

# The Role of the Public Prosecution in Achieving Balance between Media Freedom and Prosecutorial Secrecy in Algerian Legislation “Analytical Study in Light of Law 25-14”

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## Abstract:

This research studies the pivotal role of the Public Prosecution in Algerian Legislation in achieving an accurate balance between the society's right to information and the protected judicial confidentiality. Through analyzing the legal framework regulation this relationship, particularly focusing on law 25-14 amending the Code of Criminal Procedure and Organic Law 23-14 on Information, the research seeks to reveal the mechanisms that can enable the prosecution to exercise its supervisory and regulatory role. The research highlights that the Public Prosecution is no longer merely a crime prosecution body, but has become the authority responsible for regulating the flow of judicial information to the public opinion, within strict legal controls that preserve the presumption of innocence and the rights of litigants.

**Key words:** Public Prosecution, media freedom, judicial secrecy, balance, Code of Criminal Procedure.

## Introduction:

Freedom of the press constitutes a fundamental pillar in modern democratic systems, as it enables citizens to access facts and form a conscious public opinion. It also represents an important mechanism for oversight over the performance of public authorities, enhancing transparency and consolidating public confidence in state institutions, including the judiciary one. However, this freedom is not absolute; rather, it faces limits imposed by the duty of judicial secrecy aiming to protect the course of justice, guarantee the rights of litigants, and safeguard the presumption of innocence, which is considered an essential guarantee for a fair trial.

From this intersection arises the problematic balance between the right to information in the media and the requirements of judicial secrecy. This is a highly complex issue that requires precise legal regulation. The Algerian Public Prosecution emerges within the Algerian judicial system as the fundamental link to achieve this balance; it is responsible for initiating public legal actions and following up on investigations, while simultaneously playing a pivotal role in regulating the relationship between the media and the judiciary and controlling the limits of disseminating judicial information.

This study aims to analyze the legal framework governing the relationship between freedom of the press and judicial secrecy in Algerian legislation, with a focus on the evolving role of the Public Prosecution in light of recent legislative amendments, particularly Law No. 25-14. It seeks to answer the following core problematic: How can the Public Prosecution in the Algerian judicial system achieve an effective balance that guarantees the community's right to information without compromising the efficiency of the judiciary body, the rights of litigants, or the presumption of innocence?

The study is divided into two main sections: The first section addresses the legal and conceptual framework of the relationship between freedom of the press and judicial secrecy, while the second section focuses on the role of the Public Prosecution as a regulatory body for this relationship, highlighting significant legislative developments.

### **Section One: The Legal and Conceptual Framework of the Relationship between Freedom of the Press and Judicial Secrecy.**

This section aims to establish the theoretical and legal foundation for the relationship between freedom of the press and judicial secrecy in the Algerian legal system, by defining press freedom and explaining its legal foundations and limits.

then clarifying the concept of judicial secrecy and its justifications and controls, to conclude by raising the issue of balancing the two rights in light of constitutional and legislative texts and practical reality.

#### **Subsection I: Concept of Freedom of Media and its Legal Basis**

This subsection aims to demonstrate the essence of freedom of the media as an extension of freedom of opinion and expression, and to review the international, constitutional, and legislative basis upon which it rests in Algeria, while highlighting the general restrictions governing its exercise.

#### **Branch 1: International and Regional Recognition of Freedom of Media**

This branch addresses the enshrining of freedom of the media in international and regional human rights instruments and fundamental texts recognizing freedom of expression.

Freedom of media constitutes an extension of a fundamental globally recognized right, namely freedom of opinion and expression. International and regional conventions have affirmed this right; Article 10 of the European Convention on Human Rights (ECHR) stipulated that the exercise of these freedoms carries with it duties and responsibilities, and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others<sup>1</sup>.

At the regional level, this protection was reinforced in the African Charter on Human and Peoples' Rights, which emphasized the right of citizens to obtain information, as well as in the Arab Charter on Human Rights within the freedom of opinion, expression, and the right to obtain and transfer information.

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<sup>1</sup>Article 10, paragraph 2 of the European Convention on Human Rights 1950.

We note that international legislations, while sanctifying freedom of expression, have left a wide margin for states to restrict this freedom under the names of "protecting the rights of others" and the "authority of the judiciary," which is the entry point relied upon by national legislations to justify restrictions imposed in the name of the secrecy of investigation.

### **Branch 2: Constitutional and Legislative Basis for Freedom of Media in Algeria**

This branch focuses on the manner in which the Algerian Constitution enshrined freedom of the media, and then addresses the legislative framework regulating this freedom, with a focus on Organic Law 14-23.

Algerian legislation enshrines freedom of the media within an integrated constitutional and legal framework. The 2020 Algerian Constitution stipulated in Article 54 that "freedom of the written, audio-visual and electronic press is guaranteed," and specifically includes: "freedom of expression and creation of journalists and media collaborators, the right of access to sources of information within the framework of the law, the right to protection of the professional independence and professional secrecy of the journalist, and the right to publish and disseminate news, ideas, pictures, and opinions within the framework of the law and respect for the nation's constants and its religious and moral values."

Article 54 added essential guarantees, including that "the offense of the press shall not be subject to a custodial sentence (imprisonment)," and that "the activity of newspapers, periodicals, television and radio channels, websites and electronic journals shall not be suspended except by virtue of a judicial decision," and the same article defined essential restrictions: "freedom of the press may not be used to infringe upon the dignity, rights, and freedoms of others," and "the dissemination of hate speech and discrimination is prohibited."<sup>2</sup>

Furthermore, Organic Law No. 23-14 relating to information emphasized in its Article 2 that "media activity shall be practiced freely within the framework of the provisions of this Organic Law and the legislation and regulations in force."<sup>3</sup> This law expanded the concept of media activity to include all means of traditional and electronic publishing, while emphasizing the respect for individual rights and the protection of public order.

The Algerian legislator noted in Law No. 23-14 for abandoning specific penal laws related to the press (such as Law No. 12-05) and sufficing with general rules.

This trend reflects a desire to "normalize" media practice, yet it places the journalist directly before legal liability under general rules, which requires greater caution.

### **Branch 3: Limits on the Exercise of Freedom of Media in the Algerian Legal System**

This branch aims to demonstrate that freedom of the media in Algeria is not absolute; rather, it is subject to a set of restrictions imposed by the necessity of protecting public order and private life.

Freedom of media in Algerian legislation is subject to important controls aimed at achieving a balance between this right and other interests deserving of protection. On the one hand, the legislator guarantees the right to information and freedom of the press; on the other

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<sup>2</sup> Article 54 of the Constitutional Amendment issued by Presidential Decree number 20-442 on December 30, 2020, official Journal number 82, issued on December 30, 2020. <https://www.joradp.dz/trv/aconsti.pdf>

<sup>3</sup> Article 2 of Organic law number 23-14 relating to information, on August 27, 2023, official Journal number 56, issued on August 29, 2023.

hand, it imposes restrictions to protect public order, public morals, and the private lives of individuals. Article 50 of the Constitution specified that this freedom may not be used to infringe upon the dignity, rights, and freedoms of others. Likewise, Organic Law n°23-14 established an integrated system of controls governing the exercise of media activity, particularly regarding the handling of judicial cases.<sup>4</sup>

### **Subsection II: Judicial Secrecy (Concept, Justifications, and Controls)**

This subsection aims to clarify the concept of judicial secrecy as a fundamental procedural guarantee for the proper administration of justice, explaining its objectives and the justifications upon which it is based, followed by a presentation of the most important legal controls governing its scope in the Algerian Code of Criminal Procedure.

#### **Branch 1: Definition and Objectives of Judicial Secrecy**

This branch addresses the jurisprudential and legal definition of judicial secrecy, while highlighting the objectives the legislator seeks to achieve.

Judicial secrecy is considered a fundamental principle in Algerian procedural law, meaning the prohibition of publishing or broadcasting proceedings and information related to judicial cases during specific stages of proceedings. Jurisprudence has defined it as "the non-broadcasting and non-publication of details of what transpired during the investigation, whether during its conduct or after its conclusion, and the non-disclosure or dissemination of its contents."<sup>5</sup>

Judicial secrecy aims to achieve several essential objectives, including: ensuring the proper administration of justice, protecting the investigation from any external interference, protecting the presumption of innocence, preventing the formation of a pre-emptive public opinion against the suspect, maintaining the confidentiality of evidence, preventing evidence tampering or destruction, and protecting witnesses and whistleblowers from any threat or influence, as well as ensuring the independence of the investigating judge and his freedom in the search for the truth.

Secrecy here is not merely a protection for the judiciary as an institution, but rather a protection for society and the suspect. Transforming investigation rooms into media material causes the judiciary to lose its prestige and turns the trial into a theatrical spectacle, which is what the legislator seeks to avoid by enshrining secrecy as a principle.

#### **Branch 2: Justifications for Imposing Secrecy on Judicial Investigations**

This branch focuses on explaining the practical and legal reasons that pushed the legislator to impose secrecy on the inquiry and investigation stage.

Justifications for imposing secrecy on judicial investigations are based on practical and legal considerations of utmost importance. In the preliminary investigation stage, proceedings are in the process of formation and evidence is being gathered, which makes publishing investigation details at this sensitive stage a danger on several levels.

Broadcasting and publishing what transpires in the investigation may affect its course and cause it to take a biased direction. Investigation reports may influence the statements and

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<sup>4</sup> Article 3 *Ibid.*

<sup>5</sup> Mokhtar Al-Akhdar Al-Saihi, *Journalism and the Judiciary: The Problem of Balancing the right to Information and the Proper Administration of Justice*, Dar Houma, Algeria, 2011 p79.

testimonies of witnesses, thereby affecting the objective assigned to the investigation. Broadcasting investigation details might also allow the criminals to destroy evidence useful in uncovering the crime. Furthermore, publishing investigation details may constitute a media conviction of the suspect before a judicial judgment is rendered, which undermines the principle of the presumption of innocence.<sup>6</sup>

The importance of these justifications increases in light of digital media, where information spreads with lightning speed. Any leak of false or even correct information at an inappropriate time may completely dismantle the investigation plan, which makes the adherence to secrecy in complex crimes (such as corruption and terrorism) an absolute security and judicial necessity.

### **Branch 3: Controls for Lifting Secrecy and the Publicity of Trials**

This branch aims to demonstrate how to balance the principle of the secrecy of investigation and the principle of the publicity of hearings, through texts that define the scope of secrecy and cases of transition to publicity.

The Code of Criminal Procedure stipulates in Article 11 that "inquiry and investigation proceedings shall be secret, unless the law provides otherwise, without prejudice to the rights of the defense." This prohibition extends to include all persons who participate in the inquiry proceedings by virtue of their position or profession.<sup>7</sup>

However, at the trial stage, the general rule is the publicity of hearings, pursuant to Article 285 of the Code of Criminal Procedure, which stipulates that "hearings shall be public, unless their publicity poses a threat to public order or morals." The court may decide to hold the hearing secretly in specific cases, while the judgment must be pronounced in a public hearing.<sup>8</sup>

The legislator has intelligently balanced absolute secrecy during the evidence-gathering phase (to protect the investigation) and publicity during the trial phase (as public oversight of the judiciary). The imbalance occurs when the media transfers "publicity" to the "investigation" stage; here lies the role of the Public Prosecution to intervene and restore matters to their proper course.

### **Subsection III: The Problem of Balancing the Two Rights in Algerian Legislation**

This subsection addresses the central problem of the study, represented by how to achieve a balance between the right to information and the requirements of judicial secrecy and the presumption of innocence, by identifying points of conflict, highlighting realistic examples, and then reviewing the legislator's position.

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<sup>6</sup> Mahmoud Nadjib Hosni, Explanation of the code of criminal procedure. Part one, Dar Al-Nahda Al-Arabiya, Cairo, 2016 p569.

<sup>7</sup> Article 11 of Ordinance number 15-02 on Shawwal 07, 1436 corresponding to July 23, 2015, amending and supplementing number 66-155 on Safar 18, 1386 corresponding to June 08, 1966, containing the Code of Criminal Procedure, Official Journal number 71, issued on July 26, 2015.

<sup>8</sup> Article 258 of Law number 17-07 on Jumada al-Thani 28, 1438 corresponding to March 27, 2017, amending and supplementing Ordinance number 66-155 on Safar 18, 1386 corresponding to June 08, 1966, containing the Code of Criminal Procedure, Official Journal number 20, issued on March 29, 2017.

## Branch 1: The Conflict Between the Right to Information and the Presumption of Innocence

This branch focuses on highlighting the aspects of conflict between the exercise of freedom of the media -especially in covering criminal cases- and the protection of the presumption of innocence.

The tension between the right to information and the presumption of innocence constitutes the core of the fundamental problem in the relationship between the media and the judiciary body. On the one hand, the Constitution and media legislation guarantee the citizen's right to knowledge; on the other hand, the Constitution, in its Article 41, guarantees the presumption of innocence, stating: "Every person shall be presumed innocent until his guilt is established by a judicial jurisdiction within the framework of a fair trial."<sup>9</sup>

Intensive and biased publication of investigation details in criminal cases may create a pre-emptive impression of the suspect's guilt in public opinion, which weakens the guarantee of the presumption of innocence and jeopardizes a fair trial.

The gravity of this conflict is most clearly manifested when examining some realistic cases witnessed in the Algerian arena in recent years. Several sensitive judicial files have seen intensive media coverage and leaks of investigation information before the completion of judicial proceedings. In one case involving a journalist and a university researcher, professional and scientific communications and correspondence were widely circulated in the media and social media platforms within the context of security-related accusations, before the full data was presented to the competent judiciary.

Such a matter has raised serious new questions regarding the extent of respect for the secrecy of investigation and the limits of using professional or research-oriented data in criminal prosecutions.

Some cases with political and rights-related echoes have also been noted, such as the file of an activist whose departure from national territory led to diplomatic tension and subsequent judicial proceedings. This case saw a wide dissemination of leaks related to the course of prosecutions and investigations in the media and digital space, prior to the issuance of official statements from the Public Prosecution or the competent judicial authorities. This contributed to forming a pre-emptive public opinion regarding the file. In other cases, courts have issued convictions against some journalists on charges of "publishing secret information" or "disclosing data that would prejudice security," based on the provisions of the Penal Code. This has reopened the jurisprudential and professional debate regarding the precise boundaries between exercising the legitimate right to information and the duty to respect judicial secrecy.

The Algerian reality has proven that "media trial" is often harsher than judicial trial; once the name of a suspect in a corruption case, for instance, is published, "popular conviction" is issued immediately, even if the investigation ends in an acquittal, which empties the presumption of innocence of its practical content.

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<sup>9</sup> Article 41 of the Constitution issued pursuant to Presidential Decree number 20-442, same reference.

## **Branch 2: Position of the Algerian Legislator on the Balance between the Two Principles**

This branch analyzes the manner in which the Algerian legislator attempted to reconcile freedom of the media with the requirements of judicial secrecy.

The Algerian legislator has sought to achieve a precise balance between freedom of media and the requirements of judicial secrecy through the establishment of an integrated legal system. It has attempted to reconcile several principles: the principle of freedom of media and the publicity of trials on one hand, and the principle of protecting public order, public morals, and the privacy of individuals on the other. This trend was evident in Organic Law No. 23-14, which established specific controls for publishing news of investigations and judicial cases, while imposing penalties on violators.

The legislative position clearly leans towards favouring the "interest of the investigation" over the "journalistic scoop."

The legislator did not prohibit publication absolutely but restricted it with controls that make the information emanate from an "official source" (the Public Prosecution) to ensure its accuracy and non-infringement of rights, rather than leaving the arena to leaks.

## **Branch 3: The Roles Entrusted to Media and the Judiciary in a State Governed by the Rule of Law**

This branch aims to clarify the complementary role of both the media and the judiciary within the framework of a state governed by the rule of law.

In a state governed by the rule of law, the media and the judiciary complement each other in achieving justice and transparency. The judiciary applies the law and issues judgments, while the media plays the role of the watchdog and guide for public opinion. However, this role must be exercised with responsibility and commitment to legal and ethical controls.<sup>10</sup> The relationship between the two authorities (judicial and media) must be complementary rather than confrontational. The problem lies in the absence of specialization, as the non-specialist journalist may publish a document he considers "precedent," which is in fact a "crime," while the judge may see in every criticism an "insult." The solution lies in joint training.

## **Section Two: The Role of the Public Prosecution as a Controlling Authority of the Relationship Between the Media and the Judiciary in Algerian Legislation.**

This section focuses on the practical and central role of the Public Prosecution in regulating the relationship between the media and the judiciary, through reviewing the legal restrictions imposed on the publication of judicial cases. It also examines the powers granted to the Public Prosecution under Law 14-25 in this field, and finally assesses this role.

### **First Requirement : Legal Restrictions on Media Publication of Judicial Cases.**

This requirement addresses the most important legal provisions, particularly those in Organic Law 23-14, which regulate media publication during the stages of investigation and trial, highlighting the common objective among them.

### **First Branch : Prohibition of Publication during the Investigation Stage.**

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<sup>10</sup> Article 163, Ibid.

This branch focuses on the provisions of Article 46 of Organic Law 23-14, which constitutes the legislative basis for preventing publication that may affect the confidentiality of investigations.

Article 46 of Organic Law 23-14 is the fundamental provision that regulates the prohibition of publishing news related to judicial investigations.

It stipulates that: “Any publication or broadcast, through any media, of any information or document that affects the confidentiality of preliminary or judicial investigations, or the content of deliberations of judicial bodies, or the decisions issued by courts in closed sessions, or reports relating to private life, shall be punishable by a fine ranging from one hundred thousand dinars (100,000 AD) to five hundred thousand dinars (500,000 AD).<sup>11</sup>

This provision is general and comprehensive, as it uses the expression “any information or document,” meaning that it prohibits the publication of any information related to the investigation, not only official documents. Through this broad formulation, the legislator intended to provide wide protection for investigations against any external interference that may hinder their progress.

Article 46 represents a clear legislative direction toward protecting the confidentiality of investigations, as it penalizes the publication of any information or document that affects the investigation or harms private life, regardless of its nature or the medium of its publication. With this expansion of the scope of prohibition and the increase in fines, media institutions are required to exercise a high degree of legal caution before publishing. Meanwhile, the Public Prosecution emerges as a central authority balancing the public’s right to information and the protection of the course of justice and the dignity of the parties.

### **Second Branch : Restrictions on Publication during the Trial Stage (Protection of Confidential Sessions, Judges’ deliberations).**

This branch shows that restrictions on publication are not limited to the investigation stage, but extend to the trial stage in certain cases.

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Even after the case has been referred to the court, there remain restrictions on publication in certain situations. If the court decides to hold the hearing in camera in order to protect public order or morals, the media is prohibited from publishing the substance of what took place therein. Article 46 of Organic Law No. 23-14 punishes anyone who publishes “ the content of the deliberations of judicial bodies issuing judgments when their sessions are in camera” with a fine ranging between 150,000 and 250,000 AD .<sup>12</sup>

Judges’ deliberations are considered strictly confidential, as deliberation follows the closing of pleadings and consists of the exchange of views among the judges composing the court regarding

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<sup>11</sup> Article 46 of Organic Law n°23-14 related to media, reference cited.

<sup>12</sup> Article 46, same reference.

the facts of the case in terms of proof or denial. The publication of anything related to their proceedings is prohibited, whether before or after the pronouncement of the judgment.

The protection of “deliberations” is a protection of judicial independence, so that the judge does not render a decision under pressure from public opinion or the media. The violation of this confidentiality constitutes one of the most serious forms of influence on the judiciary body ; therefore, the legislator has adopted a strict stance in criminalizing it.

### **Third Branch : Special Protection of Privacy and Vulnerable Groups (Family Cases, Juveniles).**

This branch addresses the enhanced legislative protection established by the legislator for certain types of cases, such as family and juvenile cases, due to their sensitivity and their connection to private life.

Article 47 of Organic Law n°23-14 provides for the punishment of publishing or broadcasting images, drawings, or illustrative data that reconstruct the circumstances of felonies and misdemeanors stipulated in the provisions of the Penal Code relating to sexual acts and violence against children and women, with a fine ranging from 100,000 to 500,000 AD.<sup>13</sup>

Article 35 also expressly prohibits the journalist from infringing upon individuals’ private life, the presumption of innocence, violating children’s rights, or harming the image, honor, and dignity of women, while imposing disciplinary sanctions by the Higher Council for Ethics and Deontology of the Journalistic Profession.<sup>14</sup>

Articles 37 and 38 complement this framework through the right of reply and mandatory correction for any person subjected to false allegations affecting their honor or reputation, thereby providing a rapid mechanism for the protection of those harmed.<sup>15</sup>

The provisions of this law reflect both a preventive and remedial approach simultaneously, as they combine financial and disciplinary deterrence. This makes the Public Prosecution responsible for activating these mechanisms in cases involving vulnerable groups, while protecting the privacy of the parties without the immediate need to resort to severe criminal sanctions.

### **Second Requirement: Powers and Legal Mechanisms of the Public Prosecution**

This requirement aims to highlight the powers of the Public Prosecution under Law n°14-25.

#### **First Branch: Innovations Introduced by Law n°14-25 Amending the Code of Criminal Procedure.**

This branch presents the most significant amendments introduced by Law n°14-25 with regard to the protection of the confidentiality of investigations and the role of the Public Prosecution.

Article 19, (as amended by Law n°14-25 of August 03, 2025), provides that: “Procedures of inquiry, investigation, and judicial investigation are confidential unless the law provides

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<sup>13</sup> Article 47, same reference.

<sup>14</sup> Articles 35 and 36, same reference.

<sup>15</sup> Articles 37 and 38, same reference.

otherwise, without prejudice to the rights of the defense,” with an obligation on every participant to maintain professional secrecy under penalty of the Criminal Code.<sup>16</sup>

Among the most important innovations are the addition of paragraphs enabling the representative of the Public Prosecution or a judicial police officer, (with written authorization from the Public Prosecutor), to inform public opinion of “objective elements derived from the proceedings” in order to avoid “incomplete or inaccurate information” or “disturbance of public order.”

The representative of the Public Prosecution is also permitted, in serious crimes, to publish images or identifying elements of suspects where necessary to preserve security or to identify victims, while respecting the presumption of innocence and the sanctity of private life.

Law No. 14-25 represents a qualitative shift by transforming the Public Prosecution from a silent guardian of confidentiality into an active regulator of information flow. It centralizes the authority to “breach confidentiality” under precise conditions (objective elements, written authorization, absence of evaluation), thereby preventing the dispersion of responsibility and ensuring the provision of reliable official information, while preserving the essence of confidentiality as a mandatory rule.

### **Second Branch : The Authority of the Public Prosecution to Grant Authorization for the Publication of Judicial Information**

This branch focuses on the positive aspect of the role of the Public Prosecution, namely enabling it to provide public opinion with official information when necessary.

Pursuant to the provisions of Article 19, the representative of the Public Prosecution is granted discretionary authority to publish “objective elements derived from the proceedings” after authorization from the Public Prosecutor, with the aim of countering rumors or disturbances of public order, while prohibiting any evaluation of the charges against those involved. In serious crimes, the publication of images or identities of suspects is permitted to preserve security or to identify victims, provided that the presumption of innocence and the sanctity of private life are respected<sup>17</sup>.

This new authority makes the Public Prosecution “the sole official voice” during the investigation stage, as it prevents informational chaos and avoids “media trials.” However, it requires a delicate balance between transparency and confidentiality, since any excessive disclosure risks compromising the investigation, while silence generates rumors, thereby making the Public Prosecution responsible for applying the “ criterion of necessity” in each case.

However, the problem lies in determining “the assessment” of necessity, as the Public Prosecution must assess, in each case or major issue, whether the time is suitable for disclosure. Only sound professional practice can resolve this issue.

### **Third Branch : Practical Mechanisms of the Public Prosecution in Confronting Rumors and Media Misinformation**

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<sup>16</sup> Article 19, paragraph 2, of Law n°14-25, a law dated on Safar 09 1447 corresponding to August 03,2025, bearing Code of Criminal Procedure, amending and supplementing Ordinance n°66-155 of Safar 18, 1386 corresponding to June 08, 1966, which contains the Code of Criminal Procedure, Official Journal, Issue n°54, published on August 13, 2025,

<sup>17</sup> Article 19, paragraphs 3 and 4, same reference.

This branch outlines the practical means employed by the Public Prosecution in dealing with the media, whether at the level of issuing statements or initiating proceedings.

The Public Prosecution possesses several practical mechanisms for engaging with the media and confronting misleading information, including issuing official statements to clarify facts, adopting official communication that contributes to initiating public proceedings against violators, and coordination with regulatory bodies of the media sector to address professional misconduct.<sup>18</sup>

### **Third Requirement: Assessment of the Supervisory Role of the Public Prosecution**

This requirement is devoted to assessing the effectiveness of the current role of the Public Prosecution in achieving a balance between freedom of the press and judicial confidentiality, and identifying challenges.

#### **First Branch : Practical Challenges in Implementing Legal Controls.**

This branch presents the most significant difficulties faced by the Public Prosecution when applying legal provisions related to the confidentiality of investigations within the digital media environment.

The application of legal controls relating to the confidentiality of investigations faces several challenges, most notably the rapid dissemination of information in the digital space and intense media competition, difficulty in determining liability for leaks, as well as differing interpretations of certain legal expressions such as “harm to the course of the investigation”.<sup>19</sup> The Public Prosecution today operates in a race against time (real-time), while legal mechanisms (Summons, Investigation) are relatively slow compared to the rapid spread of digital content (trend). The challenge, therefore, “The challenge lies more in “ technical and temporal” aspects than in legal aspects.

The transition from “deterrence” (trials) to “anticipation” (media statements) represents the most prominent development in the work of the Public Prosecution, An official statement nips the rumor in the bud , a method has proven more effective than subsequent judicial interventions that come too late.

#### **Second Branch : Sanctions for Violating Judicial Confidentiality.**

This branch focuses on the deterrent aspect of criminal and financial penalties prescribed in the Penal Code and the Media Law 14-23.

The penalties prescribed for violating professional secrecy vary between financial fines and custodial sanctions. With regard to imprisonment, Article 301 of the Penal Code provides for imprisonment ranging from one month to one year and a fine from 5,000 to 50,000 AD.<sup>20</sup>

As for Law n°14-23, it provides for fines more severe financial penalties that may reach up to 250,000 AD in the case of publishing the deliberations of in-camera hearings.

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<sup>18</sup> Khadir Rachid, “Freedom to Publish News of Judicial Trials through Media Outlets and Its Regulations in Algerian Legislation,” *Journal of Legal and Political Sciences*, Algeria, Vol. 10, n° 03, 2019.

<sup>19</sup> Mohamed Najib Hassani, the same reference, p. 569.

<sup>20</sup> Article 301 of Law n° 04-82 dated on 13 February 13, 1982, as amended and supplemented by Ordinance n° 66-156 containing the Algerian Penal Code, *Official Journal*, n° 07, issued on February 16, 1982.

Referring to the Penal Code makes the penalty “An imminent threat”, which may be very severe (effective imprisonment). This situation may lead journalists to excessive “self-censorship” out of fear of imprisonment, which may harm press freedom. The balance here lies in the “wisdom of the judge” when applying the penalty.

### Conclusion

It becomes clear through this study that the Algerian legislator does not grant either freedom of the press or judicial confidentiality absolute priority. Rather, both rights are surrounded by a system of reciprocal restrictions and guarantees, with the aim of ensuring the proper administration of justice without excessive restriction of the media’s role. It also becomes evident that the Public Prosecution, following the enactment of Law n°14-25 and Organic Law n°14-23, has moved from being a “public prosecution authority” in its traditional sense to a regulatory authority governing the flow of judicial information toward public opinion, through the monopoly over authorizing publication during the investigation stage and the use of official statements to counter rumors. The protection of judicial confidentiality is no longer limited to the prohibition of publication of official data alone, but has extended to the protection of litigants as well, especially in terms of the presumption of innocence and the protection of their reputation from any media condemnation prior to a judicial ruling.

Despite the clarity of the legal texts, their practical application faces several challenges, most notably the rapid spread of information across digital platforms and the limited capacity of judicial bodies to keep pace with this speed, which reduces the effectiveness of the prescribed penalties. In addition, the absence of continuous and effective communication by the Public Prosecution with media outlets often creates an informational vacuum that is exploited by leaks and rumors, which negatively affects public trust in the judiciary and the image of the Public Prosecution itself before public opinion.

Based on these findings, the research proposes the following recommendations:

- The preparation of a joint code of conduct between the Public Prosecution and media institutions including clear professional rules for covering judicial cases.
- The necessity of activating cells or communication offices at the level of judicial councils to provide official information in a proactive manner, in order to cut off rumors (activation of Article 11 of the Code of Criminal Procedure).
- Encouraging mutual training between judges and journalists<sup>21</sup> through joint training sessions on the limits of media freedom and the requirements of criminal investigation.
- Focusing on professional financial penalties (through the authority of regulation) as an initial alternative to custodial criminal sanctions against freedom, in alignment with the spirit of the new organic law.

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<sup>21</sup> Ahmed Fathi Serrou, *The Mediator in the Law of Criminal Procedure*, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2016, p. 892.

- Activating alternative mechanisms to criminal prosecution such as the right of reply and prompt correction.
- Developing digital monitoring tools within the Public Prosecution to follow media content related to judicial cases.

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