal law held in Rome in 1953 called for applying the penal sanctions and preventive measures on the moral person⁶. Some laws adopt both the penal sanctions and the preventive measures while others take only one aspect, i.e., either penal sanctions or preventive measures⁷. Based on this, we shall discuss the main preventive measures adopted against the moral person:

¹ Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 254.

² Nesrine Radouane, op. cit., p. 73.

³ Article 18 bis 01 of law 04.15 of 10/11/2004 that supplements and complements order 66/156 on the penal law provides for the optional seizure against the moral person. It is about confiscating the tools used in the crime, or leading to the crime.

⁴ Mahmoud Najib al Hassani, penitentiary sciences, Arab renaissance house, Cairo, Egypt, Vol. 02, 1973, p. 119.

⁵ Ibid., p. 121.

⁶ Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 256.

⁷ For instance, in the new penal law, the French legislator did not distinguish the preventive measures from the sanctions. Rather, he combined them, considering they are sanctions against the moral person.

See Rana Ibrahim Suleiman al Attour, op. cit., p. 373.

2.1- The seizure as a preventive measure:

The seizure as a preventive method differs than being a sanction. If the moral person has dangerous tools that may cause social harms, it is better to opt for the preventive seizure¹.

2.2- Banning some activities:

This aims at protecting the society from the moral person who shows inability to commit to the applicable rules². The Algerian legislator provided for this measure in many laws³.

2.3- Suspending the moral person:

It means suspending the activity of the person for a given period without violation of his legal existence. This differs than the dissolution. Thus, the suspension must be temporary, and is generally accompanied by sanctions⁴.

2.4- The judicial control:

The moral person may be put under the judicial control for a given period as a preventive measure⁵.

2.5- Exclusion from the public contracts for less than 05 years:

This is about excluding the moral person from making any contract with one of the general law subjects. The contract may be about estate or transferable actions, delivering a service, selling products, etc. This means it is not legal to implicitly or explicitly underwrite a contract

¹ Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 258.

² Nesrine Radouane, op. cit., p. 75.

³ The Algerian legislator banned exercising some activities in Article 18 bis of Law 04-15. To apply this preventive measure, there must be a relation between the moral person and the committed crime. In addition, in Article 18 bis of law 04.15 of 10/11/2004 that supplements and complements order 66/156 on the penal law, the Algerian legislator provided for this measure optionally for a period that does not exceed 05 years.

⁴ Mahmoud Suleiman Moussa al Mortajaa op. cit., p. 261.

⁵ Article 18 bis 01 of law 04.15 of 10/11/2004 that supplements and complements order 66/156 on the penal law provides for the judicial control for a period of less than 05 years as a preventive measure.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

with the moral person¹. In Algeria, this preventive measure is a general rule².

Conclusion

After examining the issue of the criminal responsibility of legal entities and the associated penalties under Algerian law, we can say that the Algerian legislator was brave in recognizing this liability that had been a mere notion before some Western laws, including the French, had established it.

The results:

Our findings show that:

1. The Algerian legislator has recognized the penal liability of moral entities within the national legal framework, specifically in Algerian penal law and various private laws, thereby making this form of liability enforceable by the Algerian judicial system.
2. Algeria possesses a legal framework that comprises penal law, laws on preventive measures, and private legislation, including laws aimed at combating tax evasion, fighting drug-related offenses, and other regulations that establish the penal liability of moral entities.
3. At present, the Algerian legal framework is inadequate in light of the evolving nature of society, particularly concerning the connections between moral entities and issues such as organized crime, money laundering, and international terrorism, which complicate the process of imposing sanctions on these moral entities.

Suggestions:

Based on the findings, we suggest that:

1. It is necessary to readapt the current legal arsenal that covers the penal liability of the moral persons to the new changes and facts of the Algerian society and the international atmosphere (terrorism,

¹ See Jacques barricade et Anne marie simon, *Droit pénale ;procédures pénal*. 2^{em} EDITION Dalloz edition . paris . France .2000.p 175.

² Article 18 bis 01 of law 04.15 of 10/11/2004 that supplements and complements order 66/156 on the penal law provides for the exclusion from the public contracts for a period of less than 05 years as an optional preventive measure after the sentence to fine.

transnational organized crime, money laundering, etc), which the current laws cannot face.

2. The judges (investigation judges, prosecutors, and trial judges) must be trained on the penal liability of the moral persons, mainly with the new facts inside and outside Algeria, to deal with the sensitive crimes by moral persons against the national economy and security.

3. It is essential to establish legal standards that establish the criminal responsibility of individuals overseeing the legal entities during legal proceedings.

Bibliography:

1- Ahmed Abderrahim, **the penal liability of the moral persons: a comparative study, research submitted under fulfillment of a degree in the general law**, Faculty of Laws, University of Aleppo, Syria, 2004.

2- Ali Bakhouché, **the penal liability of the moral person**, journal of the supreme court, issue 02, 2012.

3- Ali Sirano & Amel Abderrahim Othmane, **criminology and punishment**, Arab renaissance house, Cairo, Egypt, Vol. 01, 1980

4- Executive decree 02-43 of 14-01-2022 on Algeria post.

5- Executive decree 91-148 of 02-03-1991 on the offices of estate promotion and management.

6- Jacques barricade & Anne marie simon, **Droit pénale ;procédures pénal**. 2^{em} EDITION Dalloz edition . paris . France .2000.

7- Frédéric Desportes & Francis Le Gouéhec . **Le Nouveau Droit Pénal** . Tome 1 .

Droit Pénal General . 5eme Edition .Edition Dominos . Paris . France. 1998.

8- Georges LE Vasseur ET Paul doucet . **Droit Penal General** . Edition Cujas Paris . France . 1969 .

9- **Law 04-18 of 25-12-2004 on the prevention of drugs and combatting the illegal drug dealing, supplemented and complemented** by Order 23-05 of 07 May 2023.

10- Mahmoud Najib al Hassani, **penitentiary sciences**, Arab renaissance house, Cairo, Egypt, Vol. 02, 1973.

11- Mahmoud Suleiman Moussa al Mortajaa, **the penal liability of the moral persons, a detailed comparative study**, Magister thesis in penal sciences, Faculty of Laws, University of Benghazi, Libya, 1983.

Limits and controls on the criminal liability of a legal person and the penalties prescribed for it in Algerian legislation

- 12- Mohamed Al Fadel, **the general principles of the penal law**, library of the University of Damascus, Damascus, Syria, Vol. 04, 1965, p. 406.
- 13- Nesrine Radounae, **the penal liability of the moral person: comparative study in the light of the comparative penal law and the new French penal law**, research submitted under fulfillment of a degree in the penal law, University of Damascus, Faculty of Laws, 2004.
- 14- **Order 05/06 of 23/08/2005 on combatting tax evasion**
- 15- **Order 66-156 of 08 June 1966 on the Algerian penal law**, supplemented by law 04-15 of 10-11-2004 (official gazette 71), and law 06-23 of 20-12-2006 (official gazette 84).
- 16- **Order 75-58 of 26 September 1975 on the Algerian civil law**, supplemented and complemented by law 05-10 of 20 June 2005 (official gazette 44).
- 17- Rana Ibrahim Suleiman al Attour, **the penal liability of the moral person**, journal of Damascus for economic and legal sciences, Damascus, Syria, Vol. 22, issue 02, 2006
- 18- Salim Sammoudi, **the penal liability of the meal person: a comparative study between the Algerian and French laws**, al Houda house, Ain Mlila, Algeria, 2006, p. 06.
- 19- Sami Jad Abderrahman Wassel, **the state terrorism in the light of the rules of the general international law**, Arab Renaissance house, Cairo, Egypt, Vol. 01, 2003-2004, pp. 430-431.
- 20- Thierry Garé & Catherine Ginester . **droit pénal . procédure pénal** – édition dalloz ,paris 2000.