

THE CONCEPT OF PUBLIC ORDER AS AN OBJECTIVE CONSTRAINT ON EXERCISING MEDIA ACTIVITY IN LIGHT OF ARTICLE 3 OF THE ORGANIC LAW NO. 23-14 RELATED TO MEDIA



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Submission date: 12/03/2025 Acceptance date: 30/05/2025 Publication date: 30/06/2025



Abstract:

The exercise of media activity is considered one of the civil and political rights enshrined in various international agreements, constitutions, and internal legislations. However, this right is constrained by respect for public order, considering the latter as a restriction on practicing media activity in all its forms and components, in order to preserve the public interest. Accordingly, this study aims to clarify the meaning of public order, starting with its definition, legal nature, and historical development, then its elements, and its relationship to public morals, culminating in the areas of its embodiment, whether related to public interests or pertaining to private rights and freedoms, as stipulated in Article 3 of the Organic Law No. 23-14 related to media.

Key Words: Public Order; Public Security; National Sovereignty; National Identity; Public Interests.

ضابط النظام العام كقيد موضوعي لممارسة النشاط الإعلامي على ضوء المادة 3 من القانون
العضوي رقم 23-14 المتعلق بالإعلام.

ملخص: تُعد ممارسة النشاط الإعلامي من الحقوق المدنية والسياسية المكرسة في مختلف الإتفاقيات الدولية، والدساتير والتشريعات الداخلية، إلا أن هذا الحق؛ مقيد باحترام النظام العام؛ باعتبار أن هذا الأخير؛ يُعد قيداً على ممارسة النشاط الإعلامي بكل وسائله ومقوماته؛ حفاظاً على المصلحة العامة. وعليه؛ تهدف هذه الدراسة إلى؛ بيان المقصود بالنظام العام، بداية بتعريفه، طبيعته القانونية، مروراً بتطوره التاريخي، فعناصره، ثم علاقته بالأدب العامة؛ وصولاً إلى مجالات تجسيده؛ سواء المتصلة بالمصالح العامة، أو المتعلقة بالحقوق والحريات الخاصة؛ المقررة بموجب المادة 03 من القانون العضوي رقم 23-14 المتعلق بالإعلام.

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الكلمات المفتاحية: النظام العام؛ الأمن العام؛ السيادة الوطنية؛ الهوية الوطنية؛ المصالح العامة.

Le principe de l'ordre public en tant que restriction objective à l'exercice de l'activité médiatique à la lumière de l'article 3 de la loi organique n° 23-14 relative à l'information.

Résumé: حجم: 14 Times New Roman الخط

L'exercice de l'activité médiatique est considéré comme l'un des droits civils et politiques consacrés par divers accords internationaux, constitutions et législations nationales. Cependant, ce droit est limité par le respect de l'ordre public, ce dernier étant considéré comme une restriction à l'exercice de l'activité médiatique par tous ses moyens et composantes, afin de préserver l'intérêt général.

Par conséquent, cette étude vise à clarifier le sens de l'ordre public, en commençant par sa définition et sa nature juridique, en passant par son évolution historique, ses éléments et sa relation avec les bonnes mœurs, pour atteindre les domaines de sa concrétisation, qu'ils soient liés aux intérêts publics ou relatifs aux droits et libertés individuels, tels que stipulés par l'article 03 de la loi organique n° 23-14 relative à l'information.

Mots Clés: Ordre public ; Sécurité publique ; Souveraineté nationale ; Identité nationale ; Intérêts publics.

Introduction:

The freedom to practice media activity represents a cornerstone and fundamental element of democratic governance in any state. It is a constitutionally guaranteed right,¹ thereby establishing the inviolability of freedom of opinion and expression, including the freedom to practice media activity, whether written, audio, visual, or electronic. Guaranteed freedoms include the freedom of expression and creativity for journalists and media practitioners, the right of journalism professionals to access sources of information in accordance with legal mechanisms, as well as the right to establish newspapers and publications upon mere declaration, such as the right to establish television and radio channels, and electronic websites and newspapers, within conditions defined by law. These include the right to publish news, ideas, images, and opinions within the framework of the law, and to respect the fundamental values and constants of the nation, and its ethical and cultural principles, provided that the freedom to practice media activity is not used to infringe upon the dignity, freedoms, and rights of others....²

However, despite the paramount importance of the freedom to practice media activity, this freedom – like other freedoms – cannot be absolute, otherwise, it would devolve into chaos, carrying within it aggression and encroachment upon the interests of the state and the freedoms of others. This necessitates its organization and restriction by rules and limits defined by law. On this basis, various legislations have been keen to regulate the media activity sector so that the latter is not used as a means to commit crimes. The Algerian legislator has followed this approach. The freedom that media activity enjoys now has been attained after strenuous efforts and over long periods.

This organizational idea has become a legally independent entity in itself with the evolution of states and the rise of nations and systems. It is known among jurists and judges, and within the folds of laws and legislations, as public order. It has become more clearly defined with the development of the modern state and has kept pace with its developments and changes in almost all fields.

Most contemporary legal systems have sought to frame this idea and formulate it in a more organized manner until it has become one of the basic and fundamental principles upon which the legal, political, and social systems are based alike. The idea has become present in all branches of law, whether public or private.

¹ Article 34 of Presidential Decree No. 20-442 of Jumada al-Awwal 15, 1442 AH, corresponding to December 30, 2020, concerning the promulgation of the constitutional amendment, ratified in the referendum of November 1, 2020, (Official Gazette, No. 82, issued December 30, 2020)

² Articles 51, 52, and 54 of Presidential Decree No. 20-442, concerning the promulgation of the constitutional amendment.

While the constitutional founder has affirmed the freedom to practice media activity in the generality of its constitutions, internal texts, especially Laws No. 82-01¹ and No. 90-07² related to media, did not explicitly and clearly stipulate the limits and scope of public order except in general terms. However, Organic Law No. 12-05³ was clearer, and this was confirmed by Article 3 of Organic Law No. 23-14, related to media.⁴

Problem Statement:

Following independence, Algeria, like other nations, sought to ratify international conventions and treaties, starting with the Universal Declaration of Human Rights, then the International Covenant on Civil and Political Rights, and subsequently international African and Arab agreements, and others. This necessitated their inclusion in its constitutions, from the 1963 Constitution to the 2020 Constitution. Most Algerian constitutions have stipulated freedom of thought and expression as rights that cannot be restricted except by law for reasons primarily related to the preservation of public order and security, and national constants.

Based on the foregoing, the main research question can be posed: what extent can public order serve as a legal constraint on the regulation of media activity under Organic Law No. 23-14 on Information?

Methodology:

To achieve the objectives of this study, and to comprehensively understand and grasp the subject of the study, the descriptive and analytical approaches were adopted due to their suitability to the nature of the topic. The descriptive approach is used to define certain concepts such as public order and public morals, while the analytical approach is used when addressing the domains of public order.

Study Plan:

In order to answer the research question proposed above, and in accordance with the methodological plan above, the research paper has been divided into two sections. The first section serves as a quasi-conceptual framework in which we address the meaning of public order and public morals. The second section will address the analysis of the domains that the Algerian legislator has defined for public.

¹ Article 3 of Law No. 82-01 of Rabi' al-Thani 12, 1402 AH, corresponding to February 6, 1982, related to Media (Official Gazette, No. 6, issued February 9, 1982).

² Article 3 of Law No. 90-07 of Ramadan 8, 1410 AH, corresponding to April 3, 1990, related to Media (Official Gazette, No. 14, issued April 4, 1990).

³ Article 2 of Law No. 12-05 of Safar 18, 1433 AH, corresponding to January 12, 2012, related to Media (Official Gazette, No. 2, issued January 15, 2012).

⁴ Article 3 of Law No. 23-14 of Safar 10, 1445 AH, corresponding to August 27, 2023, related to Media (Official Gazette, No. 56, issued August 29, 2023).

THE FIRST TOPIC:

The Concept of Public Order.

The Algerian legislator, like much other legislation, did not define public order; rather, it sufficed to identify it as a purpose for administrative control and to clarify its elements. The position taken by the legislator is attributed to the flexibility of the concept of public order and its lack of fixedness and stability.

Accordingly, the study requires defining public order and its historical development in the first requirement, while addressing the legal nature of the rules related to public order and its relationship to public morals in the second requirement.

First requirement: Definition of Public Order and its Historical Development

Academic research, as is customary, tends to define the topics it addresses. Therefore, we will follow their approach to define public order in the first section, while its historical development will be addressed in the second section.

First section: Definition of Public Order

Due to the divergence and overlap of jurisprudential definitions, it is necessary to clarify the legislative definitions first. As for the jurisprudential and judicial definitions, they will be clarified secondly.

First: the legislative definition of public order.

The Algerian legislator, like most positive legislations, did not define the term public order, despite its occurrence in many legal texts, whether in public or private law, through the applications of legal issues. Even though the Algerian legislator, for example, when dealing with the provisions of obligations and contracts in its civil code – as it is the general law of private law – mentioned the term public order in many legal texts related to the violation of legal actions to the regulations of public order and public morals. Among these texts is that: "Algerian law shall be applied in place of foreign law that violates public order and public morals" ¹.

Thus, establishing a general rule stating the necessity of referring to the principles of Islamic Sharia in all transactions and matters addressed by its texts in wording and meaning, if there is no text in this law that can be applied. If there is no

¹ Article 24 of Ordinance No. 75-58 of Ramadan 20, 1395 AH, corresponding to September 26, 1975, amended and supplemented, including the Civil Code, (Official Gazette, No. 78, issued September 30, 1975). Amended and supplemented by Law No. 88-14 of Ramadan 16, 1408 AH, corresponding to May 3, 1988 (Official Gazette No. 18, issued May 4, 1988). Amended and supplemented by Law No. 05-10 of Jumada al-Awwal 13, 1426 AH, corresponding to June 20, 2005 (Official Gazette, No. 44, issued June 26, 2005). Amended and supplemented by Law No. 07-05 of Rabi' al-Thani 25, 1428 AH, corresponding to May 13, 2007 (Official Gazette, No. 31, issued May 13, 2007).

text, the judge rules according to permissible custom, and if there is no custom, then according to the principles of justice in accordance with the fundamentals of Islamic Sharia and consults the opinion of those who have previously exercised jurisprudence from scholars of Islamic Sharia. It is stipulated that the custom must be established and not contradict the principles of Islamic Sharia, public order, and public morals¹.

While the Algerian legislator mentioned public order and public morals in various legal texts and codes, the Jordanian legislator defined the scope, or vital areas, for the application of public order. It considers the following, in particular, to be of public order: in the area of personal status, such as provisions of legal capacity, guardianship, custodianship, curatorship, and inheritance, as well as provisions related to transfer, and the procedures necessary for disposing of endowments, real estate, and the property of the legally incapacitated, endowment property, and state property, laws of compulsory pricing, and all other laws issued for the needs of consumers in exceptional circumstances².

Secondly: Clarifying the Meaning of Public Order in Jurisprudence and Judiciary

1- Jurisprudential Definition of Public Order: Multiple definitions of public order have been given. Among these definitions is that of Dr. Hassan Kera, who defined it as: "The set of rules that relate to the fundamental interests of people, including the foundations and pillars upon which the structure and entity of people are based, such that the survival of this entity in sound condition is inconceivable without these interests being stable"³ Dr. Mamdouh Abdel Karim defined it as: "It is represented in those supreme interests of the country and the essential foundations of the system of government and the constitutional guarantees established for citizens at the level of conscience and living conscience related to spiritual, religious, and faith-based feelings"⁴ Dr. Ahmed El-Sayed Afifi also defines it as: "Everything related to public security or the supreme interest of society, whether it is a social interest represented in protecting and maintaining society, or a political interest represented in

¹ Content of Article 1 of the Yemeni Civil Code of 2002, which is the meaning of Article 1 of the Jordanian Civil Code of 1976, which entered into force on: January 1, 1977. Revised and updated until 2021.

² Article 163 of the Jordanian Civil Code of 1976, which entered into force on: January 1, 1977. Revised and updated until 2021.

³ Kira, Hassan. Introduction to Law. Al-Monsha'at Al-Ma'arif, Alexandria, 2000, p. 47.

⁴ Mamdouh Abdel Karim, Private International Law, 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2005, p. 194.

protecting the security of the state internally and externally, or an economic interest represented in prohibiting everything that would harm the economic situation"¹.

This means that the rules of public order may be customary rules or legal rules. This indicates that the jurisprudential disagreement regarding this matter is not limited to the content of public order itself but extends to the very basis of the idea. In this regard, the jurist Schwarzenberger states: "Examining the exceptions presented by proponents of the concept of public order reveals that they involve a fallacy. All that this concept reveals is that it refers to real and logical restrictions on the freedom of action of individuals." As for the jurist Belffot, he defined public order by its purpose, saying: "The purpose of control is a negative factual state, and all its actions aim to prevent disturbance"².

2- Judicial Definition of Public Order: The judicial definition of public order can be inferred from the decision of the Administrative Chamber issued by the Council of State of Algeria on January 27, 1984, stating: "...By the term public order, we mean the set of fundamental rules to protect peace and social security that must be maintained, in order to enable every resident across the nation to utilize their legal capacities within the limits of their legitimate rights in their place of residence, considering that, whatever the matter, it is an unstable concept that evolves with the evolution of times and social circles..." It is noted about this definition that it is limited to social peace, meaning it is very narrow, thus excluding several areas related to public order³. As for the Egyptian Court of Cassation, it defined the concept of public order by saying: "Public order includes the rules that aim to achieve the public interests of the country, whether from the political, social, or economic aspect, and which relate to the natural material and moral condition of an organized society in which they prevail over the interests of individuals"⁴.

Hence, it includes the legal rules that regulate the interests that directly control society more than individuals. This necessitates that all persons respect public order and work to entrench it, and they are not entitled to violate it by agreements among

¹ Ahmed El-Sayed Afifi, (General Provisions of Publicity in the Penal Code), PhD Thesis, Ain Shams University, Egypt, 2001, p. 71.

² El-Dakdouki, Helmy. Judicial Control over the Internal Legality of Administrative Control Actions. Dar Al-Matbou'at Al-Jami'iya, Alexandria, 1989, p. 51.

³ Nouara Triyaa, "The Development of the Elements of Public Order," Journal of Rights and Freedoms, Mohamed Khider University of Biskra, Volume 1, Issue 2, December 15, 2013, pp. 93-94.

⁴ Asma Balouh, "Applying the Concept of Public Order in the Field of Conflict of Personal Status Laws," Sawt al-Qanoon Journal, Khemis Miliana, Volume 1, Issue 2, October 10, 2014, pp. 263-264. Quoting: Muhammad Hamed, The Effect of Public Order in Limiting Resorting to Arbitration Agreement, Egypt, Dar Al-Nahda Al-Arabiya, 2012, p. 18.

themselves, even if it includes private interests for them. On the other hand, defining the foundations upon which public order is based is worthy of protection and is not limited to the legislator alone. The judge also has a prominent constructive role in this area. Through the concept of public order, the judge can keep pace with social, economic, political, and moral developments by introducing new elements under the umbrella of public order that is worthy of protection to expand the content of the concept of public order.¹

Based on the foregoing, it appears that the concept of public order as a constraint on the practice of media activity is based on hesitation between restriction and adopting the idea of balance. Therefore, and to address this problem, the state, as a political and social entity, has a duty to lay the foundations for an integrated system of rights and duties in the field of practicing media activity. However, reaching this integrated system constitutes a fundamental challenge in working to find a precise and fair balance between the freedom to practice media activity and the interests of society and individuals.²

It is worth mentioning that the concept of public order is a relative concept, given its flexible concept that varies from one society to another, from one time to another, and from one state to another. It is based on the fact that they are imperative rules that individual will has no power over; that is, no authority or ability to violate them. They are also relative, flexible, and evolving rules whose content varies according to time, place, and the society in which they are applied³, as they are connected to the legal reality of the group. Since the connection of the concept of public order is fundamentally centered on the nature of collective interests and values, the latter requires dynamism and change according to those targeted interests and in proportion to the obstacles and crises that may hinder their achievement. The rules of public order are also general and comprehensive rules, as they include all branches of law, whether public or private. We find it clearly in private law through the formal rules that must be respected under penalty of nullity⁴.

¹ Abdel Rahman Azzawi, (Administrative Licenses in Algerian Legislation), Dissertation for obtaining a State Doctorate Degree in Public Law, Faculty of Law and Political Science, University of Algiers, Discussed on: June 2, 2007, p. 20.

² Abdel Samad Laagab, (International Responsibility for Offending Heavenly Religions), PhD Thesis in Law, Public Law Department, Mouloud Mammeri University, Tizi Ouzou, Academic Year: 2015/2016, pp. 45-46.

³ Fatiha Qariqar, Public Order and International Commercial Control, Thesis to Obtain a PhD Certificate, Faculty of Law and Political Science, University of Ben Youssef Ben Khedda, Algiers 1, 2016/2017, p. 26.

⁴ Lias Ait Shaalal, Limits of Public Order and Public Morals in the Field of Intellectual Property, Thesis to Obtain a PhD in Science, Specialization: Law, Faculty of Law and Political Sciences,

It should also be noted that public order in private international law differs in its concept from public order in national law. The former works to frame and formulate the idea of considering and respecting the rules, regulations, and restrictions imposed by the cultural and civilizational heritage, the legislative paths that states take, and the economic interests they approve, which preclude any rule contrary to them. In contrast, we find that the latter operates within a domestic framework through which considerations of major importance are protected by imperative rules that preclude any private will contrary to them. Thus, it regulates the pattern of living within society within a specific time frame¹.

Second section: Development of the Concept of Public Order and its Elements.

The second branch discusses the historical development of the concept of public order firstly, and then addresses the traditional and modern elements of public order secondly.

Firstly: Historical Development of Public Order.

Public order is as old as humanity itself, beginning with what is known in it as family and social organization. It gradually developed in the formation and organization of the family, then the clan, then the tribe, or the clan, then the state. Public order appeared in ancient times and coexisted with all historical stages, but it changed and evolved, and its concepts and manifestations differed from one period to another, until it had legal applications in the modern era. Some jurists believe that the concept of public order began to emerge in the nineteenth century AD in Europe, when there was a need to find a set of unified legal rules in each state that protect the supreme values and interests of the state, in an effort to curb personal initiatives and contractual freedoms by imposing the rule of law. The term public order was then used as a deterrent and a legal tool for social control².

Public order arose and grew, with respect to contemporary legal jurisprudence, within the embrace of social principles aimed at sanctifying public benefits at the expense of private benefits. Considering that individualism was at the forefront of embodying the freedom of individuals and glorifying them at the expense of public interests, consequently, public order was not prevalent during the stage of the dominance of this doctrine, which is based on prioritizing the freedom and interest of

Mouloud Mammeri University - Tizi Ouzou -, Discussed on: 6/7/2023, pp. 19-22. See also: Fatiha Qariqar, Previous Reference, pp. 38-42.

¹ Ali Kahloon, Commentary on the Journal of Civil and Commercial Procedures, Publications of the Al-Atrash Complex for Specialized Books, Tunisia, 2016, p. 455.

² Edda Alian, The Concept of Public Order and Freedom of Contract in Light of Algerian Law and Islamic Jurisprudence, Thesis Submitted to Obtain a PhD in Private Law, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, Algeria, Academic Year: 2015/2016, pp. 19-21.

individuals. The principle of the rule of will is the offspring of individualistic philosophy, which spread and its principles were completed at the beginning of the nineteenth century, which contributed to the spread of human freedom and natural inclinations, and the great expansion of economic freedom activity. The use of this term flourished, and its employment became widespread in various branches of law, since the issuance of the French Civil Code in 1804.¹

Secondly: the elements of public order.

1- Traditional Elements of Public Order: Most jurisprudence tends to limit the traditional elements of public order to three elements:

a- Public Security: Public security, or public safety, as one of the elements of public order, means working and striving to achieve a kind of localization of stability, establishment of security, and extending protection to individuals in all aspects of their lives, against what may threaten them from crimes and assaults in public places. The meaning of public security also includes ensuring the preservation of individuals against the risks of natural disasters that may threaten them.²

b- Public Health: Public health within the framework of public order means: "The protection that is put in place to safeguard citizens from threats that may target their health. These threats include various diseases and epidemics that necessitate the development of protocols, measures, and necessary procedures to prevent them, with the aim of protecting public order by maintaining public health, especially with the density, overcrowding, and congestion that modern societies are witnessing, which represents a suitable environment for the spread of epidemics, transmission of infection, and their spread among them, posing a threat to public order".³

c- Public Tranquility: The term public tranquility is synonymous with the term public comfort or serenity, and the essence of the idea revolves around considering this tranquility among the material elements of public order. It can be defined as: "The process of confronting forms of noise that cause confusion and disturbance to public peace, which result from loudspeakers, sound recordings, car horns, and the noise generated by the shouts of vendors who roam the streets with loudspeakers for

¹ Abdelkader Allag, "The Problematic of Defining a Concept of Public Order," Volume 10, Issue 4, Al-Meyar Journal, University of Tissemselt, January 29, 2020, p. 3.

² Abdel Wahab, Muhammad Rifaat. General Theory of Administrative Law. Dar Al-Jami'a Al-Jadida, Alexandria, 2012, p. 210.

³ Saeed Suleimani, "Public Order as a Goal and Constraint on the Activity of Administrative Control," Algerian Journal of Legal, Political and Economic Sciences, Volume 49, Issue 3, University of Ben Youssef Ben Khedda, Algiers, September 15, 2012, p. 98.

the purpose of attracting customers, in addition to the noise resulting from the sounds of machinery inside workplaces and the noise from factories".¹

2- Modern Elements of Public Order: With the development in needs that have emerged and grown with the emergence and growth of the welfare state, new fears associated with it sometimes push the control authorities to intervene without being able to justify their intervention by protecting one of the aforementioned traditional elements. Hence, modern elements emerged, some of which we will limit ourselves to by way of example, not limitation, due to their multiplicity and complexity:

a- Environmental Public Order: The Algerian legislator did not define the environment, but it referred to its components. The environment in Algerian legislation consists of living and non-living biological materials: generally represented in essential things such as air, water, and land, plants and animals, including genetic heritage, and forms of interaction between these resources, including places, landscapes, and natural landmarks.² The right to a healthy environment is one of the rights that the state works to preserve.³

b- Aesthetic or Scenic Public Order: Aesthetic public order is a matter of debate among jurists. One side believes that what is meant by splendor and beauty is: "The artistic form or aesthetic character that evokes in the souls of passersby when they see it a kind of joy and pleasure." Others believe that it is: "That system that aims to preserve the delightful quality of splendor and beauty of the environment in order to preserve the tranquility and psychological comfort of individuals residing in that environment".⁴

c- Economic Public Order: It can be said that the element of economic public order is what imposes on the controlling authorities intervention in it to ensure its preservation, by regulating some of the relationships included in the economic field through the principle of infringing public order for economic purposes.⁵

¹ Saji Muhammad Abbas Al-Fadhli, The Role of Environmental Administrative Control in Protecting the Beauty of Cities, Comparative Study, Arab Center for Scientific Studies and Research for Publishing and Distribution, Cairo, 2017, p. 77.

² Article 4/7 of Law 03-10 of Jumada al-Awwal 19, 1424 AH, corresponding to July 19, 2003, related to Environmental Protection within the Framework of Sustainable Development, (Official Gazette, No. 43, issued July 20, 2003).

³ Articles 21/2 and 64 of Presidential Decree No. 20-442 2020, related to the promulgation of the constitutional amendment.

⁴ Maryam bin Abbas, "Modern Elements of Public Order in Administrative Law," Al-Bahith Journal for Academic Studies, University of Batna 1 Haji Lakhdar, Batna, Volume 7, Issue 1, January 22, 2020, p. 199.

⁵ Maryam bin Abbas, Previous Reference, p. 201.

This development that has befallen the concept of public order has not only affected economic activity, but has also affected all fields, including the field of audiovisual media through radio and television stations. The reason for this is that in the past, the state's monopoly of audiovisual communication activity through radio and television stations was the rule, but now that is no longer acceptable, and this field has moved from monopoly to freedom. The private sector has entered as a key partner in this field, and the implication of this is that the private sector will have a major role in achieving media democracy.¹

Second requirement: The Legal Nature of Rules Related to Public Order and its Relationship to Public Morals.

The legal nature in legal studies is of paramount importance. Therefore, it is necessary to address the legal nature of the rules related to public order in the first branch, and to clarify the relationship of public order to public morals in the second branch.

First section: The Legal Nature of Rules Related to Public Order

The legal rules related to public order are characterized as imperative rules that may not be violated by agreement; otherwise, such agreement shall be null and void *ab initio*. Absolute nullity may be invoked by anyone with an interest, and there is no specific person for whose benefit this nullity is established, in contrast to relative nullity, which is established for the benefit of a specific person with the intention of protecting him alone, and therefore no one other than this person may invoke it. This is because the characteristic of obligation in imperative rules is a clear characteristic that raises no doubt, considering that these foundations, according to their meaning, cannot be unanimously agreed upon to contradict them. As for flexible rules, they are those foundations upon which unanimous agreement to contradict them is permissible. However, it is necessary to emphasize the characteristic of obligation in supplementary rules as well. These rules are not optional; the parties may exclude them only in the presence of another legal arrangement other than the arrangement they stipulate.²

¹ Essam Ibrahim Khalil Ibrahim, Legal Organization and Control over Radio and Television Stations, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 157.

² Saeed Saif Al-Sabousi: "Public Order and Public Morals and Their Impact on the Implementation of Arbitration Awards According to the Provisions of the UAE Civil Procedures Law No. 11 of 1991 and its Amendments, A Comparative Study," Journal of Legal and Social Sciences, Ziane Achour University, Djelfa, Volume 4, Issue 2, June 2019, p. 358.

Second section: Relationship of Public Order to Public Morals.

Public morals - moral public order - are considered more closely related to the term public order. The jurist Al-Sanhouri defines it as: "The legal foundations that are considered of public order are rules intended to achieve public benefits, whether political, social, or economic, and related to the supreme ideals of society and are superior to personal interests." As for public morals, they are: "A set of ethical foundations that people are obligated to follow, according to a moral code that regulates their social dealings."¹ Despite the attempt to distinguish between them, on the pretext that public morals are based on the foundations of supreme ideals, religion, custom, habits, and traditions.²

By examining the definitions of public order and public morals, the jurisprudential disagreement about the two terms becomes apparent: whether they are distinct from each other, or whether they are the same concept. This has caused ambiguity and lack of clarity in defining the concept of public morals, given the French jurisprudence's recognition of the difficulty of doing so, especially since judicial interpretations, in the solutions they announced, stipulated public morals in some instances and then changed their view in similar decisions to stipulate public order.³

In general, jurists believe that: Public order aims to establish order in society, maintain its entity, and guarantee its development and progress. While public morals, its goal is ethical idealism aimed at elevating man to perfection. This is with regard to the scope of each. As for the degree of obligation, the rules of public morals are more binding because they are among the beliefs and creeds of society, and its members believe in the necessity of adhering to them. While the rules of public order are of a lesser degree due to the requirements of interest. As for the entity that establishes either of them, public order is established by the state and imposed by law, in contrast to public morals, which are established by the general conscience in society.

In contrast, we find another jurisprudential view that believes that the two terms have the same meaning. Public morals are part of public ethics and are closely related to the supreme interest of society, which makes them a rule of public order. They believe that illicit sexual relations and agreements to pay money in exchange for engaging in them or continuing them are void because they violate both public order and public morals. Nullity is established to protect a supreme interest, which lies in preserving the family, which is the nucleus of society, and warding off vice

¹ Abd al-Razzaq Ahmad al-Sanhouri, The Mediator in Explaining Civil Law, Part 1, 2nd Edition, Dar Al-Nahda Al-Arabiya, Egypt, 1964, pp. 399-400.

² Muhammad Sabri Al-Saadi, (Explanation of the Algerian Civil Law), General Theory of Obligations, Part 1, Contract and Unilateral Will, Dar Al-Huda, Algeria, 1993, p. 218.

³ Fatiha Qariqar, Previous Reference, pp. 22-23.

from individuals, not only to preserve morals, but to protect members of society. Violating public morals is a primary transgression, or a transgression and encroachment of the first degree, which in reality is a transgression and violation of public order. This means that public morals are only a part of public order; indeed, we can say that they are its first threshold.¹

THE SECOND TOPIC

The Legal Scope of Public Order Domains in Organic Law No. 23-14.

The difficulty in defining the concept of public order in the field of media activity lies in the fact that it relates to the ideas, opinions, and beliefs that are disseminated among members of society. This gives the state the right to intervene to regulate the dissemination of these ideas and opinions in a manner that does not cause a serious rift in the fabric of society or shake its stability due to the impact of the disseminated ideas and opinions, which may affect the stability of society.

Given the sensitivity and specificity of the topic, it is necessary to clarify the legal scope, according to Article 3 of Organic Law No. 23-14 related to media mentioned above, for the domains of public order related to public interests in the First requirement, and to discuss the domains of public order related to private rights and freedoms in the second requirement.

First requirement: Domains of Public Order Related to Community Interests

The constitutional founder authorized the freedom to practice media activity within the framework of the provisions of the Constitution, enshrining it with certain legislations, such as the organic law, legislation, and regulations in force, and while respecting the Islamic religion, other religions, the national religious reference, national identity, the constants and religious, ethical, and cultural values of the nation, as well as national sovereignty and territorial unity, in embodiment of the requirements of public order, security, and national defense, and in order to preserve the components and symbols of the state, which is conventionally known as the sovereign character of the state. This will be addressed through two sections.

First section: Respect for the Islamic Religion, Other Religions, and the National Religious Reference.

While freedom of opinion and expression is a right guaranteed by law, and by international forums concerned with human rights, the deeply rooted religious beliefs of peoples, as well as the religious symbols of these beliefs, are not an open field for

¹ Fatiha Qariqar, Previous Reference, pp. 29-31.

disparagement and contempt under the pretext of freedom of expression.¹ A people fortified by its deep-rooted spiritual values, and preserving its traditions of solidarity and justice, is confident in its ability to effectively contribute to cultural, social, and economic progress in the world of today and tomorrow.²

Therefore, the Algerian legislator criminalized anyone who insults the Messenger of God, peace and blessings be upon him, and the rest of the prophets, or who mocks what is necessarily known of religion, or any of the rituals of Islam, or by drawing, declaration, or any other means.³ Crimes of sabotage, damage, desecration of the Holy Quran, or demolition and desecration of places of worship are also considered crimes violating public order,⁴ as well as in relation to cemeteries and the sanctity of the dead.⁵ The Algerian legislator may have intended by the national religious reference what is conventionally known in Algeria, such as the Maliki school of jurisprudence, the Ash'ari creed, and the Junaidi Sufism.

Second section: The Sovereign Character of the State.

The state security and defense secrets will be studied(first) and then the economic interests of the country will be touched upon(Second).

Firstly: State Security and Defense Secrets.

There is no doubt that defense affairs are among the most sensitive matters in the life of the state. Hence, considerations of public interest preclude the disclosure of military secrets, so that this information does not fall into the hands of enemies, with the exception of matters announced by the state authorities, or information that the competent authorities have allowed to be published within the limits of what they have permitted. It is also prohibited to broadcast secrets related to foreign and domestic policy, considering that broadcasting and transmitting any information on this matter may harm the supreme interest of the country.⁶ Also, all components and

¹ Mustafa Fahmy, Khaled. Freedom of Opinion and Expression. 1st ed., Dar El-Fikr El-Jami'i, Alexandria, 2009, p. 52.

² From the Preamble of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

³ Ordinance No. 66-156, dated: Safar 18, 1386 AH, corresponding to June 8, 1966, including the Penal Code. (Official Gazette, No. 49, issued June 11, 1966). Amended and supplemented by Article 144 bis 2 of Law No. 01-09 dated June 26, 2001, No. 34 of 2001.

⁴ Ordinance No. 66-156, including the Penal Code. Amended and supplemented by Articles 160 and 160 bis 3 of Law No. 82-04 dated February 13, 1982, No. 7.

⁵ Articles 150 to 154 of Ordinance No. 66-156, including the Penal Code. Amended and supplemented by Law No. 82-04 dated February 13, 1982, No. 7.

⁶ [6] Ismail Belhoul, Freedom of Audiovisual Media and the Restrictions Thereon in Algerian Law, Thesis submitted to obtain a PhD in Science, Specialization: Rights, Branch of Media Law, Faculty of Law and Political Science, Djilali Liabes University, Sidi Bel Abbes, 2018/2019, p. 90.

symbols of the state are considered to be of public order; intentionally and publicly assaulting, tearing, distorting, or desecrating the national flag.¹

In addition to that, there is the preservation and support of national sovereignty and independence, as well as the preservation and support of national identity and unity, in a manner that preserves the protection of the fundamental freedoms of the citizen, the social and cultural prosperity of the nation, and work to promote social justice.²

It is worth mentioning that this commitment, as a general principle, is considered one of the permanent tasks entrusted to the People's National Army in preserving national independence and defending national sovereignty. It also undertakes to defend the unity of the country, its territorial integrity, and protect its land, air, and sea domains.³ It is also worth noting that this commitment is emphasized on the President of the Republic, who embodies the unity of the nation and ensures in all circumstances the unity of the national territory and national sovereignty.⁴

Secondly: Economic Interests of the Country

Given the evolution of the fields and concerns of the contemporary state, with the increasing scope and expansion of the authority of control, this has led to the birth of new general foundations, represented in economic public order, by expanding the growing importance of economic problems and their connection to general development, which leads the state to direct and diversify its legal domains, prompting some jurists to adopt the existence of economic public order, such as "Repertoire" and "Bordeaux." The latter says: Public order transcends the scope of calm and security for residents, being influenced by economic transactions. In the name of public order, the control authorities today are granted the right to set specific economic purposes and goals, such as wages, prices, and supply.⁵

The Algerian people resolved to achieve fateful victories that allowed the restoration of their sovereignty and national wealth, and the building of the state to serve them alone, as well as strengthening the legitimacy of the state that exercises its

¹ [7] Ordinance No. 66-156, including the Penal Code. Amended and supplemented by Article 160 bis of Law No. 82-04 dated February 13, 1982, No. 7.

² Article 9/1/2/3/4 of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

³ Article 30 of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

⁴ Article 84 of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

⁵ Nouara Triyaa, Previous Reference, pp. 102-103.

powers in the service of national independence, away from any external pressure,¹ by encouraging the building of a diversified economy that values all the country's capabilities, natural, human, and scientific, and protecting the national economy to address any kind of manipulation, theft of public funds, or bribery of employees, whether positive or negative bribery, or illicit trade, or abuse of the right, or illicit control and confiscation, or smuggling of funds to and from within the country.² This is embodied through a series of laws aimed at limiting or reducing economic corruption crimes.³

From the foregoing, it is evident that this commitment is considered a culmination of the Algerian people, under the leadership of the National Liberation Front and the National Liberation Army, of the sacrifices made by the best sons of Algeria in the people's liberation war for independence, and established a modern state with full sovereignty.⁴

Consequently, these measures include all areas of the state, as they have made the economy, security, and defense inseparable. In addition to not exceeding the hopes, aspirations, and available capabilities, thus, the necessity of planning for the present and the near and distant future emerges, taking into account international and regional changes, and consequently the responsibility of the political leadership.⁵

¹ From the Preamble of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

² Article 9/7/8 of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

³ Among these laws: - Law No. 06-01, dated: Muharram 21, 1427 AH, corresponding to: February 20, 2006, related to the Prevention and Combating of Corruption, Official Gazette, No. 14, issued March 8, 2006, amended and supplemented by Ordinance No. 05-10, dated: March 26, 2010, and by Law No. 11-15, dated: August 2, 2011, Official Gazette, No. 44, of 2011.

- Presidential Decree No. 06-414, dated November 12, 2006, defining the model for the declaration of assets, Official Gazette, No. 74, issued November 22, 2006.

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⁴ From the Preamble of Presidential Decree No. 20-442 of 2020, related to the promulgation of the constitutional amendment.

⁵ Siham Rahal, Limits of the Right to Freedom of Expression in International Human Rights Law, Thesis submitted to obtain a Master's degree in Legal Sciences, Specialization: International Human Rights Law, Department of Legal Sciences, Faculty of Law and Political Science, الحاج لخضر University - Batna, 2010/2011, p. 112.

This commitment - protecting the economic interests of the country - as previously mentioned, is one of the modern elements of public order.

Second requirement: The Legal Scope of Public Order in the Domains of Private Rights and Freedoms.

The domains of public order related to private rights and freedoms are numerous, ranging from what is related to human dignity, which will be addressed in the first section, or what is related to the proper administration of justice, which will be addressed in the second section.

First section: What is Related to Human Dignity

Human dignity is defined as: "A person's respect for themselves; it is a feeling of honor and personal value that makes them affected and pained if their worth is diminished, and it is also honor." Perhaps this linguistic definition is one of the closest definitions and concepts that befit the subject of our study, due to its close relationship with the spirit of the law. We can only say that the concept of human dignity is one of the purely legal concepts, and this is evidenced by the attention that the term has received through its widespread use at both the national and international levels.¹

The jurisprudential debate between authority and the exercise of freedom is considered one of the most important manifestations of administrative control in which the intensity of disagreement is evident. It is the area in which some see that authority should not be a central pursuit and a primary goal, while others see it as a guarantee that ensures the stable exercise of freedoms. Hence, the necessity of reconciling authorities emerges, with their defined goal centered on achieving the public interest, organizing freedoms and restricting their release so that chaos does not prevail. In this way, the true relationship between public freedoms and administrative control emerges, which can be summarized in a relationship of integration and compatibility. Freedom should not be exercised in an absolute manner, and control should not be employed arbitrarily.²

Second section: What is Related to the Proper Administration of Justice.

The publication of news or documents affecting the course of the preliminary investigation of crimes will be studied(first), touching on the publication of the content of the discussion of the secret judicial sessions(second) and then on the publication of reports on the pleadings related to the case of people (third).

¹ Maryam bin Abbas, Previous Reference, p. 205.

² Lias Ait Shaalal, Previous Reference, pp. 23-24.

Firstly: Publishing News or Documents that Affect the Course of Preliminary Investigation in Crimes.

Considering that the preliminary investigation is conducted in secrecy, publishing the facts of the preliminary investigation, such as publishing the statements of witnesses, or publishing the material evidence related to the accused resulting from inspection and search, may have an impact on the psychology of witnesses and public opinion.¹

Secondly: Publishing the Content of Discussions of Confidential Judicial Hearings.

Publicity of court hearings is considered one of the fundamental principles, the violation of which entails nullity. It means the necessity of enabling any person of their right to witness trial procedures without restriction or impediment, including announcing the schedule of cases, calling witnesses and litigants, and the judgment issued in their settlement, with the exception of judges' deliberations.²

Thirdly: Publishing Reports on Pleadings Related to the Status of Persons.

As a result of the harm that may befall the family and society in general, and in protection of the public interest, it is prohibited to publish reports that include pleadings about the status of persons, such as pleadings of personal status and abortion.³ Organic Law No. 23-14 above also stipulates, in addition to that, the citizen's right to complete, impartial, and objective information, as well as the pluralistic nature of currents of thought and opinions.⁴

It is worth mentioning that among the ethics of practicing journalistic activity, and in strict adherence to the rules of professional conduct and ethics, is what is related to public order, such as glorifying colonialism, or offending national memory and the symbols of the liberation revolution, publishing or broadcasting false or biased news, praising, directly or indirectly, and calling for racism, terrorism, fanaticism, violence, hate speech and racism, exploiting positions for private or material purposes, promoting or broadcasting posters, or uttering, or signs, or immoral insinuations, or those that affect the feelings of the citizen, and infringing on the image of women, their honor and dignity ...⁵ It should also be noted that among

¹ Saeed Belharch, Crimes Related to the Practice of Media Activity, Master's thesis in Criminology and Criminal Sciences, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, 2004/2005, p. 87.

² Ismail Belhouli, Previous Reference, p. 137.

³ Saeed Belharch, Previous Reference, p. 107.

⁴ Article 3 of Law No. 23-14 related to Media.

⁵ Article 35 of Law No. 23-14 related to Media.

public order is what has the characteristic of public morals, such as preserving the confidentiality of the preliminary and judicial investigation.¹

Conclusion:

Through this study, which addressed the concept of public order as an answer to a problematic, beginning with defining the concept of public order; its definition, historical development, as well as its traditional and modern elements, and its relationship to public morals, leading to its domains in Organic Law No. 23-14.

As a general conclusion, public order is considered one of the restrictions that regulate media activity in a manner that is consistent with the values, traditions, and customs of society. This is because the rules of public order are flexible rules that change according to place and time, yet they are binding rules that cannot be changed by the will or consent of legal persons. They are of a constitutional nature in their objective meaning, and therefore they only change with legislation imposed by economic, social, or cultural circumstances, or by a revolutionary act undertaken by society as a whole or a part of this society. We conclude with a set of results and some recommendations, which we summarize as follows:

First: Results

- Freedom to practice freedom of opinion and expression is considered one of the civil and political rights enshrined in various international conventions, heavenly religions, and various constitutions and domestic legislations.
- Definitions of public order have varied due to its flexibility, the difficulty of defining it precisely, and the evolution of its elements throughout history.
- There is a relationship between public order and public morals.
- The elements of public order differ from the traditional classical concept to the modern concept.
- The legal nature of public order is that it consists of imperative rules that may not be violated by agreement, otherwise such agreement is null and void ab initio.
- Article 3 of Organic Law No. 23-14, related to media, stipulated the domains of the scope of public order, between what is related to the public interest and what is related to rights and freedoms.
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¹ Article 3 of Law No. 23-14 related to Media.

Second: propositions

- It is necessary to clarify what is meant by the national religious reference.
- Extending from the recommendation above, it is necessary to emphasize the religious reference, which may be intended or may initially come to mind as the Maliki school of thought, especially in light of the circumstances and seditions that may result from the multiplicity of doctrines and intolerance of opinion.
- It would have been better to mention the requirements of public order first, and then mention the paragraphs contained in Article 3 of Organic Law No. 23-14, because most of what is mentioned in Article 3 above is of public order, similar to what is in Article 53 of the Algerian Family Law No. 84-11, amended and supplemented, which included ten paragraphs, the last of which is "any harm considered legitimate." It would be desirable if Article 3 of Organic Law No. 23-14 related to media were amended after mentioning what is related to public order by way of example, and in its last paragraph, include the phrase "...and all requirements of public order."
- It is necessary to stipulate the rejection of discrimination and hate speech in Article 3 and to emphasize it in Article 35/6 of the aforementioned Organic Law, because the latter is closer to maintaining public order on the one hand, and also because there are some ethics and public morals mentioned in Article 3 of Organic Law No. 23-14 above.

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