Criminalizing forgery and the use of forged documents in light of the principle of legality in criminal law, according to the 2020 Algerian constitutional amendment.



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Abstract:

This research aims to study the constitutional basis for criminalizing acts of forgery and the use of forged documents in Algerian legislation, considering them as crimes that affect public trust and national interest. The legislator based this on well-established constitutional principles, foremost among them the principle of criminal legality stipulated in Article 43 of the Constitution, which affirms that there is no crime or punishment except by law, in addition to the constitutional foundations that give this criminalization the character of legitimacy, to ensure justice and equality before the law. However, the development of digital forms of forgery necessitates updating the legislative framework in accordance with technological developments, which was embodied in the enactment of Law No. 24-02 relating to combating forgery and the use of forged documents. The Constitution constitutes the supreme reference in determining the limits of criminalization and punishment, and constitutional review is an effective mechanism to ensure that penal texts do not exceed constitutional principles.

Keywords: *Forgery; Use of the forged; criminal legitimacy; Public trust; Constitutional* justice.

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Introduction:

The principle of legality in criminal law is one of the most important constitutional principles governing criminal policy in the modern state. There is no crime or punishment except by law. The crime of forgery and use of forged documents falls under the category of crimes that threaten public trust and undermine the credibility of official documents. This makes it a matter of concern for the Algerian legislator from both a constitutional and legal perspective.

The Algerian Constitution has been keen to protect the fundamental rights and freedoms of individuals and ensure trust in state institutions and their documents. Through its provisions, it enshrines the principles that frame criminalization and punishment and define the limits of public authority's intervention in infringing upon individual freedoms. Hence, the importance of studying the constitutional framework of this crime emerges, as it is a crime that undermines the principles of honesty, integrity, and trust in legal and administrative transactions. Based on the foregoing, the central question of this research paper is:

How did the Algerian constitutional founder regulate the crime of forgery and use of forged documents, and to what extent is it consistent with the constitutional principles dedicated to protecting rights and freedoms?

The importance of this topic lies in its intersection of constitutional and criminal law, highlighting the close relationship between protecting public trust and ensuring the principles of legality and criminal justice. It also clarifies the role of the constitution in defining the general framework for criminalizing acts that harm the public interest.

The research aims to achieve several key objectives, most importantly clarifying the constitutional basis for criminalizing this offense and demonstrating the extent to which penal legal texts align with constitutional principles. It also aims to analyze the relationship between protecting official documents and guaranteeing public trust as a constitutional principle.

To examine the constitutional basis for criminalizing this offense in Algerian legislation, this research paper is divided into two sections:

The first section addresses the conceptual and constitutional framework of the crime of forgery and the use of forged documents.

The second section examines the compatibility of penal texts related to forgery with constitutional principles.

Section One: The Conceptual Framework of the Crime of Forgery and Use of Forged Documents

Forgery and the use of forged documents are serious crimes that affect public trust and legal security. The 2020 constitutional amendment came to confirm the constitutional basis for criminalizing these acts. To understand its concept, we first address its definition and then determine its elements.

First requirement: The concept of forgery and use of forged documents.

The crime of forgery means changing the truth in a document or instrument in a way that causes harm, with the intention of using it in a way that suggests it conforms to the truth, whether it concerns official or customary documents, and by using material or moral means. As for the crime of using a forged document, it is an independent crime based on using or relying on a forged document with knowledge of its forgery, without requiring that the user be the perpetrator of the forgery. This distinction between the two crimes is based on the nature of the criminal conduct of each, as forgery targets the truth itself, while the use of a forged document targets public confidence in documents. The Algerian legislator has been keen to criminalize these two acts in order to protect public order, ensure the stability of transactions, and achieve general and specific deterrence, within the framework of respecting constitutional principles and legal guarantees.

First : Definition of forgery in criminal jurisprudence :

Forgery is defined as the deliberate alteration of the truth in a document, by one of the methods specified by law, that is likely to cause harm, with the intent of using it for its intended purpose. Legal scholars focus on three fundamental elements in this definition : **(Hegazi, 2019, p 141):**

- **Alteration of the truth**: whether wholly or partially, materially or morally;
- **Harm:** it is sufficient that it be potential, without requiring its actual occurrence;
- **Criminal intent:** the intent to forge and use the forged document to harm others or the public interest.

Legal scholars also distinguish between forgery of official documents and forgery of private documents, according to the nature of the document and its legal value.

Second: The legal concept of forgery:

The Algerian legislator merely outlined the forms and elements of the crime of forgery in the penal code. However, the concept of forgery, as derived from these texts, is any alteration of the truth in a document or instrument, using one of the methods specified by law, resulting in or potentially resulting in harm, and

committed with the intent to use the document for its intended purpose. The legal framework for the crime of forgery indicates that the legislator aims to protect documents and instruments, whether official documents issued by a competent authority or private documents. This is embodied in the penal code. From this, it can be concluded that forgery is **(Penal Code, 2024) :**

- Any alteration of the truth in a document or instrument, by any means specified by law, that is likely to cause harm and is committed with the intent to use the forged document or enable another person to use it.
- This criminalization aims to protect documents, whether official or private, with harm being considered a presumed or potential element in most cases.

The law concerning combating forgery and the use of forged documents provides the legal framework for the crime of forgery, especially in light of digital transformations and the development of means of proof, and accordingly, the concept of forgery is broadened to include **(Law No. 24-02: combating forgery and the use of forged documents, 2024):**

Any deliberate alteration of the truth in a document or record, whether paper or electronic, by any means whatsoever, that undermines public trust or causes harm, and is committed with the intent to use or rely upon it, constitutes forgery.

It is noteworthy that this law has broadened the scope of protection to include electronic documents and records; it has strengthened the link between forgery and the protection of legal security and public trust, and it has established the independent crime of using a forged document, which is committed as soon as the forged document is used with knowledge of its forgery, even if the user's participation in the original act of forgery is not proven.

Through this law, the Algerian legislator has adopted a broad concept of the crime of forgery, based on the alteration of the truth, the presence of criminal intent, and the potential for harm, while expanding the scope of criminalization to keep pace with technological developments, thus ensuring the protection of public trust and the stability of transactions.

Based on this, we find that the jurisprudential definition intersects with the legal concept of the crime of forgery in emphasizing that the essence of this crime lies in the assault on the truth and public trust, with the requirement of criminal intent and harm, which makes forgery a serious crime that necessitates special penal protection.

Third: The elements of the crime of forgery:

According to Algerian law, the crime of forgery is based on three elements:

1. The material element: This is achieved by altering the truth in a document, whether official or private, paper or electronic, using one of the methods specified by law. These methods include, most notably, total or partial alteration of the document, changes to essential data such as names, dates, and signatures, the inclusion of false information or the omission of true information that should have been included, and impersonation or forging the signature of another person. **(Law No: 24-02., 2024)**, The change must be likely to cause harm, but it is sufficient that it is probable.
2. The Mental Element: Forgery requires general criminal intent, meaning the perpetrator's knowledge of the alteration of the truth and their will to commit this act. It also requires specific intent, namely the intention to use the forged document or enable another person to use it.
3. The Subject Matter of the Crime: (the document), which includes official documents issued by an employee or competent authority, private documents issued by individuals, and electronic documents, records, and data.

Fourth: Examples of forged documents:

One of the most serious forms of the crime of using forged documents **(Aouda, 2025)** :

1. Submitting a forged document to an administrative authority.
2. Using a forged document in court, whether in a civil, criminal, or administrative case.
3. Using a forged document in financial or commercial transactions.
4. Submitting a forged document to prove a legal fact.
5. Using a forged electronic document.

It is clear from this that the legislator, after the issuance of Law No. 24-02, surrounded the crimes of forgery and use of forged documents with strict penal protection, by precisely defining their elements, confirming the independence of this crime, and expanding the forms of use to include electronic media, in order to protect public confidence and ensure legal security.

The second requirement: The constitutional basis for criminalizing forgery and the use of forged documents

This is based on firmly established constitutional principles, considering them crimes that undermine public trust and legal security, which are fundamental pillars of the rule of law. Documents of all kinds constitute a tool for proving rights and establishing obligations, and any infringement upon their integrity or validity negatively impacts the stability of transactions and the protection of rights and freedoms. The 2020 constitutional amendment enshrined a set of principles that

form the constitutional framework for criminalizing forgery, foremost among them the principle of the rule of law, which requires respect for legitimacy and the protection of the legal system from all forms of fraud and deception. **(Amendment, 2020) .**

The principle of protecting rights and freedoms, such as the right to property, the right to litigation, and legal security, are rights that are directly violated by forgery. This criminalization also finds its basis in the principle of criminal legality, which requires that criminalization and punishment be based on an explicit legal text, which is what the legislator adhered to when regulating forgery crimes.

First: The principle of criminal legality:

The principle of legality in criminal law is a fundamental principle that ensures there is no crime, punishment, or security measure except by a legal text in force at the time the act was committed **(Penal Code, Article 1, 2024)**. It protects individuals from the arbitrary actions of authorities by clearly defining criminal acts and their penalties in advance, and obligating the judge to a strict interpretation. It is a guarantee of individual freedom and the achievement of justice, the content and components of which are as follows **(Khoury, 2007) :**

1. **Legality of Crimes:** The law must clearly define the acts that constitute crimes.
2. **Legality of Punishments:** The law must specify the penalties prescribed for each crime, so that individuals know in advance the consequences of their actions.
3. **Legality of Procedures:** All procedures for investigation, prosecution, and trial are subject to the Code of Criminal Procedure to ensure a fair trial.
4. **Non-Retroactivity of Criminal Law:**

A new criminal law that punishes an act that was permissible at the time it was committed may not be applied, in order to guarantee the rights and freedoms of individuals, achieve legal stability, and restrict the judge's authority, thus setting limits on the judge's powers and making him an implementer of the law, not a legislator of it.

Constitutions and penal codes enshrine the principle of legality in criminal law, expressed in Article 1: "**There is no crime, punishment, or security measure without a law**" **(the Penal Code, Article 1).**

Second: The principle of equality before the law and the guarantee of a fair trial:

The principle of equality before the law guarantees that everyone is treated equally without discrimination, while a fair trial ensures the application of this

principle before the judiciary through procedures that guarantee the rights of the accused **(Youssef, 2006)**.

1. **The principle of equality before the law**: This means applying the law to everyone without exception or discrimination, whether citizens or foreigners, individuals or groups, and it takes many forms, including: equality before the judiciary and administration, equality in public rights and duties (such as taxes, holding public office), and equality in civil, political, and social rights.
2. **Guarantees of a fair trial**: It is a set of procedures that guarantee a fair trial for all parties, and its fundamental pillars are equality before the law, meaning the right of everyone to access the same courts under the same conditions without discrimination; the independence and impartiality of the judiciary, meaning that the courts are not influenced by other entities or by the personalities of the litigants; the right to defense as a guarantee for the accused (such as knowing the charges, the right to legal counsel, and a public and expeditious trial); and the presumption of innocence, where the accused is presumed innocent until proven guilty **(Amendment., 2020) .**
3. **Constitutional and legal protection**: This principle is enshrined in the Algerian Constitution and in international agreements (such as the International Covenant on Civil and Political Rights). It is a cornerstone of democratic legal systems, and constitutional bodies such as the Constitutional Court aim to monitor its implementation.
4. **The principle of protecting the public interest and trust in institutions**: This means that the state enacts laws to protect the fabric of society and its institutions from corruption, forgery, and aggression, with the aim of promoting administrative integrity and public trust **(Law No: 24-02. Article 1., 2024).**

This is achieved by criminalizing acts such as document forgery, perjury, and embezzlement of public funds, while emphasizing that project failure is not a crime if it occurs in good faith and within the framework of the law. This encourages officials to act freely in the public interest. The importance of this principle lies in the fact that **(Aouda, 2025, p. 240) :**

a. **Protecting the State**: Legislation aims to protect the stability and sovereignty of the state and to preserve public trust in its institutions and administrative systems.
b. **Enhancing Administrative Integrity**: Criminalizing crimes that harm the administration (such as corruption and forgery) maintains its proper functioning, protects public funds, and ensures the stability of transactions.
c. **Ensuring the Smooth Operation of Businesses:** The law criminalizes acts that harm public trust, such as perjury and counterfeiting, to protect public order. It also protects employees who make decisions in the public interest, even if these decisions result in unintentional errors. This reduces "defensive bureaucracy."

As for the applications of the principle in the legal field, we find them in:

- **Anti-corruption laws:** criminalizing embezzlement, bribery, and other offenses to protect public funds.

- **Penal Code:** criminalizing forgery of documents, records, and seals, perjury, and impersonation.

- **Changing the administrative culture:** shifting from criminalizing any administrative failure to punishing bad faith and gross negligence, to encourage officials to make bold decisions in the public interest (as seen in recent administrative reforms).

Second topic: The compatibility of penal provisions related to forgery with constitutional principles :

The penal texts regulating the crimes of forgery and use of forged documents are among the basic legal mechanisms for protecting public trust and legal security, given the serious effects of these crimes on the stability of transactions and the credibility of documents. However, the effectiveness of these texts is not measured only by their ability to deter, but also by the extent of their compatibility with the constitutional principles that constitute the supreme reference framework for criminal legislation. In this context, the principle of criminal legality stands out as a fundamental constitutional rule, which requires the legislator to define the criminal acts and their penalties clearly and precisely. Criminal policy in this area is keen to adhere to the guarantees of a fair trial and the rights of the defense, in accordance with the requirements of the rule of law. Therefore, studying the penal texts related to forgery in light of the constitutional principles allows for evaluating the extent of their compatibility with constitutional values, and highlights their role in achieving criminal protection of public trust, within a framework that respects constitutional legality and enshrines criminal justice.

First requirement: Regulating the crime of forgery in Algerian legislation :

Forgery and the use of forged documents in all their forms are serious crimes that affect the economy and social security. Originally addressed within the Penal Code, they were later addressed by Law No. 24-02, which now governs them as a separate law. This law covers the forgery of official, private, and electronic documents, currency, counterfeiting of seals, and perjury. It imposes harsher penalties, particularly on public officials, and includes preventative measures and deterrent punishments to combat this widespread phenomenon. The penalties are imprisonment and fines, with the possibility of exemption in cases of early reporting or assistance in identifying perpetrators. The two crimes are considered independent, each with its own specific elements (material and moral), despite their connection.

First: Objectives of the law regulating forgery and the use of forged documents:

Law No. 24-02 has become the body responsible for combating these crimes more effectively. It aims to contribute to ethical conduct in public life, enhance public trust, eliminate all forms of fraud used to obtain services and benefits of any kind, and address in a comprehensive and deterrent manner all societal imbalances resulting from forgery and the use of forged documents. The goal is to embody transparency and establish genuine and fair competition, as well as to enshrine equality, preserve the integrity of documents and records, ensure the stability of transactions, guarantee that state aid reaches its rightful beneficiaries, and define the crimes related to forgery and the use of forged documents, along with the applicable penalties **(Law No 24-02, 2024).**

Second: Types of forgery crimes:

Forgery and the use of forged documents take several forms, including **(Law No : 24-02 See Article 02, 2024)**:

- Forgery of official, customary, or electronic documents, and altering the truth in a document with the intent to cause harm.

- Counterfeiting money and financial instruments, i.e., imitating or falsifying the national currency.

- Forging state seals and stamps, which constitutes an attack on a symbol of public authority.

- Perjury and false oath.

- Impersonating officials or titles, and making false claims.

Third: The elements of the crime of forgery and use of a forged document:

The crime of forgery and use of a forged document consists of two essential elements: the material element and the moral element, which we summarize below:

1. **The material element (the act):** which is represented by changing the truth, whether materially (erasing, adding, changing data) or morally (proving false and incorrect facts), and the document, which must be (official, customary, electronic) that can cause harm or change the truth, and the use of the document, actually using the forged document or showing it to others.
2. **The moral element (special criminal intent):** represented by the intention to use the forged document, knowing that it is forged, to achieve a criminal purpose, which is known as “special criminal intent,” which is based on certain knowledge of the forgery, where it must be proven that the person who used the document was fully aware that it was forged, and the intention to use it to harm

others, that the goal of the use is to harm others or achieve an illegitimate benefit, even if the harm did not actually occur.

Fourth: Penalties prescribed for the crime of forgery and use of a forged document:

The law stipulates penalties involving deprivation of liberty (imprisonment) and financial penalties (fineries), which vary according to the nature of the document (official, customary) and its supporting evidence, which is represented in **(Law No : 24-02, 2024) :**

1. Forgery of documents and records, such as administrative documents and certificates, official and public documents, and private, commercial, or banking documents;

2. Forgery to obtain public subsidies, aid, and exemptions;

3. Counterfeiting currency and documents;

4. Counterfeiting seals, stamps, and marks, as well as perjury and false oaths;

5. Impersonating or misusing official positions, titles, and names.

It should be noted that the severity of the penalty for public officials stems from the fact that these offenses are committed in the course of their official duties.

Fifth: Prevention and Measures:

The new law aims to protect society and embody transparency. It includes preventive measures and deterrent penalties to combat the phenomenon. Forgery crimes are addressed through general judicial procedures, with a separate lawsuit specifically for forgery. Administrative authorities, public and private bodies and institutions must secure the documents and records they issue, particularly by establishing technical specifications that make forgery difficult, imposing controls on access to databases, and protecting sensitive data. Among the precautionary measures is also the cooperation of state agencies responsible for oversight and the exchange of information among themselves and with various public administrations, either directly or through the digital platform established for this purpose, or by utilizing databases related to these documents to verify their authenticity in a timely manner. **(Law No: 24-02, 2024) .**

Second requirement: Constitutional evaluation of penal texts :

The constitutional evaluation of penal texts is based on the extent to which the principle of legality in criminalization and punishment is respected, the extent to which the texts protect the rights of defense and a fair trial, and the extent to which the texts are consistent with international obligations to protect fundamental rights.

First: The extent to which the principle of legality in criminal law is respected in criminalization and punishment:

In the Algerian legal system, the principle of criminal legality in criminalization and punishment is one of the most prominent constitutional and legal guarantees that protect individuals from the abuse of state power, in accordance with the provisions of the Constitution, in consecrating the principle of criminal legality, as no act may be considered a crime nor any punishment imposed except in accordance with an explicit legal text issued before the act was committed. Criminalization and punishment are linked to a clear legislative text and are not left to the discretion of the executive authority or the judge alone. This principle requires that criminal laws be accessible, clear, stable, and not retroactive to the detriment of the accused (non-retroactivity of criminal law). It is one of the results of criminal legality necessary to protect the rights of individuals. The Constitution has strengthened the position of the principle of criminal legality through several constitutional aspects and the principle of legal certainty. The Constitution explicitly stipulates that penal sanctions are subject to the principles of legality and personal status within articles related to criminal justice.

This means that any punishment or criminalization can only be based on a law issued by the constitutionally recognized legislative authority. The constitution also stipulates the principles of legal certainty, which include the requirements of clarity of legal texts, legal stability and consistency, ease of access to the law and legitimate expectation of its application. This is closely related to the principle of criminal legality, because without a clear and stable law, individuals cannot know in advance whether their behavior constitutes a crime or not, and what the associated punishment is. Also, the constitutional amendment established the Constitutional Court instead of the Constitutional Council, which is the supreme body that monitors the constitutionality of laws, including respect for the principles of legality in criminal texts when they are issued or amended.

Second: The extent to which the texts protect the rights of defense and a fair trial:

The right to defense is guaranteed to the accused at all stages of criminal proceedings. This includes informing the accused clearly of the charges against them in a language they understand, allowing them to prepare their defense; the right to legal counsel; the right to an interpreter if necessary; the right to cross-examine witnesses, obtain their testimonies, and present evidence in their favor.

Regarding the right to a fair trial, the 2020 constitutional amendment strengthened guarantees of this right. The constitution guarantees the presumption of innocence, stipulating that every person accused of a crime is considered innocent until proven guilty in a fair trial that ensures all guarantees of defense. It also guarantees the right to legal aid for those with limited means, as stipulated by law, and prohibits imposing any penalty or taking any judicial action except in accordance with the law and pre-established procedures. Furthermore, it reinforces the rights of the defense and the principles of a fair trial through strong constitutional guarantees. The constitution emphasizes a fair trial with full guarantees of defense and requires that procedures comply with human rights and international treaties without compromising the principles of a fair trial. Finally, it guarantees the independence of the judiciary. By strengthening the independence of the judiciary, which is a fundamental condition for the accused to enjoy a fair trial, and in light of the above we find that the constitution lays sound constitutional foundations for these rights (presumption of innocence, the right to legal argument, guarantees of procedures), while in practical application some challenges appear that need constant strengthening in judicial and legal practice.

Third: The extent to which the texts are consistent with international obligations to protect fundamental rights:

Algeria is a party to several international agreements that serve as a fundamental reference when evaluating any penal legislation; the most important of these are:

1. **The Universal Declaration of Human Rights** : stipulates the protection of fundamental rights, including the right to a fair trial. Everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them. The Declaration also affirms the presumption of innocence and the right not to be convicted without due process of law. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence. No one shall be held guilty of a penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed **(See Articles: 10-11, 1948)**.
2. **The International Covenant on Civil and Political Rights**: The Covenant stipulates the protection of a set of fundamental rights, especially those related to the right to liberty and personal security, the right to a fair trial and guarantees of defense, the principle of criminal legality and non-retroactivity of penal laws, ...and other rights **(See Articles 9, 1966)** .

3. **The African Charter on Human and Peoples' Rights**: The African Charter on Human and Peoples' Rights also stipulates the protection of fundamental rights, including those related to a fair trial and judicial guarantees. Under the amended Algerian Constitution of 2020, ratified international agreements supersede ordinary law, making the harmonization of domestic laws with them a constitutional obligation **(See Articles 6-7:, 1981)** .

An examination of the consistency of legal texts with international obligations for the protection of fundamental rights reveals that the content of Law No. 24-02 fulfills the principle of legality in criminal law. It precisely defines the criminal acts and elements of forgery offenses, and stipulates penalties in written legislation. This aligns with international standards. Furthermore, the law does not impose harsher retroactive penalties and presupposes the application of the law most favorable to the accused. The protection of the right to a fair trial and the rights of the defense is, in principle, consistent with these principles. Although the law does not detail the procedures, its application is subject to the Code of Criminal Procedure. The Constitution enshrines several principles: the presumption of innocence; the right to defense; the right to legal counsel; public hearings; and the independence of the judiciary. These guarantees are consistent with international standards for a fair trial.

It can be said that Law 24-02 is consistent with international obligations to protect fundamental rights, but this consistency remains practically dependent on judicial application and constitutional oversight.

Conclusion:

Through this research, we have reached a number of conclusions, the most important of which are:

The constitution represents the supreme reference for all legal rules, and it defines the general framework for criminalization and punishment. While forgery and the use of forged documents are criminal offenses in origin, their constitutional basis rests on protecting the principle of public trust and ensuring the integrity of transactions. Therefore, the development of Algerian legislation in this area must remain consistent with constitutional values and principles that safeguard human dignity and guarantee justice. Accordingly, the most important conclusions reached are that:

- The criminalization of forgery and the use of forged documents is based on the principle of constitutional legality, which ensures the precise definition of criminal acts.

- The Algerian Constitution enshrines the principle of protecting public trust as a cornerstone of public order.

- The penal provisions related to forgery are generally consistent with constitutional principles, but they require development in light of digital transformations and the forgery of electronic documents.

Based on the findings, we propose the following recommendations:

1. The need to adapt penal codes to address electronic forgery and digital documents within a clear constitutional framework.
2. Strengthening the role of the Constitutional Court in monitoring the extent to which penal codes respect constitutional principles.
3. Organizing awareness campaigns about the seriousness of forgery as a crime that undermines trust in public and private institutions.

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