

Writing in the electronic form according to French legislation

الكتابة في الشكل الإلكتروني وفقا للتشريع الفرنسي

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Abstract:

The research paper sheds light on the analysis of the French legislative texts related to the organization of evidence in writing in the electronic form, as well as the texts that protect the writing from the risks they fall into in dealing with them. The research takes the fraud model so as to protect its confidence

key words:

Electronic Writing - Proof of Transactions - Procurement - Technical Protection - Criminal Protection- French legislation

المخلص :

تسلط الورقة البحثية الضوء على تحليل نصوص التشريع الفرنسي المتعلقة بتنظيم الإثبات بالكتابة في الشكل الإلكتروني وكذا النصوص التي تحميها من المخاطر التي تقع عليها إزاء التعامل بها ويتخذ البحث مخاطر التزوير أنموذجا، كل ذلك لأجل حماية الثقة فيها.

الكلمات المفتاحية:

الكتابة الإلكترونية - إثبات المعاملات - التزوير - الحماية التقنية - الحماية الجنائية -

التشريع الفرنسي

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Introduction:

The interaction between computers and communication networks made the world becoming a life full of rapid communication and the transfer of information over thousands of miles of distances, and dealing with advanced systems in experience and artificial intelligence. As a result, abstract and natural persons used writing in electronic form in all fields such as industry, commerce, administration, medicine and education and so on because of the accuracy and speed it provides. People are depending in storing or preserving information on chips or electronic supports that differ in their shapes between magnetic tape, microfilm, and flexible and rigid disks, which are called electronic editors that have become competing with paper editors.

The French legislator has intervened to give an evidentiary value for writing in the electronic form equal to the value of paper documents, as long as their content can prove a legal fact that has legal effects to give public confidence in it for the sake of stability of transactions. However, the use of this newly created writing in civil evidence was not without potential risks that as in the case of paper documents, and perhaps the most important of these risks is forgery or changing the content of the truth by substituting falsehood for the right, and using it in a way that reaps an illegitimate material benefit to the forger and it causes damages to others who have a legitimate interest in its authenticity.

Owing to the great importance of writing in the electronic form in proving the resulting rights, especially from mutual trade between countries and the ensuing or subsequent revival of the economies of countries across the world. In this regards, it is found that the French legislator has taken care, by seeking the help of experts in computing and communication technologies, to put in place legal systems that protect these documents technically as they provide preventive measures represented in the use of advanced encryption programs and the granting of certificates of attestation or authentication approved by the state. Despite the importance of preventive measures to reduce the risk of forgery, it did not prevent it from being committed, as the informatics criminals took advantage of this development in the means of modern technology and misused them to commit this forgery easier, which led to a growing spread and overburdened the economies worldwide. The French legislator has intervened again to grant it criminal protection from fraud as to limit the spread of forgery.

The problematic at hand is that when the French legislator recognized the writing in electronic form, how did he protect it from potential dangers? To answer this problem, we divided this research into two axes, as follows:

The first axis: proof in writing in the electronic form
The second axis: the risks of using writing in the electronic form in the proof.

Section I : The proof through writing in the electronic form

The French legislator has given the use of writing in electronic form the same authenticity established for the traditional written evidence, but with

conditions related to the safety, integrity and validity of these documents. In a case of an insecurity of these documents, credibility will be questioned in conforming to the truth to prove legal behavior, which weakens their value, and because the possibility of tampering is likely to happen, it is then important before searching for the authenticity of electronic documents in evidence to examine the conditions for their acceptance in evidence.

A) Conditions for accepting evidence in writing in the electronic form:

Electronic documents are accepted in proving legal actions, as long as they are written in an intelligible manner, prepared and preserved in a form or means that guarantee their safety, and they are signed with a signature created by a secure electronic means that discloses the identity the signer, proving his willingness to perform the commitment associated with the signature.

Accordingly, the conditions for accepting electronic documents are civil proof in writing and signature and we will analyze all of this in the following points:

1- Writing:

It is not sufficient for the documents that are used as an argument to contain writing, whatever its shape may be letters, numbers, pictures, or words. What is important is that they have an understandable meaning as soon as they are connected to the computer, which is equipped with programs that have the ability to translate machine language into a human-readable and perceptible language¹. Not only, but according to the legislation of electronic transactions, it must ensure that it is the same document or message agreed upon between the parties, which was established for the first time between them, and this can only be achieved by preserving the electronic document in a way that guarantees its integrity, and indicates its reliability and validity for a long period, without damage, modification or tampering with its content² so that it can be referred to at any time, and this is what the French legislator intended in Article 1316/4 of the Civil Code: (Evidence in writing in electronic form is considered as evidence by writing on paper, provided that it is prepared and preserved in conditions that guarantee its safety). Therefore, the legislator insisted on the necessity of documents' preservation to make it possible to retrieve them in order to maintain the legal positions of the contracting parties electronically, as long as the information contained in it indicates who created or received it and the date of its sending and reception.

Electronic writing can be saved on a drive or an electronic medium, and it is a method capable of storing, preserving and retrieving information electronically. Modern technology has been introduced and is still providing continuously high-fidelity techniques that ensure the preservation of writing for its stability and continuity without any manipulation, for example the computer memory itself, hard disks or magnetic disc, CD, magnetic tape or DVD³.

It is clear from what has been said earlier that it is not possible to use the electronic editor as an argument, unless its writing has an understandable meaning and prepared and preserved in a way that guarantees its security and safety from any manipulation, so that it can be retrieved at any time, which supports public confidence in the documents.

2- Signature:

Article 1316/4 of the French Civil Code is unique in establishing a general and functional definition of signature so that it includes all types of signature, whether in writing or electronic, or any other signature produced by modern technology⁴, as it stipulates that an electronic signature is the use of a reliable means that ensures the identification of the contractors and their relationships and the actions associated with it⁵.

It is observed that the French legislator's definition of signature derives from its function in determining the owner of the signature, expressing this person's satisfaction with the contents of the document, his approval of it, and the direction of his will to abide by its content⁶.

An electronic signature cannot acquire the authenticity of a normal signature, unless it is secured and trusted. In order to ensure its safety and authenticity, several general and special technical controls have been put in place to prevent any harm to it, and then to the editor. Among the most important general technical controls are⁷:

- Confirm the identity of the person.
- That the signature be specific to the signer alone, and that it is created by electronic means that the signer controls exclusively, and that the signature is linked to the document on which it is signed in a way that allows any modification or change to the document data or the signature elements to be detected.
- It must be trusted or associated with an approved certificate.

In order to implement or achieve these general technical controls, decrees or implementing regulations were issued that stipulate the special technical controls which show the modalities for using and documenting the electronic signature in order to ensure its validity, and showed that the latter is kept and secured in a number of ways or technical systems, most notably the encryption system and the authentication or certification system.

The encryption system is a technology that is based on a smart mathematical algorithm that allows whoever having a secret key to convert any readable electronic document into an unreadable electronic document. Moreover, on the contrary, it allows those who possess the secret key to use the encryption system to decode the code, and return the encrypted document to its original position⁸, and the encryption is done in several ways. One of the most important encryption systems is the Asymmetric system, which is a method that allows the use of many complex numbers that cannot be falsified, as well as the public key encryption method and the private key mechanism⁹. The latter is for encryption

while the former is for decryption, and the two keys have an important feature, which is that if one of these two keys is known, the other key cannot be known, and both of them carry a mathematical mark that can only be recognized by its owner, and only the public key of some competent authorities can be known, while the private key remains confidential and it is not imagined that another person knows it except its owner¹⁰.

The French legislator stipulated the encryption system, and not only partially referred to it by mentioning the definition of a private and public encryption keys, but he provided practical and technical explanation of this system or mechanism, by issuing a document in 1998 that included practical and technical explanation about the encryption system stipulated in the law French Telecom Regulation issued on 07/16/1996¹¹.

The French legislator was not satisfied with the encryption system only, so that the signature is secure, but it must be placed using an accredited certificate of attestation or authentication, and then it is correct and acquires the authority prescribed for it, especially if we know that the encryption system adopted by countries is not sufficient to preserve the confidentiality of the documents as it takes place between contractors who do not have previous knowledge of each other, which adds to it a bit of ambiguity, or weakens confidence when using it among individuals. For this reason, the electronic certification or authentication system was created through which it is difficult to manipulate official documents, and hence reassuring individuals in terms of confidence, safety, and reliance on them as prior evidence when the legal action was issued at an undisputed time. This system enables the position of the person who issued the bond to be clearly and accurately determined, by means of an electronic signature, and the content that it contains is identical to the offer and acceptance with this system. Consequently, the judiciary can rely on it as complete evidence in proof, and then disputes are resolved and transactions are settled.

The electronic authentication system means the documentation of the electronic document with a licensed authority whose work is to verify the authenticity of the document using known technical methods. Then, a certificate of authentication is submitted confirming its authenticity to be a proof against those who claim to be incorrect¹², or to certify the writing and signature affixed to the electronic documents to prove its authenticity or confirm its ownership to those who issued it¹³.

Accordingly, the authentication system relies on an accredited body that grants a certificate of attestation of the electronic document after all authentication procedures are over.

Article (1), Paragraph 09 of the aforementioned French Decree 272/2001 defines the electronic certificate as a document in electronic form that establishes the link between the verification data of the electronic signature and the signer.

Accordingly, the certificate proves the validity of what is contained in the electronic document and its attribution to the parties because it contains data that

would enhance its public confidence and the most important of these data are the following:

- Determining the name, data, or identity of the provider of certification services.
- The signer's name, disclosure of his identity, address and financial status.
- An indication of the physical action that was taken to review the signature.
- Determining the beginning and end of the certificate's validity period
- Certificate Password.
- The electronic signature secured by the provider of the electronic certification services.

These laws have determined the liability of service providers in anticipation of damages that may result from their mistakes, unless they prove that they did not make a mistake in providing the data included in the authentication certificate, and that this data was provided to them by the electronic editor's signer, and that they took all possible measures to review the validity of this data.

By regulating the technical means that protect the electronic signature from any attack, the legislature will thus protect the electronic documents, give them credibility, and establish their public confidence, and then they are accepted as evidence before the courts.

B) Organizing evidence by writing in the electronic form:

When modern technology produced electronic documents to prove civil and commercial actions, which became a tangible reality that imposed itself in dealing and its use spread among individuals, the French legislator intervened to give it legal protection, by organizing and defining it as a method of proof, as it equated it with the paper documents in authenticity. The question that it arises is: Do electronic documents acquire the value of official paper documents or do they give them the authenticity of customary paper documents?

The French legislator has detailed evidence with electronic documents, equating them with the official and customary paper documents¹⁴, as Article 1316/3 of the French Civil Code states that: (Writing on the electronic pillar has the same indicative power for writing on the paper support). He did not stop at this point, but rather he indicated when the electronic document is official, and when it is customary.

1- The acquisition of writing electronically as a proof for the official writing:

Article 1713 of the same law stated that the official contract is the one that is received by a public official, according to the required formalities, who has the right to authenticate in the body in which the paper was written, and this official contract can be based on an electronic support if it is established and kept according to the conditions specified in the State Council decree. Decree No. 973/2005 of August 10, 2005 related to contracts concluded through notaries¹⁵ to define the conditions for creating and preserving the official electronic document.

Article 16 t stipulates that the notary who writes a contract on an electronic support uses a data processing and transmission system licensed by The Supreme Council of Notaries to ensure the safety and confidence in the content of the document and Article 17 stipulates that the notary shall place on the contract his secure electronic signature as specified in Decree 272/2001 of March 30, 2001 related to the modalities for the application of Article 1316/4 of the French Civil Code related to the previous electronic signature.

According to Article 20 Paragraph (1), if one or all of the contracting parties did not appear before the certified notary, their consent and signature would be verified by other notaries before them and those who participate in the establishment of the contract, and this latter carries the meaning for which it was created. Paragraph 2 of the same article states that it is necessary to establish the contract performed by means of the automatic data processing system mentioned in Article 16 for notaries to exchange information related to the parties' consent and eligibility, then paragraph 3 requires that notaries verify the consent and signature of the contracting parties or persons, then put their personal signature. Moreover, Paragraph (4) reveals that the contract is completed when the certified notary puts his insured electronic signature.

It is understood from the text of Article 20 that the online official contract in which several notaries participate, exchanging their verification of the eligibility, satisfaction, and signature of the parties on the contract through an approved automatic data processing system. After that, the contract is not official until the approved notary puts his signature on the insured in the sense that this official electronic contract was concluded, but without the physical presence of the notary and the parties, which is what the French jurisprudence¹⁶ was divided about as some of them refuse to establish an official electronic contract in the absence of the physical presence of the notary and the parties, and their attendance is necessary and essential, because verification of eligibility, and the reality of consent can only occur through a direct relationship and actual presence between the notary and the parties¹⁷. In addition, others believe that the physical absence of the notary is possible to edit the official electronic contract because the law did not stipulate a personal interview between the parties, and that modern communication devices allow the possibility for the virtual presence between the parties and the notaries to replace the physical presence¹⁸. In this regard, one of the jurists adds that video devices, e-mail and other communication devices that transmit writing, pictures and calls are sufficient for this¹⁹ and that the notaries law stipulates that only the notary obtains the signature of the parties.

2- Writing in the electronic form as a proof of customary writing:

According to the French legislator as well, the electronic document can be customary, and this is what came in the provision of Article 1325 of the Civil Code that talks about the customary contract. At the end of the article, it is said that the customary contract is considered in the electronic form as long as it was

edited and preserved in accordance with Article 1316/1/4, i.e. on the condition that it bears a perceptible writing and a secure electronic signature, and as long as it was issued with the consent of the concerned parties, and it is required that it be of several copies if the contract is binding on both sides, as the copies are in the number of the parties, and that the number of copies made from this document is mentioned in each copy²⁰.

Section II : Risks of using writing in electronic form in evidence

Modern technology has made it possible to do a lot of work that was difficult to accomplish easily, and these technologies in the field of communication and electronic information provided the possibility of achieving social communication and providing many services, as electronic means and methods appeared that often perform the functions of traditional means such as electronic document, and when these modern methods are used to allow the completion of transactions between individuals and institutions and so their use is not without risks such as fraud. These risks lead to simply saying that its public trust becomes threatened, which should address these risks by protecting the document legally as not to prevent its forgery and make guarantees for the individuals and the state dependent on using and achieve reassurance and stability of transactions since above all it includes what proves rights and affirms obligations and regulates relations.

The protection of electronic documents from forgery is to criminalize forgery that causes harm to others and to warn that the penalty will be applied to everyone who commits it, as the penalty represents a preventive aspect before it is deterrent, and the French legislator has intervened and added criminal protection to dealing in writing in the electronic form.

A) The legal construction of forging writing in electronic form:

The crime of falsifying writing in electronic form is based on a legal, material and moral element

1- The legal part:

Due to the seriousness of forgery, especially with the difficulty of detecting and proving it, the French deputy, Jacques Godfrain, submitted to the National Assembly a proposal for a bill on information fraud, in which he tried to amend and adapt some of the existing legal texts in the Penal Code to include all attacks on information, including forgery in documents to include informational recordings. The French Parliament vehemently attacked this proposal on the grounds that adopting it leads to distorting the concept of documents and saying that it is achieved despite the lack of electronic or a written document, as it has not yet been delivered to the computer outputs as electronic or written. However, the Law Preparation Committee in The National Assembly proposed an alternative bill, by stiffening the penalty for the crime of deliberate assault on data if the entry, amendment, or deletion results in a change in the truth, while the French Senate saw another amendment, which is to consider falsifying

automatically processed documents a crime independent of forgery of documents, as well as the crime of using those forged documents. This amendment was approved in Parliament by its two chambers, and Law No. 19/88 promulgated on 01/05/1988 amending the law the penalties for computer fraud are articles 5/462 and 6/462, where the first article stipulates the criminalization of falsifying automatically processed documents, while the second article criminalizes the use of those documents²¹.

However, after the issuance of the new French penal code on 12/16/1992, which came into effect in 1994, the French legislator decided that it was not necessary to maintain the criminalization of falsifying and using automatically processed documents, and only adding it to the regular crime of forgery, as Article 441/1 of Fourth Book of the Penal Code to fulfill this purpose, whereby it stipulates that forgery is a change in reality with fraud, whether completed in a written document or any other pillar of the expression of thought. Thus, the French legislator expanded the concept of the electronic document to include, besides the document in its traditional form, every other medium for expressing thought, including CDs, CDs²² and so forth.

The reason that led the legislator to include electronic forgery in the regular forgery crimes is that the two crimes of falsification of automatically processed documents and their use among the crimes of attacking the automatic data processing systems, which is logical and justified in the difference in the interest protected by law, which stands behind the criminalization of each of them. The interest that is protected from criminalizing the attack on information systems is an individual and it is that of the owner of the information system, while the interest it protects the law regarding the criminalization of forgery, whether on paper or electronic documents, is to protect the supposed its public trust²³.

2- Physical part:

The material element to change the fact that leads to the harm

2-1- Changing the truth:

Forgery of documents is based mainly on the act of changing the truth, and accordingly there is no punishable falsification if the writing does not carry any change or does not contain any real fact²⁴, as it is the act that embodies the corruption of the document by distorting, altering and camouflaging, and it must strip it of its legal value before the change occurs, and therefore it is considered as the standard that highlights this forgery, and creates its complete self²⁵.

By changing the truth means to replace it with another, creating a different truth, or distorting an existing truth, so if the it remains unchanged, then no forgery even if the perpetrator believes that what he has proven is contrary to reality, so whoever makes before an employee statements that he believes is false, then the employee writes it in a document prepared for that. Then, it becomes clear that it is identical to the truth without a crime of forgery, because the essence of this crime is to change the truth, and the lesson in that is the reality and not what the perpetrator deludes²⁶.

Accordingly, changing the truth brings the document out in a form other than the one for which it was created, and in this way it implies a breach of the guarantee, certainty and stability that should surround transactions of all kinds, which undermines public confidence²⁷ in the preservation and proof of individuals' rights and obligations.

This is the matter that the French legislator introduced in the Penal Code in Article 441/1, which did not mention any of the methods of forgery that was stipulated in the old law; only the phrase that the change of the truth causing harm is achieved "in any way...",

The reason that the legislator did not specify exclusively the ways in which forgery occurs is his desire for the text of the article to be public so that the forgery takes all its material and moral means²⁸. At the same time includes any method by which forgery may be committed in electronic documents because with the emergence of these documents, modern methods have appeared that enable their forgery which were not among those methods specified by the law because of their special nature acquired from the nature of electronic documents. Instead, these modern methods have become traditional methods due to the tremendous development in the use of computers and dependence on information networks, which criminals have adapted and continued to do so for daily discoveries of methods for falsifying modern information.

2-2- Damage:

Some penal legislation²⁹ explicitly states in their definition of forgery that it cannot be established except on the basis of the notion of harm, as it is stated in Article 441/1 of the French Penal Code that forgery is formed, established or based on every change of fraud in the truth that would cause In damage, which was confirmed by the judiciary in France³⁰.

Accordingly, the crime of forgery shall be excluded in every case in which the change of the truth does not result in harm to others, and the search for its availability or lack thereof is a matter of facts that the judge shall decide according to the circumstances in each case³¹.

3- The intangible part:

The crime of falsification of documents is one of the intentional crimes that entails for its completion the necessity of the existence of criminal intent or deliberate intention³². The deliberate intention that is required in all intentional crimes is the general criminal intent that requires the existence of the two elements of knowledge and will, meaning that the will of the perpetrator tends to commit the crime with his knowledge of all the necessary elements that constitute the material part³³.

However, the crime of forgery of the documents, and by extrapolating some legislative texts, it is noticed that they contain phrases such as "intent to deceive"³⁴ and "with the intention of forgery"³⁵ which led the jurisprudence and the judiciary in Egypt and France to unanimously³⁶ that the general intention

alone is not sufficient to establish the moral element, rather it requires the existence of a special criminal intention.

Nevertheless, jurisprudence has maintained³⁷ that the special intent required for establishing the moral part of forgery is the tendency of the forger, at the moment of committing the act of changing the truth, to use the document for what it was forged, because forgery does not constitute a social risk that requires criminal law intervention to criminalize it unless it is committed with the intention of using the exhibit after forging it, and if that intention was not present at the moment of the act, and if it was present after that, then no forgery, because it is necessary to contemplate the intention of the act as a basis for carrying out all crimes, including forgery. In addition, it is noted that the intention to use the forgery is sufficient for the availability of intent and the crime of forgery regardless whether the document was actually used or not and the punishment for forgery does not depend on the use of the forged document, since both crimes are independent of each other.

B) Penalties for falsifying writing in electronic form:

The French legislator developed a punishment plan for forgery, as it adopted the principle of criminal responsibility for legal persons as well as the criminal responsibility of natural persons, and both of them monitored original penalties and complementary penalties.

1- The original penalties for the crime of forgery in official or public documents or recordings ordered by the public authority:

The perpetration of forgery in official or public documents or records ordered by the public authority shall be subject to regular original penalties and other aggravating penalties if they meet the circumstance of aggravation, and whether the penalty is normal or aggravated, all of them are considered as aggravated.

1-1- Ordinary Original Punishment:

In the first paragraph of Article 441/4, the penalty for the stipulated crime is imprisonment for a period of 10 years and a fine of 150,000 euros. This penalty is considered aggravated compared to the punishment of Article 441/1, and the reason for the severity is the evidentiary power that the law gives to public and official documents³⁸.

1-2- Aggravating original penalty:

Paragraph 03 of Article 441/4 stipulates that the penalty shall be increased to 15 years imprisonment, and a fine of 225,000 euros, if the stipulated crime in this article was committed by a representative of the public authority or a person charged with a public utility and that while he is performing his job, and this aggravating circumstance is caused by the type of employee who uses his job to commit a crime of breach of trust related to public documents. It is worth mentioning that the penalty is also increased if the crime constitutes a terrorist act according to Article 421/1/3 of the French Penal Code³⁹, and according to Article

421/1, the crime of Article 441/4 constitutes a terrorist act whenever it is intentionally committed in connection with groups formed with the aim of disturbing public order. According to Article 421/3 Paragraph 4, the original normal punishment is increased to 15 years imprisonment, and the aggravated penalty according to Paragraph 03 of the same article is increased to 20 years imprisonment.

2- The original penalties for forgery in the customary, banking or commercial documents:

The French legislator stated in Article 441/1, the second paragraph that the penalty for forgery in this article is imprisonment for a period of three years and a fine of 45,000 euros. The text does not mentioned the circumstance to aggravate it, just as Article 421/1 in Paragraph No. 03 did not mention Article 441 / 1 and accordingly, the penalty for the crime of forgery in customary, commercial, or banking documents is outside the scope of emphasis due to the circumstance of terrorist acts.

3- The original penalties for forgery in administrative documents:

Article 441/2 also included more severe penalties than those stipulated in Article 441/1, and they can be divided into regular original penalties and severe original penalties.

3-1-The Ordinary Original Punishment:

The normal original penalty according to the first paragraph of Article 441/2 is equivalent to imprisonment for a period of 05 years, and a fine of 75,000 euros.

3-2- Aggravating original penalty:

According to the third paragraph of Article 441/2, the penalty is raised to 07 years of imprisonment and a fine of 100,000 euros, if three circumstances are met. The first circumstance is that the forgery is committed by a representative of the public authority or assigned to a public utility during the performance of his job. In the sense of the violation⁴⁰, the text neglects the referral to the person who has a mandate or agency for the general election. The second circumstance that it is committed in a habitual manner and the third circumstance that it was committed in a way that facilitates the commission of the crime or causes the perpetrator not to be punished.

The penalty of this article is increased if the crime constitutes a terrorist act according to Articles 421/1 and 421/3, where the normal original penalty according to Paragraph 05 of Article 421/3 is increased to 07 years of imprisonment, and the aggravated original penalty is increased to 10 years in prison.

4- Attempting a crime:

The French legislator punishes for attempting previous crimes with the same penalties applied to the perpetrator who has completed the crime, as stated in Article 441/9 of the French Penal Code.

Accordingly, the French legislator punishes for attempting forgery, whether it constitutes an offense from describing a felony or describing a misdemeanor, and the reason for the punishment for attempting, whether it is obligatory in a felony and not punishable in a misdemeanor except by the text of the law, is that it constitutes an aggression that takes the form of a danger threatening the legal interests, and it is tantamount to possible aggression, as the law provides protection for these interests from the danger that is likely to eliminate them, and also does not require the completion of the material element in the crime of an act that leads to the achievement of a result so that the punishment is obligatory. However, the punishment can be imposed even if the result is not achieved because we are in the process of attempting a crime that may cause a potential risk to a legally protected interest⁴¹, and because the criminal intent is fixed for the perpetrator.

5- Complementary penalties applied to ordinary persons:

Articles 441/10 and 441/11 of the French Penal Code stipulate the complementary penalties that are applied to natural persons who have been found guilty of committing any kind of forgery knowingly and willingly⁴². In Article 6/133, the ban from exercising a public office or an activity of a professional or social nature in the manner stipulated in Article 131/27, exclusion from public procurement and confiscation of the thing that is used in the commission of the crime or resulted from it.

Article 441/11 stipulates a supplementary penalty that will be applied to every foreigner who commits a crime of forgery in the documents, and this punishment is to be prevented from entering the French territory under the conditions specified in Article 131/30 in a final way or for a period of 10 years or more.

6- Penalties for legal persons:

The French legislator has stipulated the criminal liability of the legal person for all forgery crimes in Article 441/12 of the Penal Code⁴³, which states: (Legal persons are held criminally accountable under the conditions stipulated in Article 121/2, and they are applied to them in the event of conviction for one of the crimes stipulated in this chapter the fine in the manner set forth in Article 131/38, and the penalties specified in Article 131/39).

With reference to Article 121/2, we find that it defines the conditions for accountability of the legal person, as it excludes the state in its first paragraph and regional groups in the second paragraph of this responsibility. The aim of that is particularly related to the role of the state in protecting collective and individual public interests because it is in charge of pursuing and punishing criminals⁴⁴, and stipulates the establishment of responsibility of legal persons in case they committed one of the crimes stipulated in the law or the system⁴⁵, and that it was committed by one of its members or representatives, or if it is committed on behalf of the legal person.

Accordingly, if the legal person commits the crime of forgery in the documents in accordance with these conditions, then he is criminally convicted and held accountable, and the penalties are applied according to Article 441/12, which are the penalties stipulated in Articles 131/38 and 131/39, as the first specifies the original penalties, while the second specifies the complementary penalties.

6-1- The original penalty for a legal person:

Article 131/38 stipulated the original penalty for the legal person, as it was stated in its first paragraph that: (The maximum fine applied to legal persons is equal to five times the maximum fine prescribed for natural persons...), and in the second paragraph of the same article⁴⁶, it says: (... In case that the legal person commits a crime in which the law does not stipulate a fine for the natural person, the fine imposed on him is 1,000,000 euros).

6-2- Supplementary punishment for a legal person:

Article 131/39 states that if the law stipulates a crime for which the legal person bears criminal responsibility, then one or more of the following penalties may be applied to him, and we mention some of them:

Dissolution if the penalty applied to a natural person is imprisonment equivalent to 03 years⁴⁷, and a final ban for a period of 05 years or more from the direct or indirect practice of one or more of his professional or social activities. In addition, the final closure or for a period of 05 years or more for institutions or for one or more than contracting establishments that are used to commit criminal acts, exclusion from public procurement in a final way or for a period of 05 years or more, etc.

Conclusion:

Through our research, we reached the following conclusion that France:

- Recognizes writing in electronic form as a tool that governments rely on in the performance of their duties and as a means for people to prepare prior evidence proving their rights in certain transactions that they entered into at the national or international level. It also attributes it the same legal authority established for paper documents, and therefore considers them as written evidence which is specified in the texts of civil evidence.

- Added to the writing in the electronic form the authenticity of the official papers if it fulfilled the conditions of its legal formality, as well as the authenticity of the customary papers if they contained an electronic signature with its legal terms.

- Added technical and criminal protection to writing in electronic form to ensure confidence in dealing with it.

We present to the French legislator the following suggestion:

- To set for forgery stipulated in Article 441/1 of the aforementioned Penal Code penalties with two limits, a minimum and a maximum, in line with the punitive singularity principle, which is based on abundant studies in criminology,

which is that every criminal is driven by factors leading him to commit a crime which are different from those of another criminal and even for the same criminal committing different crimes. Consequently, these factors may require the application of the minimum, and they may require the application of the maximum and the estimation of this is the competence of the judge, as he is the one who assesses the circumstances and the case and the determination of the two limits of the penalty is in itself enabling the judge to make his discretion.

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