

The Restrictions on Media Activity under the 2020 Constitutional Amendment: The Case of Press Freedom

القيود على النشاط الإعلامي في ظل التعديل الدستوري 2020 - حرية الصحافة أنموذجا-

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Abstract:

This study aims to shed light on the constitutional constraints imposed on the freedom of media activity in general, and freedom of the press in particular, as it is one of the most important indicators of democracy and is closely linked to other freedoms, such as freedom of opinion and expression and the right to access and circulate information. The Algerian legislator guaranteed freedom of the press in the 2020 constitutional amendment and provided safeguards for it, enshrining freedom of opinion, expression, and access to information. However, it also restricted legislative authority in regulating this freedom. In contrast, these freedoms were limited based on considerations of national constants, national security, and human dignity.

Keywords: Freedom of Media Activity; Freedom of The Press; Constitutional Constraints; Media Legislation.

الملخص:

تهدف هذه الدراسة إلى تسليط الضوء على القيود الدستورية الواردة على حرية النشاط الإعلامي بصفة عامة وحرية الصحافة بصفة خاصة، لكونها من أهم مؤشرات الديمقراطية وترتبط بحريات أخرى كحرية الرأي والتعبير وحرية الوصول إلى المعلومات وتداولها. المشرع الجزائري كفل حرية الصحافة في التعديل الدستوري 2020 ووضع لها ضمانات أين كرس حرية الرأي والتعبير وحرية الوصول إلى المعلومات، كما أنه قيد سلطة المشرع في تنظيمها وفي المقابل فقد قيد هذه الحريات مستندا إلى اعتبارات الثوابت الوطنية والأمن الوطني وكذا الكرامة الإنسانية.

الكلمات المفتاحية: حرية النشاط الإعلامي، حرية الصحافة، القيود الدستورية، التشريعات الإعلامية.

Introduction:

Freedom of the media in general, and freedom of the press in particular, is considered one of the most important indicators of democracy. It extends from freedom of thought, serves as the platform for freedom of opinion and expression, and reflects the realization of the right to access and circulate information. The press shapes public opinion and is also a tool for oversight. Given the importance of press freedom, it has been enshrined in various international treaties and embodied by states through their internal laws, at the top of which is the constitution, as the protector of rights and freedoms.

The relationship between authority and the press has witnessed numerous developments, resulting in the emergence of various ideas and theories that define this relationship, ranging from the subordination of the press to authority to its liberation, which led to certain negative consequences. This ultimately led to the concept of press freedom within the framework of responsibility. To implement this idea, a legal system is required that limits press freedom to the extent that guarantees its existence.

The Algerian constitutional experience has seen variations in the area of rights and freedoms since the first constitution of the republic in 1963, which enshrined certain rights and freedoms, including freedom of the press, though it imposed a set of restrictions, primarily serving the socialist project. This continued until the most recent constitutional amendment in 2020, which followed the popular movement known as "Hirak," where protesters raised slogans, including those calling for the protection of rights and freedoms. The 2020 constitutional amendment was proposed under the slogan "From the Constitution of Authorities to the Constitution of Freedoms." This amendment enshrined freedom of the press and established the general framework for organizing rights and freedoms. To complement this, media legislation was issued, including the Organic Law 23-14 related to the media, Law 23-19 related to written and electronic press, and Law 23-20 related to audiovisual activity. These laws have sparked considerable debate, with one side asserting that they ensure and properly regulate press freedom, while another side argues that these laws restrict press freedom and represent a stifling of media activity.

While it is generally accepted that press freedom must be restricted, which is justified by several principles, the process of restriction requires specific guidelines to strike a balance between press freedom and its responsibility. There is a fine line between restricting freedom and infringing upon it. Therefore, it is necessary to study the constitutional system related to press freedom by examining the restrictions imposed on this freedom, both in the 2020 constitutional amendment and in legislation of a constitutional nature. In this study, we will focus on press freedom as one of the forms of media activity.

Study problem:

The problem of this study can be formulated in the following main question:

What are the constitutional restrictions on press freedom under the 2020 constitutional amendment?

To answer this key question, we will rely on the descriptive method by examining concepts and theories related to press freedom, as well as the analytical method by presenting and analyzing constitutional texts related to press freedom. From a methodological standpoint, this study will be divided as follows:

- First Section: Restrictions on journalistic activity in the 2020 constitutional amendment.
- Second Section: Restrictions on press freedom in Organic Law 23-14 related to the media.

1. Restrictions on Journalistic Activity in the 2020 Constitutional Amendment:

The constitutional legislator's approach to restricting rights and freedoms under the 2020¹ constitutional amendment varies between direct restrictions within the text and those referred to the law or a combination of both, as seen in the case of press freedom. Restrictions are outlined in the text itself, while the matter of regulation is referred to the legislator. On the other hand, the constitutional legislator does not use a single term to indicate restriction; instead, terms like "respect," "cannot," and "prohibited" are used. Although these terms differ in their legal strength, they all signify limitations. The restrictions on journalistic activity revolve around those related to freedom of opinion and expression, as well as the right to access information.

1.1 Restrictions on Freedom of Opinion and Expression under the 2020 Constitutional Amendment

The dissemination of news, ideas, images, and opinions—methods of journalistic activity—must occur within its legal framework, respecting the nation's principles and values. It must not infringe on the dignity of others, nor violate their rights and freedoms. Thus, the nation's principles and human dignity are key constitutional restrictions on press freedom.

1.1.1 The Nation's Principles as a Restriction on Media Activity:

The constitution guarantees the right to publish news, ideas, images, and opinions; however, this is not an absolute right, and it must adhere to the limits set forth in the constitution, among which are the nation's principles. The nation's principles serve as a restriction on journalistic activity, meaning that it must not infringe upon these principles.

A notable observation about the constitutional legislator is their inconsistency in terminology; sometimes using "national principles" and at other times "nation's principles." Furthermore, the first chapter of the constitutional amendment is titled "General Principles Governing Algerian Society," while other provisions refer to "values" and the "basic components of national identity." By examining the concept of the nation's principles, this phrase finds its meaning in sociological and legal studies. From a jurisprudential perspective, the term "nation" refers to the group of individuals bound together psychologically by shared language, religion, history, and common interests, with a shared will to live together in a specific territory.² The term "principles" refers to the stable, unchangeable foundations deeply rooted in the consciousness of this nation, which define its existence and historical continuity.

National Principles: Refer to the collection of stable and enduring principles, or foundational elements, ingrained in the collective consciousness of Algerian society, which enhance national unity. These are the principles and values held by individuals, inherited over generations, or considered national legacies and symbols that define the identity and belonging of the people to the homeland. National principles unite people across their differing views, thoughts, affiliations, and origins. They protect the people from being swayed

1- The Constitutional Amendment of 2020, issued by Presidential Decree No. 20-442, dated December 30, 2020, O.G.G.G., Issue No. 85, published on December 30, 2020.

2 - Mouloud Didan, Studies in Constitutional Law and Political Systems, Balqis Publishing House, Algiers Casablanca, 2007, p. 19.

by external schemes and serve as the strongest guarantee for the unity and solidarity of Algerians.³

National Identity: On the other hand, refers to the shared religious, linguistic, and ethnic ties among individuals. While nationality represents the legal bond between an individual and the state, national identity is the set of shared ties among individuals formed over a historical period within a specific geographical region. By combining the aforementioned concepts and what has been established, the principles of the Algerian nation revolve around Islam, Arabic, and Amazigh.

A. Islam:

According to Article 2 of the 2020 constitutional amendment, Islam is the state religion, and freedom of the press is limited by this principle. Freedom of opinion and expression cannot be invoked to address matters that fall within the realm of Islamic sanctities, especially when related to what is known as essential aspects of the religion. However, there is a question raised: when do we say that there has been an offense against Islam as a foundational element of the nation? Is the matter restricted to what is known as essential in religion, such as pillars, rulings, and rituals, or does it extend to Islamic symbols and figures? Referring to the amendment to the Algerian Penal Code, it is clear that the Algerian legislator has criminalized several actions and considered them offenses against Islam. Article 144 bis 2 criminalizes actions such as insulting the Prophet Muhammad (peace be upon him), as well as other prophets, or mocking essential aspects of the religion, including all Islamic rituals.⁴

As for Organic Law 23-14,⁵ Article 3 explicitly states that freedom of the press is conditioned upon respecting Islam. Furthermore, it adds another component: the national religious reference, which refers to the doctrinal and legal framework that governs the practice of Islamic rituals in the country. This reference has two aspects: intellectual and institutional. The intellectual aspect refers to the doctrinal beliefs of individuals that guide them in matters of national importance, while the institutional aspect refers to the legitimate administrative body responsible for overseeing scientific activities. Therefore, journalists, within the scope of their work, must respect the religious reference, including its institutions and individuals.⁶

B. Arabic Language:

Arabic is the official language of the Algerian state, as affirmed by all Algerian constitutions since the first constitution of the Algerian Republic in 1963, where it was designated as the national and official language of the state in Article 5. The constitutional founder used the term "national language," influenced by the wave of Arab nationalism prevalent at the time. The wording was changed in the 1976 Constitution from "national language" to "national language," emphasizing its general use in official contexts, known as the "Arabization of administration" (Article 3 of the 1976 Constitution). The 1989 and 1996 constitutions, as well as subsequent amendments (in 2002 and 2008), maintained the same wording from the 1976 Constitution. However, the 2016 constitutional amendment introduced

3- Fatima Al-Zahra Ramdani, Commentary on Article 34 of the Algerian Constitutional Amendment of 2020, *Journal of Legal and Political Sciences*, Volume 12, Issue 1, University of El Oued, 2021, p. 856.

4- Law No. 01-09, dated June 26, 2001, amending and supplementing Ordinance No. 66-156, dated June 8, 1966, containing the Penal Code, O.G.G.G. No. 34, issued on June 26, 2001.

5- Organic Law No. 23-14, dated August 6, 2023, related to information, O.G.G.G. No. 56, issued on August 29, 2023.

6- Ben Mustafa Driss, "Religious Authority in Algeria – Foundations and Pillars," *Matoun Journal*, vol. 14, no. 01, Moulay Tahar University, Saida, 2021, p. 200.



a new formulation, affirming the continued status of Arabic as the state's official language, replacing "national language" with "state language." Additionally, a Higher Council for the Arabic Language was established to promote and ensure its use, especially in scientific and technological fields. The 2020 constitutional amendment maintained this provision without change. Regarding Arabic as a restriction on press freedom, this does not imply that publications and news broadcasts must be in Arabic. Rather, the restriction lies in respecting the language, not devaluing it, and recognizing it as the official language.

C. Tamazight:

Although Tamazight represents the historical continuity of the Algerian people and one of the components of Algerian identity, it was absent from the constitutional framework until the 1996 Constitution, where it was explicitly mentioned in the preamble, affirming that the identity of the Algerian people is rooted in Islam, Arabism, and Amazighity.⁷ However, it was not officially recognized as an official language until the 2002⁸ constitutional amendment, through Article 3 bis 1, which constitutionally mandated the state to promote and develop it. Furthermore, the Algerian Academy of the Amazigh Language was established under the President of the Republic to promote Tamazight, in accordance with the 2016 constitutional amendment. The 2020 constitutional amendment retained the same provision.

1.1.2 Human Dignity:

Human dignity has been referenced under the term "the dignity of others," which refers to treating individuals with decency and preserving and respecting the human value of a person, whether physically or morally. Various international treaties have enshrined human dignity, and it has been embedded in national legislations. For instance, in comparative legislation, the French legislator has made human dignity a restriction on freedoms, extending this right not only to the living but also to the deceased. There are legal provisions prohibiting the publication of images of deceased victims in the media. In the French press law, Article 35, added by the June 2000 law, stipulates penalties for publishing images of crime victims when such publication constitutes a serious violation of the victim's dignity.⁹ Referring to the 2020 constitutional amendment, human dignity protection is guaranteed in several provisions. Article 39 states that the state guarantees the inviolability of human dignity and prohibits physical and moral violence, as well as any violation of dignity. Therefore, human dignity must be respected during media coverage, whether in the field or in newsrooms, whether in writing, sound, or image. It is essential to avoid exploiting moments of human weakness, or mental or physical disabilities, and it is prohibited to publish images depicting deformities or violence. Furthermore, care must be taken to avoid anything that could harm the feelings of victims or their families, particularly in events related to disasters or wars.

1.2 Restrictions on Freedom of Access to Information:

1.2.1 National Security Requirements:

National security is one of the most significant restrictions on rights and freedoms in general, and on freedom of the press in particular. The concept of national security is associated with protecting the national territory and the existence of the state, as well as

7- See the fourth paragraph of the preamble of the 1996 Constitution, issued by Presidential Decree No. 96-438, dated December 07, 1996, Official Gazette of the Republic, No. 76, issued on December 08, 1996.

8- Law No. 02-03 dated April 10, 2002, containing the constitutional amendment, Official Gazette of the Republic, No. 25, issued on April 14, 2002.

9 - Jaafar Kazem Jabir Al-Mouzani and others, "Towards a Legal System for the Civil Liability of Journalists for Displaying Images of Crime Victims," published research, Kufa Studies Center Journal, University of Kufa, vol. 5, no. 7, 2008, p. 65.

safeguarding the lives and properties of citizens. Security, in general, is understood as "peace, tranquility, the continuity of life's aspects, and the preservation of its essential elements and conditions, away from threats and dangers."¹⁰ National security is defined as "the measures taken by the state within its capacity to preserve its existence and interests, both in the present and in the future, while considering international developments."¹¹ The concept of national security has evolved; it is no longer confined to protection against military aggression, which is the traditional view. It now includes connections to various social and economic aspects. The stability of a state does not only mean protection from external and internal military aggression or any form of violence and insecurity, but it also extends to other complex areas.

Referring to the 2020 constitutional amendment, the constitutional founder used the term "national security requirements" as a restriction on access to information. Since information is the raw material for journalistic work, and given the expanded concept of national security, this restriction is flexible and cannot be confined to a specific framework. National security is often the primary justification for withholding information, documents, and statistics related to the state's administration, which should otherwise be accessible to journalists. In this context, and in order to balance national security with the right to access information, the "Global Principles on National Security and the Right to Information," also known as the Tshwane Principles,¹² were issued. Among these principles is the need to define narrow categories of information that may be withheld for national security reasons, which must be clearly stated in the law and represent a real and clear threat to legitimate national security interests. Moreover, the burden of proving the legitimacy of any restriction on public access to information falls on the public authority. It is not enough for the authority to claim that there is a danger or harm; it is required to provide specific and objective reasons to support its claims. The right to access information should be interpreted and applied broadly, while the interpretation of any restrictions on this right should be narrow and limited.¹³

2.2 Information Related to Private Life:

The Algerian legislator did not provide a specific definition of private life, likely because it is a flexible concept that may vary according to time and place. From a legal perspective, the French legal scholar Carbonnier defined private life as "the secret domain over which an individual has the authority to exclude any external interference. It is the right to be left alone and the right to respect for personal autonomy."¹⁴ Private life can take many forms, such as personal correspondence, private communications, and matters related to an individual's family and health. The constitutional legislator has set the inviolability of private life as a restriction on media activities, as information related to private life does not serve the public interest, which contradicts the purpose of media work. In the 2020 constitutional amendment, the constitutional legislator emphasized the protection of private life in several provisions. Article 47 states that every person has the right to protect their private life and honor. The second paragraph of the same article includes the right of individuals to privacy, particularly

10- Ali Abbas Murad, *Security and National Security: Theoretical Approaches*, Al-Rawafid Cultural Foundation, 1st edition, 2016, p. 15.

11- Amin Howaidi, *Arab Security in Confrontation with Israeli Security*, Al-Tali'a Publishing House, Beirut, 1st edition, 1975, p. 7.

12- Drafted in Tshwane by experts and professors from South Africa, with the aim of providing global standards on how to ensure maximum public access to information while protecting legitimate national security concerns, issued on June 12, 2013. Accessed from the website at the link: <https://www.justiceinitiative.org/>

13- See Principles 3 and 4 of the Tshwane Principles.

14- Abd al-Rahman Khalifi, *The Right to Privacy in Algerian Penal Legislation: A Foundational, Analytical, and Comparative Study*, National Criminal Journal, vol. 54, no. 3, November 2011, p.155.

regarding their correspondence or private communications. Furthermore, the Media Law includes penalties in its seventh chapter regarding media activities, criminalizing the publication or broadcasting of any document that violates the confidentiality of investigations related to private life or the honor of individuals.¹⁵

2. Restrictions in Organic Law 23-14 on Media:

Since independence, Algeria's media legislation has undergone several changes, with the latest being Law 23-14. Media laws are defined as those binding rules related to media and communication activities, which govern the practice, establish standards for media activities, and are generally divided into legislation concerning content, media institutions (in terms of their organization, management, and the determination of their rights and obligations), media profession laws, and international media regulations.¹⁶

In addition to what was established in the 2020 constitutional amendment, Law 23-14 introduced new restrictions as part of the Algerian legislator's efforts to regulate media work and create a balance between responsibility and freedom. We have previously discussed the limits of legislative authority in regulating rights and freedoms within the general framework provided by Article 34 of the 2020 constitutional amendment. This article outlines the constitutional guidelines that the legislator must adhere to when regulating rights and freedoms. However, it is notable that the legislator has expanded the scope of restrictions in this organic law. Although this expansion may be justified by the content of Article 34, which seeks to protect national constants, maintain public order and security, and safeguard constitutionally enshrined rights and freedoms, the restrictions in this law are phrased using socially, morally, and philosophically charged terms. Expressions such as religious values, moral and cultural values, foundations, and interests are broad and flexible terms. The inability to precisely define these concepts affects one of the key principles of restrictions, which is the necessity of clarity in legislation concerning rights and freedoms. This opens the door to interpretation, potentially undermining press freedom.

Additionally, some of these restrictions are nested, meaning that a general restriction encompasses subsidiary ones, which are independently stipulated elsewhere, leading to repetition. Moreover, the legislator did not consistently use the same terminology to indicate restrictions. In the restrictions mentioned in Article 3, the phrase "under the condition of respecting" was used before listing the restrictions. In contrast, in other restrictions, such as those in Chapter 3 under the title "Journalistic Ethics and Conduct," the term "the journalist must refrain from" was used.

2.1 Restrictions Under Article 3 of Organic Law 23-14 on Media:

Article 3 contains several restrictions on media activities. In addition to the previously discussed restrictions related to identity, national constants, human dignity, and national defense, it introduces further limitations concerning the professional conduct of journalists, such as integrity and equality. The legislator emphasized the citizen's right to full and impartial information and the need to respect the pluralistic nature of intellectual trends and

15- See Article 46 of Organic Law 23-14, op. cit.

16 - Hijab Muhammad Muhammad, *Media Dictionary*, Dar Al-Fajr for Publishing and Distribution, Cairo, 2004, p. 140.

opinions. These can be seen as self-imposed restrictions, guided by the journalist's conscience. The legislator included several restrictions, which can be summarized as follows:

2.1.1 National Sovereignty and Its Requirements:

Sovereignty is defined as "the supreme authority that has no higher authority above it, nor an equal or competing authority within the state."¹⁷ Mohiuddin Al-Jamal views sovereignty as synonymous with political power, arguing that sovereignty is a characteristic of authority, indicating that no higher authority exists. The two terms—political power and sovereignty—can be used in distinct contexts, with political power being applied in constitutional law and political relations, and sovereignty in international law¹⁸. One of the characteristics of sovereignty is its comprehensiveness, as enshrined in the 2020 constitutional amendment in Article 14, which states that the state exercises sovereignty over its entire territory (land, air, and sea). This means that it exercises authority over all residents within its territory, which necessitates the unity of national territory and national unity. Therefore, the Algerian legislator coupled the restriction of national sovereignty with national unity and territorial integrity. Sovereignty cannot be discussed in the absence of national unity or territorial integrity.

Since sovereignty is the absolute supreme authority that alone has the right to define the narrative surrounding citizens' actions, whether by obligation or permission, it holds the exclusive right to issue binding judgments regarding acts and things. It can declare an act mandatory, prohibited, or permissible, and can designate something as a cause, condition, or impediment.¹⁹ In contrast, the media plays a crucial role in shaping public opinion on political, economic, and social issues, influencing decision-making processes and its impact on the public. Media content can pose a threat to national unity, territorial integrity, and social cohesion, as well as undermine the bonds of citizenship, which directly affects national sovereignty. This includes promoting separatist, regionalist, or ethnic rhetoric, or undermining symbols of sovereignty. Therefore, media activities must remain within the framework of respect for national sovereignty.

2.1.2 Requirements of Public Order:

While the restriction of national sovereignty presents a relative challenge, the issue of public order is broader and more complex due to its wide and flexible connotations. Public order encompasses a set of political, economic, social, and cultural foundations upon which society is based at a given time. It is a relative concept that varies according to time and place, as the foundations of each society differ based on customs, traditions, and norms.²⁰ Moreover, public order includes various elements such as public safety, public health, public tranquility, and extends to economic, environmental, and aesthetic aspects. There is a close link between maintaining public order and protecting rights and freedoms, as the government justifies any measures it takes to protect public order as being in the interest of safeguarding rights and freedoms. For example, when the state prohibits demonstrations to prevent disturbances to public safety, it is in effect protecting the right to life, property rights, and the right to the inviolability of homes. However, the justification may expand due to the characteristics the

17- Mouloud Didan, *Studies in Constitutional Law and Political Systems*, op. cit., p. 25.

18- Badawi Tharwat, *General Theory of Political Systems*, Part One, Dar Al-Nahda Al-Arabia, Cairo, 1st edition, 1989, p. 242.

19- Salah Al-Sawy, *The Theory of Sovereignty and Its Impact on Secular Systems*, book published on the Noor Library website at the link: <https://www.noor-book.com>

20- Ammar Boudiaf, *Introduction to Legal Sciences*, Dar Houma for Publishing and Distribution, Algeria, 2009, p. 15.

state enjoys when restricting a freedom under the pretext of protecting public order, such as its unilateral, preventive, and discretionary powers. Perhaps the most concerning aspect is the discretionary nature of the state's exercise of regulatory measures.

When applied to freedom of the press, media activities are restricted by the concept of public order and its broad implications. This places media work in the hands of the authorities. For this reason, the United Nations Human Rights Committee requires governments to provide specific evidence that restrictions on freedom of opinion are necessary to protect public order. Furthermore, the decisions of the U.S. Supreme Court stress the need to distinguish between advocating ideas that may lead to unlawful activities if acted upon, and inciting unlawful acts. The court considers only the latter as justifiable for restriction.²¹

2.1.3 State Foundations and Symbols:

In the 2020 constitutional amendment, the national flag and national anthem are explicitly stated as symbols of the Republic. Other symbols can be inferred implicitly. In the chapter on duties, the constitutional legislator refers to additional symbols that the state must ensure are respected, including symbols of the revolution, and the souls of martyrs and freedom fighters. The nation's history is also considered a symbol of the state. Based on Article 84, the President of the Republic is also a symbol of the state, even though the constitutional legislator did not explicitly state this. However, the status of the President as a symbol is clear since he embodies national unity and ensures the preservation of national sovereignty. If sovereignty is a restriction, as mentioned earlier, then the person who exercises it is a symbol of the state. Additionally, the state seal must also be respected. Thus, media activities are bound to respect all these symbols.

2.1.4 Economic Interests of the Country:

The economic interests of the country refer to the vital interests that ensure the state's general revenues. In the absence of a legal definition for the economic interests of the country, it can be said that these interests encompass the benefits and profits that societies can achieve through various activities. They also refer to the strategic economic activities carried out by key sectors in the state, as well as the state's economic potential, including resources, raw materials, wealth, economic infrastructure, and commercial activities. The Algerian legislator restricts journalistic activities by requiring them to respect the country's economic interests. This does not mean that journalistic activities cannot cover economic issues. On the contrary, media has specialized in economic matters and is considered a tool for economic development. It raises public awareness about major projects and attracts investors by presenting the country's economic image and showcasing its economic potential. However, this does not imply that the press should act as a tool of the government in promoting its projects or justifying its economic policies. The restricted activities are those that harm economic interests by misleading the local and international public about the country's economy. Nevertheless, due to the lack of precise terminology, the press may find itself in situations where it inadvertently disrespects the country's economic interests.

2.1.5 Confidentiality of Preliminary and Judicial Investigations:

21- Muhammad El-Sayed Said, *Freedom of the Press from a Human Rights Perspective*, Cairo Institute for Human Rights Studies, Egypt, 1995, p. 15.

This restriction originates in criminal law. Although the general principle for court sessions is publicity, preliminary investigation procedures are characterized by confidentiality. From a legal perspective, confidentiality means that the public is prohibited from entering the places where investigations are conducted, and investigation records are not made available for public viewing. Moreover, it is forbidden for newspapers and media outlets to publish or broadcast these records.²² Confidentiality thus serves as a dual restriction: on the one hand, it limits access to and acquisition of information, and on the other, it restricts the media from informing the public about it. Information related to confidential preliminary investigations cannot be published.

Given that cases, especially those of public interest, often attract media attention, journalists frequently seek to obtain information to secure a so-called "scoop," relying on the principle of freedom of access to information. However, this violates the principle of confidentiality. The justification for maintaining the confidentiality of investigations is based on several considerations that necessitate this restriction of media freedom. The primary reason is to preserve evidence and avoid hindering the investigation process. This principle also serves another key principle: the independence of the judiciary. Publishing information about the investigation can create public opinion, which may influence the investigative authority. Additionally, human dignity and the presumption of innocence require that investigations remain confidential.

To enforce this restriction, Chapter 5 of Executive Decree No. 24-250, titled "Cases Pending Before Judicial Authorities," requires media professionals to refrain from broadcasting programs, images, incidents, documents, interviews, or statements that could affect the independence of the judiciary, judges' rulings, or the presumption of innocence and the right to defense. Furthermore, any information obtained from the public prosecutor's office must be reported without any addition or distortion.²³

2.2 Restrictions Related to the Ethics and Morals of the Journalistic Profession:

The Algerian legislator, through Law 23-14 on media, was influenced by the theory of social responsibility, which is based on the ethics and morals of journalists and self-regulation through higher press councils. Chapter 3, titled "Ethics and Morals of the Journalistic Profession," outlines the rules and duties governing journalism. It refers to the various principles journalists must adhere to while performing their duties.²⁴ The legislator assigned the task of drafting the Code of Ethics and Morals for the journalistic profession to the Higher Council for Ethics and Morals of Journalism, emphasizing the importance of respecting the code. However, Article 35 introduces several restrictions that complement those outlined in Article 3 and establish general ethical standards for journalists.

In addition to the moral and ethical standards such as truthfulness, integrity, respect for public sentiment, rejection of racism, terrorism, and fanaticism, and the prohibition of using illegal or corrupt methods to obtain information or using information for blackmail, Executive Decree 24-250 also includes several guidelines under the title "Ethics and Morals." The

22- Maamoun Salama, *Criminal Procedures in Egyptian Legislation*, Dar Al-Nahda Al-Arabia, Cairo, 2007-2008, p. 518.

23 See Articles 29, 30, and 31 of Executive Decree No. 24-250, dated July 23, 2024, defining the provisions of the general terms of reference imposed on audiovisual communication services, Official Gazette of the Republic, No. 53, issued on August 07, 2024.

24- Jamila Kadem, *Media Performance in Algeria Between Freedom and Responsibility in Light of Political and Economic Transformations from 1990 to 2015: Private Press as a Model, a descriptive and analytical study of the theoretical and practical frameworks of journalistic performance*, PhD thesis in Media and Communication Sciences, University of Algiers 03, academic year 2016/2017, p. 135.

legislator introduced further restrictions tied to other constitutionally enshrined rights and freedoms, such as the rights of children and women, and the presumption of innocence.

2.2.1 Child Rights:

This restriction stems from Algeria's commitment to the international conventions it has ratified regarding children's rights,²⁵ which aim to protect them. The 2020 constitutional amendment enshrines this by stating in Article 71 that children's rights are protected by the state, considering the best interests of the child. The same article also mentions that the law punishes all forms of child exploitation. Additionally, Article 81 in Chapter 2, titled "Duties," requires the exercise of rights and freedoms in a manner that respects and protects childhood.

In terms of freedom of journalistic activities, journalism must not violate children's rights. According to the ethical guidelines on media coverage by UNICEF, journalists must respect the dignity and rights of every child. When interviewing children or covering their situations, special care must be taken to ensure each child's right to privacy and confidentiality and to convey their opinions. Moreover, journalists are prohibited from publishing a story or image that could endanger the child.²⁶ Executive Decree No. 24-250 provides further detail, dedicating Chapter 6 to children's rights. It imposes several restrictions on media activities involving children, including prohibiting discrimination among children in interviews or broadcasting images and information that could harm them. It also mandates the protection of children and adolescents from violent programs by providing appropriate warnings and selecting suitable broadcast times for such content. Additionally, it prohibits exploiting children in advertisements and forbids showing children in media unless a written authorization from the legal guardian is provided.²⁷

2.2.2 Women's Rights:

In 1996, Algeria ratified the Convention on the Elimination of All Forms of Discrimination Against Women, and in 2004, it ratified the Convention on the Political Rights of Women. The 2020 constitutional amendment reinforced the protection of women in several provisions. Article 40 states that the state protects women from all forms of violence in all places and circumstances, including in professional and private settings. Therefore, journalistic activities must respect women's rights, privacy, freedoms, and dignity, ensuring that women are not exploited in media work.

Unlike child rights, which were addressed in some detail in Executive Decree No. 24-250, women's rights were not explicitly covered, even though the decree relied on Law 23-14 on media for its legal framework.

2.2.3 Presumption of Innocence:

As previously mentioned, freedom of opinion, expression, and access to information are guaranteed under both international and national law. This same legislative framework also guarantees the presumption of innocence, as reflected in the Universal Declaration of Human Rights. Article 11, paragraph 1, states that "Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which

25- The Convention on the Rights of the Child, ratified by the United Nations General Assembly on November 20, 1989, which Algeria ratified through an interpretative declaration by Presidential Decree No. 451-92, dated December 19, 1992.

26- See the UNICEF website: <https://www.unicef.org/ar/>

27- See Articles 32-35 of Executive Decree No. 24-250, op. cit.

they have had all the guarantees necessary for their defense." Similarly, Article 14, paragraph 2, of the International Covenant on Civil and Political Rights affirms that "Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."

The Algerian legislator has followed this principle in Article 41 of the 2020²⁸ constitutional amendment. The presumption of innocence means that any individual charged with a criminal offense, either as the perpetrator or an accomplice, is considered innocent and must be treated as such throughout all stages of the proceedings until proven guilty by a final judgment rendered in a legal trial. During the criminal procedures, the individual is treated based on the assumption of innocence.²⁹

Conclusion:

Based on the aforementioned, it can be concluded that freedom of the press is one of the indicators of democracy. It is founded on freedom of opinion and expression, as well as the freedom to access and circulate information. This freedom has evolved from being subject to authority to becoming more independent, ultimately achieving a balance between freedom and responsibility through restrictions aimed at preserving other rights and freedoms.

The following conclusions have been reached:

- The Algerian constitutional legislator, through the 2020 constitutional amendment, enshrined the principle of press freedom and established guarantees, including limiting the legislature's power in regulating press freedom, freedom of opinion and expression, as well as freedom of access to information, while also protecting journalists.
- Alongside these guarantees, the constitutional legislator, through the 2020 amendment, imposed restrictions on press freedom, including national constants, national security requirements, human dignity, and private life.
- Following the 2020 constitutional amendment, several media legislations were enacted, notably the Organic Law on Media 23-14, which serves as the reference framework for media practice in all its forms and includes several restrictions.
- The restrictions in Organic Law 23-14 are broad, and the legislator used flexible terms whose philosophical and social meanings cannot be precisely defined.
- Given the flexibility of the terms used to restrict media activities, it can be argued that this affects one of the requirements of legal security, which is the clarity of legislation regulating rights and freedoms.
- The involvement of executive decrees, such as Executive Decree No. 24-250, which defines the general terms of service for audiovisual communication, raises the issue of potential encroachment on this freedom, especially since such decrees are not subject to constitutional review.

Therefore, we propose the following recommendations:

- The need to use terms with clear meanings in legislation regulating media freedom.
- Restrictions should be formulated concisely to avoid repetition.

28- Article 41 of the 2020 constitutional amendment states, "Every person is presumed innocent until proven guilty by a judicial authority, within the framework of a fair trial".

29- Muhammad Hassan Sharif, *General Theory of Criminal Evidence*, Cairo, Dar Al-Nahda Al-Arabia, 2002, p. 445.

- Executive decrees related to the regulation of rights and freedoms should be subjected to constitutional review.

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