

Received: 01/05/2022

Accepted: 16/06/2022

## Legislative Measures Protecting Health and Well-being at the Level of Criminal Law in Algeria

التدابير التشريعية لحماية الصحة جنانيا في الجزائر

Dr. Lakhdari Fatiha \*<sup>1</sup>, Dr. Medjdoub Amena<sup>2</sup>

<sup>1</sup> University of Ghardaia (Algeria), Ifatiha360@gmail.com

<sup>2</sup> University of Ghardaia (Algeria), medjdoub.amena@univ-ghardaia.dz

### Abstract:

This study tackles the subject of protecting the human right to health and well-being at the level of criminal law. Such concept is an innate and unquestionable right, as well as a prerequisite for all other rights. It is stipulated by various laws both internationally and nationally; for instance, the Algerian legislator relied on a specific criminal law-related policy to protect health through several legal provisions in the Penal Code, and many other complementary laws such as environmental laws and consumer protection laws. Furthermore, considering that the medical profession is a field that warrants the preservation of the safety, life and health of human beings, it has been subject to a fair share legal texts that directly criminalize certain harmful practices.

This study aims to examine the right to health in the scope of criminal law regulations; since most criminal laws protect this legal interest as a collection of separate rights, which stands in contradiction to applicable realities. Our study, therefore, seeks to deal with the best possible ways of applying criminal protection laws to uphold the right to health.

**Key words:** Right, Protection, Health, Consumer.

### الملخص:

تناولت هذه الدراسة موضوع الحماية الجنائية لحق الإنسان في الصحة، وهو حق فطري وأصيل وشرط أساسي للتمتع بجميع الحقوق الأخرى ونصت عليه مختلف الشرائع سواء على الصعيد الدولي أو الوطني، فالمشرع الجزائري في هذا

\* Corresponding author

السبيل اتبع سياسة جنائية محددة لحماية الصحة من خلال عدة نصوص قانونية في قانون العقوبات، والقوانين المكملة له كقانون البيئة وقانون حماية المستهلك، وباعتبار أن العمل الطبي هو المجال الذي تبرز فيه ضرورة المحافظة على سلامة وحياة وصحة الإنسان فقد نال نصيباً من النصوص القانونية التي جرمت بعض الممارسات الماسة بصحة الإنسان بشكل مباشر.

تهدف هذه الدراسة إلى دراسة نطاق تنظيم الحق في الصحة جنائياً، حيث تحمي معظم القوانين الجنائية هذه المصلحة القانونية كحقوق منفصلة، وهو ما يتعارض مع الواقع الواجب التطبيق، ولذلك تسعى هذه الدراسة إلى استخلاص أفضل السبل لتطبيق الحماية الجنائية للحق في الصحة.

**الكلمات المفتاحية:** حماية، الصحة، مستهلك، حق.

## INTRODUCTION:

Health is an essential requirement for the functioning of every individual and society. Preserving it and maximizing its value and importance has recently become paramount and a high priority. The right to health is closely linked to life; its merits and importance are unquestionable as a component of life itself.

The preservation and protection of health fall within the spectrum of human rights, as this particular right relates to the origin of all human rights, and is a basis for ensuring that its role is preserved within the same context. The idea of the right to health has been confirmed at two levels; first, at the international level through the Universal Declaration of Human Rights, as well as the proposed social, economic and cultural covenant of states by the United Nations in 1966, which was adopted by Algeria in 1989.

Along the same vein, the Alma-Ata 18 declaration affirmed everyone's right to the highest possible level of health, and the duty of governments to consider this task as one of their most vital social goals.

Second, at the national level: Most legislation now deals with this right in criminal law through the enactment of legal texts that protect health in its many forms, be it physical, psychological, environmental, or food safety. It also puts into service all means and tools aimed at protecting human health from all dangers including treatment of serious diseases and epidemics.

For that end, the Algerian legislator pursued a specific policy to protect health through several legal provisions in the Penal Code, and complementary laws such as the Environment Act and the Consumer Protection Act. And as the medical field is an area where the need to preserve human health is essential.

A fair share of the legal texts were dedicated to criminalizing of several practice that are deemed hazardous to health.

The importance of this study lies in the fact that the subject of health occupies an important place in the exceptional circumstances that the world is going through. A world where human health is threatened on many sides by the spread of pollutants, deadly viruses and epidemics. As such the need for comprehensive protective measures to address threats to human health became more important than ever—both nationally and internationally.

The aim of this study is to examine the scope of regulating the right to health at the level of criminal law. Most criminal laws protect this legal interest as a form of a separate right, which contradicts the realities of our day and age. This study therefore seeks to draw out the best ways of applying criminal protection to the human right to health. Based on that, we can pen our research question as follows: What legal guarantees has the Algerian legislator put forth to protect health?

We rely on the descriptive approach, which appears through the presentation of the concept of health in both jurisprudence and legislation. We also use the analytical approach when it comes to reviewing criminal law texts that govern the right to health in Algerian legislation. The study also warrants the use of the comparative approach in order to examine statements of jurisprudence as compared judicial texts.

Our research is divided into two major sections, the first deals with the right to health under international treaties and conventions, while the second is about the crimes that are harmful to health in the Environmental Act and the Consumer Protection Law.

## **First: The Right to Health Within the Scope of International Treaties and Conventions**

Health is the prerequisite for a decent life, and not just an advantage that is enjoyed exclusively by some. The right to health is a right for all; the first recognition of the right to health came in the 1946 WHO Constitution, as well as in the Universal Declaration of Human Rights adopted by the United Nations—as a vital element of the right to decent living—on the eve of the Second World War in 1948 (Abu Ajaj, 2017).

Furthermore, several international conventions recognized the right to health, such as The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, and the Convention on the Rights of the Child 1989, as well as other regional human rights conventions such as the African Charter of Human and Peoples' Rights 1981 and the Additional Protocol of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 1988.

### **Section One: Defining the Concept of the Right to Health**

In this part, we address the definition of the right to health and other rights associated with it;

#### **Part 1: Defining the Right to Health**

According to Ibn Manzur's "The Tongue of the Arabs", it means the departure of disease, well-being and healthy as opposed to sickness. It also stands for the absence of illness and the body being in its natural condition with which actions are carried out on a natural course. Moreover, the Hadith says "Fast and you will be healthy" and healthy means remaining intact and maintaining the integrity of one's body and mind. It is, by extension, the correct state and the opposite of that which is false. It also means the return to that which is normal after its disappearance. El-Siha or health is the conditions and requirements for something being fully met. (Ben Drid, n.d)

#### **Part 2: Defining "the Right to Health" Terminologically**

According to Professor Jerome Monnier in his book on public health: "the difficulty of finding a satisfactory definition to health does not stem from an issue of vocabulary, but due to

the complexity of a multifaceted and ever-changing reality". The definition, therefore, varies depending on the one giving it and the particular subject in which the terminology is studied.

Generally, it is defined as the state in which actions are conducted properly (Al-Kandari, 2003). According to the WHO constitution, health is "A state of complete physical, mental and social. well-being and not merely the absence of. disease or infirmity". Perkins defines health as a state of balance between the different functions of the body that come as a result of the body's adaptation towards the harmful factors that it experiences.

### **Part 3: The Legal Definition of the Right to Health**

The right to health is linked to the basis of all human rights and that is the right to life, which was ratified at the international level through the Universal Declaration of Human Rights as proclaimed by the United Nations General Assembly in 10 December 1948 in article 25 paragraph 1, where it emphasized that the right to health is reflected in the satisfaction of the necessary needs of human beings for food, clothing, housing, and decent living. This right is effectively guaranteed in the proposed International Covenant on Economic, Social and Cultural Rights of the United Nations. The latter was fully embraced by Algeria in 1989. The right to health was affirmed by the European Charter of October 18, 1961, which France joined in 1972; it was then emphasized in light of the necessity to bring it in line with the social variables that occurred since it was adopted. (Ben Amer Tounsi, 1995)

Article 12's concept of "highest achievable level of health" takes into account both the biological and socio-economic basic conditions of the individual and the resources available to the State. There are a number of aspects that cannot be addressed in the context of the relationship between States and individuals alone; In particular, the State cannot ensure good health, nor can States provide prevention of every cause that can lead to human illness. In the sense that, genetic factors or an individual's vulnerability to illness and his or her partaking in unhealthy or dangerous lifestyles also play a vital role.

## **Section Two: Rights related to the Right to Health**

The right to health overlaps closely with many other human rights, including the right to food, housing, employment, education, life, non-discrimination, privacy, access to information, prohibition of torture, etc. In its public comment No. 14, the United Nations Committee on Economic, Social and Cultural Rights provided detailed guidance to States on their obligations to respect, protect and fulfil the right to health. The Committee also noted that this right contained the following interrelated and fundamental features:

**1. Availability:** States must provide an adequate number of public and individual working healthcare facilities throughout their territory, as well as safe water and sanitation facilities, trained medical staff and fairly paid professionals as well as basic drugs and medication.

**2. Accessibility:** it is characterized by four basic elements: non-discrimination, physical access, economic access and access to information. Everyone must have access to health-related facilities and services, particularly the most vulnerable without any discrimination on any ground; facilities and services, as well as basic health components such as water and sanitation facilities must be safely accessible. All must be able to afford health-related facilities, goods and services, taking into account the principle of equity when it comes to payment; so that poor families do not end up bearing the burden of disproportionate health expenditures. Finally, States must ensure that everyone has the right to seek, obtain and transmit information on health issues, without disturbing the confidentiality of medical data.

The right to health is closely linked to and depends on the realization of other human rights, as enshrined in the International Bill of Human Rights, including the right to food, housing, employment, education, human dignity, life, non-discrimination, equality, prohibition of torture, privacy, access to information, freedom of association, assembly and mobility; these rights, freedoms and others address indivisible components of the right to health.

## **Two: Guarantees of the Right to Health in Charters and Treaties**

In this part, we address the general guarantees of the right to health, and then the right to health for specific groups;

### **Section One: General Guarantees of the Right to Health**

General guarantees of the right to health come in the form of the right to a healthy environment in nature and in workplaces as proclaimed and ratified by international health regulations to promote the human right to health;

#### **First: The Right to a Healthy Environment in Nature and the Workplace**

The right to a healthy environment in nature and the workplace includes:

##### **1. The Improvement of all Aspects of Environmental and Industrial Health:**

Among other things, we mention the need for preventive measures related to occupational accidents and diseases, the need to ensure an adequate supply of safe drinking water and basic sanitation, population protection and reducing their exposure to harmful substances such as radiation, hazardous chemicals or other harmful environmental conditions that directly or indirectly affect human health. Moreover, industrial health means minimizing the causes of health risks inherent in the working environment, as much as possible.

##### **2. The Right to Disease Prevention, Treatment and Control:**

The prevention, treatment and control of epidemic, endemic and occupational diseases require economic development and gender equality. The right to treatment includes the establishment of an emergency medical care system in cases of accidents, epidemics and similar health risks, disaster relief and emergency humanitarian assistance. Disease control refers to individual or joint efforts by States, among other things, to make technologies relevant to the use and improvement of epidemic control and data collection systems (Office of the High Commissioner for Human Rights, 2008).

#### **Second: International Health Regulations Promoting the Human Right to Health**

WHO is the international health organization of the United Nations which began work when its Constitution came into effect in 1948 when WHO's responsibility towards disease and epidemic control was established. In 1951 IHR regulations were adopted to provide a legal basis for the organization's framework and its role in epidemiological disease prevention. In 2005 health regulations called the International Health Regulations (2005) were adopted as a legal framework for reporting epidemics.

Contrary to WHO's 1969 rules, which were limited to infectious diseases such as influenza, yellow fever and plague, the 2005 regulations were more extensive, focusing on all health risks; this also applied to Covid-19.

And through these regulations, States agreed to strengthen their ability to detect, evaluate and report public health events; WHO plays a coordinating role in international health regulations.

**1. International Cooperation After the Declaration of an International Emergency:** any disease can only be classified as an epidemic if it reaches a certain level of risk, forming the basis for WHO's intervention with the assistance of States to provide protection as is the case today with the emerging CORONA virus—the latter was classified as a global pandemic or pandemic, when FAO Director-General Tedros Adhanom declared: "The CORONAVIRUS is a global pandemic or epidemic". Among the conditions required for declaring emergencies as defined above we mention:

A. An unusual event already occurring in accordance with the definition of the General Directorate of the Organization of a global epidemic;

B. Poses a threat to public health: it is not enough to be a usual event, but must also come with a tremendous impact on public health, i.e., its threat to the human right to health;

C. International spread of the disease: the disease must spread widely and significantly among the countries of the world, requiring clear and specific control and response;



D. Requires an international response through the efforts of national governments and public and specialized organizations.

### **Section 2: The Right to Health for Specific Groups**

Many international conventions have recognized the right to health for every human being without discrimination, emphasizing this right for certain groups due to their particular circumstances and fragile status in society, the most important of which are women, children and people with special needs.

#### **First: Children's Right to Healthcare**

Children's right to healthcare was penned in article 24 of the Convention on the Rights of the Child of 1989, which referred to the children's right in the highest attainable level of health, that no child was denied access to health care, that infant and child mortality should be reduced, that diseases and malnutrition should be combated, that maternal health care should be ensured, that traditional practices that harmed children's health were abolished and that international cooperation was encouraged to apply this right. Particularly in developing countries. Article 25 of the Convention was devoted to children's health deposited by the authorities for care, protection or treatment; article 23, paragraph 3, emphasized ensuring that children with disabilities had access to health care services by the State. (Abd El Ghani, n.d)

#### **Second: Women's Right to Healthcare and Life**

Violence, including kidnapping, assassination and extrajudicial killings, is strictly prohibited at all times; dowry-related violence or "honor" killings are acts that are strictly prohibited by international law and must be prevented, prosecuted and punished by the State concerned. Female genital mutilation is detrimental to her health and to women's lives and is opposed to international law. States have a duty to take appropriate and effective measures to eradicate this practice, and to prevent maternal mortality. National legislation must provide at a minimum level the right for abortion in cases where, for example, women's health is at risk and in cases of rape or incest.

#### **Third: The Right of People with Special Needs to Healthcare**

States recognize that persons with disabilities have the right to enjoy the highest levels of health without discrimination on the basis of disability; States take all appropriate measures to ensure that persons with disabilities have access to gender-sensitive health services (Abd El Ghani, n.d), including health rehabilitation services. Nations are currently working to:

1. Provide free or affordable healthcare and programs for persons with disabilities equal in scope to the quality and standards they provide for others, including sexual and reproductive health services, as well as public health programs.
2. Provide the health services needed specifically for persons with disabilities due to their disability, including early detection and intervention where appropriate, and services aimed at minimizing and preventing further disabilities;
3. Provide these health services the closest possible to their communities, including in rural areas;
4. Request health professionals to provide care to persons with disabilities that is of same quality they provide others, on the basis of free and informed consent. This is achieved through raising awareness of human rights, dignity, autonomy and the needs of persons with disabilities by providing them with training and disseminating ethical standards on health care in public and private sectors (Article 25 of the Convention on the Rights of Persons with Disabilities).

### **Second: Health-damaging crimes in the Environmental and Consumer Protection Act**

The environment is the medium in which man lives, and therefore it is to be maintained and preserved. Particularly from attacks that may affect human beings, as well as the food and the materials used and consumed by humans lest serious damage is caused if the rules of health, hygiene and other risk prevention requirements are not taken into consideration.

In this research, we will address some of the crimes contained in both the Environmental Protection Act and the Consumer Protection Act.

### **Entry One: Criminal health protection in the Environment Act**

From the transition of human beings from agricultural to industrial societies, there has been a widespread consumption of natural resources. When new technology emerged, particularly the nuclear industry, the relationship between man and nature became complicated, and humans have ignored the right of others to live in a clean, risk-free and damage-free environment (Al Demeiri, 2010) This prompted the international community to tackle this risk and reconsider the identification and definition of environmentally harmful behavior and thereby criminalize what is considered an attack on the human right to health.

### **Section 1: The Right of Humans to a Healthy Environment**

The gradual deterioration of the global environment has compromised human safety and survival on the planet. The fate of man is linked to the ecosystem in which he lives because the environment is shared by all humanity.

And in order to take the issue of the environment seriously it was necessary to make it a human right. Human beings have the right to live in an environment where they feel reassured, safe and secure, or what is known as the right to live in a healthy, clean and free environment away from diseases and dangers.

#### **First: Defining the Right to a Healthy Environment**

The right to the environment is one of the rights guaranteed by the third generation of human rights or what has been termed as solidarity rights. Recognizing the right of human beings to a healthy environment began receiving international attention after the 1960s and 1970s, especially after the Stockholm Conference of 1972. As a result, the concept is still confusing to some; it is defined as the right to disease-free and healthy environment, and it could include Human-induced crimes towards the environment. There are those who assert that the content of this right is that every human being has the right to live in a healthy and clean environment, which carries no risks, and allows him make use of its resources and maintain it in such a way that allows him to live a decent life that is in accordance with his development (Al Yakoubi, 2001). In the sense that all environmental laws and all measures taken to

maintain them are to protect human beings and provide an adequate environment for human life (Al Demeiri, 2010).

Moreover, it has also been defined as the right to a natural medium fit for the permanence and development of all neighborhoods including man as a component of the environment.

In jurisprudence, this right has been defined as: "a right based on the belief of individuals and communities that it will not be safe unless it takes into account the negative environmental consequences of human behavior". It is also: "The authority of every human being to live in a balanced and healthy environment, to enjoy and use the resources of nature in a way that guarantees him a decent life and integrated development of his personality without prejudice. We can say it is the duty towards preserving the environment and its resources and to work to improve and develop them and combat the sources of their degradation and pollution.

For Algeria, the agencies charged with protecting the right to a healthy environment are the National Observatory for Human Rights. The Observatory has been assigned the task of monitoring, researching and evaluating human rights. After that, it was succeeded by the Advisory Committee for the Promotion and Protection of Human Rights established on 25/03/2001 under Presidential Decree No. 71/01; its tasks are to monitor human rights, to develop annual reports containing statistics on crimes against human rights and to present them to the President of the Republic or the President of the National People's Assembly (Yahia, 2007; p.25). It also carries out periodic reports submitted by Algeria to bodies arising from international human rights conventions and possesses a media presence and holds international meetings to spread a culture of peace and reject a culture of abuse of rights. As part of the protection of the right to the environment, Algeria has also established public bodies aimed at protecting the environment itself. These bodies operate under the guardianship of the Ministry of the Environment, through means of decrees and laws. It includes the National Waste Agency, the Biological Resources Development

Centre, the National Coasts Province, the National Observatory for Environment and Sustainable Development, the National Centre for Cleaner Production Technologies. (Bou Sultan, 2003; p.43)

### **Second: The Relationship Between the Human Right to Health and the Right to a Healthy Environment**

The right to a healthy and peaceful life is one of the most important of human rights. It has several aspects and one of them reveals the close link between the human right to health and the right to a clean environment. Since the human right to health is mainly subject to major attacks that are difficult to respond to or prevent, the risk of a combination of environmental hazards and pollutants that States do not have sufficient control over is always present. Furthermore, there is the factor of environmental pollutants produced by industrial projects that are undeterred due to the absence of Legislation that regulates their activities and limits their negative effects on the environment, or simply due to inadequacy or ineffectiveness.

Based on that, we can say that protecting the environment is the act of protecting the human right to health, which makes the environment a dimension of the many dimensions of human rights. (Matalqah, 2012; p.04)

The Universal Declaration of Human Rights of 1948 provides for the right to health. After it the Special Covenant on Civil and Political Rights, a binding international convention, in which Algeria is part of, and it emphasizes the right to health; The human right to health needs to be protected from any attack, but it also needs environmental conditions to ensure the continuation of life on Earth, as without clean air, clean water and ongoing environmental resources it is impossible to protect the human right to life. (Ritib, n.d.; p.22)

### **Section 2: Some Aspects of Health Damaging Abuses in Environmental Crimes**

Within this section we address the threat of medical waste or Health-care waste to human health and to the environment.

#### **First: The Threat of Medical Waste to Health**

**1. Definition of medical waste:** Medical waste is defined as waste from health-care facilities, such as hospitals, various medical clinics, blood banks and veterinary clinics, as well as medical research laboratories.

Medical waste is of particular importance, as it is produced on a daily or approximately hourly basis, and is usually contaminated with blood, body fluids, or other substances involving potential infection. (Mohamed Farid, n.d.; p 68). States divide medical waste into six categories:

A- Tissue waste, organs, body parts, and bodily fluids removed during surgery or autopsy.

B- Human blood, serums, plasma, and blood products.

C. Microbiological waste including samples from medical laboratories, petri dishes, medical devices used for blood transfusion or vaccination, as well as live and diluted vaccines.

D. Contaminated sharp objects, contaminated medical saddles (needles), syringes, striped blades, Pasteur pipettes and broken glass.

E. Waste produced by isolated patients in hospitals, where such waste must remain away from others due to it coming from patients with serious and infectious diseases.

F. Bed residues, parts and bodies of contaminated animals, which are deliberately exposed to pathogens in the areas of medical research and biological production, or body parts of a live animal that act as a drug testing component.

Concern about the potential health risks of medical waste began to grow in the 1980s when medical waste was washed or dumped on many east coast beaches in the United States. This pushed Congress to enact the Medical Waste Tracking Act in 1988.

It is a federal program that called on the EPA to issue regulations on medical waste management, which the agency did on March 24, 1989, and the regulations for the program began in two years on June 24, 1989 in five U.S. states (New York, New Jersey, Connecticut, Rhode Island, Puerto Rico), and expired on June 21, 1991. (Boutonnet & Neyret, 2010; p.912)

During this time, the EPA collected information, conducted several studies on medical waste management, and the agency's information collected during this period concluded that the pathogenic potential of medical waste was the largest in its production phase, whilst the risks declined naturally after production.

**1. Classification of Medical Wastes: By law No. 01/19 mentioned above:**

**A. Private waste:** It has not been classified as dangerous according to the above law; by its nature and its own components it cannot be treated as household waste and the like.

**B. Hazardous private waste:** Because of its materials, components and toxic substances, it is confirmed as potentially harmful to public health and/or the environment.

**C. Waste of Healthcare related Activities:** the resulting waste in the above definition, in accordance with article 18 of the same Law, is subject to special management and the removal of such waste is the responsibility of the producing institution, in a way that avoids harming public health and the environment.

**Second: Environmental Pollution Offences and their Punishment**

It is well established that the environment in all its aspects is affected by development and therefore deserves all the protection and attention. The Algerian legislator included these environmental elements with the legal protection to not harm public health. (Hiba et Al, 2019; p.43)

The Algerian legislator has drawn up a set of legal texts criminalizing certain behaviors that are harmful to public health through attacks on the environment. Crimes against the environment are divided into crimes, misdemeanors, felonies, and violations, while sanctions are divided into monetary sanctions and possible prison time:

**1. Divisions of crimes affecting the environment:** Referring to the Environmental Protection Act, the Algerian legislator has dedicated criminal protection to every natural area, preventing abuse and harm to biodiversity, as well as the air and water environment, not to mention the terrestrial environment and

reserves and forests. Through means of legislative provisions that contain penal codes applied to violators without departing from the course of the Penal Code, which is enshrined in article 25.

**A. Environmental crimes as a felony:** Found in the Penal Code and the laws that complement it, article 87 bis of Order No. 66/56 of the Penal Code stipulates that: "Attacking the ocean, inserting or leaking an article into the air and interior of the earth, or dumping it there or in water including territorial waters that would put human health, animal or natural environment at risk" is punished by the legislator and article 87 bis 04 states: "A temporary prison sentence of 05 to 10 years and a fine of 100,000,000 to 500,000.00 Algerian dinars is subjected upon anyone that causes or encourages the acts mentioned in article 87 bis by any means". Article 406 of the same law provides for the punishment of anyone who deliberately damaged water installations with 05 to 10 years' imprisonment and a fine of 50,000.00 Algerian dinars to 100,000.00 Algerian dinars, as well as death in articles 87/6 bis and 87/1 bis. 2. Law No. 01/19 on the management, control and removal of waste in articles 62-63-64-65-66 provided for the number of penalties in the event of violation of these orders. In a nutshell, that the Algerian legislator criminalized any attack that would harm the environmental elements of the air, land and sea.

**B. Environmental crimes as a misdemeanor:** Law No. 03/10 on environmental protection under sustainable development in articles 65-84-90-94 states: "Punishment by a fine of 5,000.00 Algerian dinars to 15,000.00 Algerian dinars for each Algerian ship captain or pilot of an Algerian aircraft, or everyone who oversees immersion or freezing at sea on Algerian vehicles or fixed or mobile floating bases in the waters under Algerian jurisdiction.

Each ship captain is subject to the provisions of the International Treaty on the Prevention of Fuel Pollution of Seawater concluded on May 12, 1954, as well as the unsured skipper when pouring or mixing fuel into the sea.



Law 01/19 punishes anyone who delivers waste, especially hazardous, to a person who exploits an unauthorized facility to treat this type of hazardous private waste without a permit. Article 172 of Law No. 05/12 on water punishes anyone who unloads dirty materials of any nature in wells, pits, spring water and drinking areas, or the introduction of all unhealthy substances and the dumping of dead animals in water installations and lakes.

**C. Environmental crime as a violation:** violations are many in the environmental field, and the Algerian legislator has drawn up provisions to protect the environment and approved sanctions for violating said provisions, article 82 of Law No. 03/10 stipulates that anyone who violates the provisions of the article shall be punished with a fine. Articles 48 to 51 also tackled the subject of the protection of fresh water in Law 10/03, and materials from 52 to 58 of the same law dealing with protecting the sea and sea life.

Article 78 of Law No. 84/12 declares that dumping dirt in forest areas is an offence of ploughing or that planting in forest property without possession of a permit is punishable. Furthermore, anyone who exploits an unlicensed animal husbandry institution as well as those who engage in hunting without a permit.

## **Two: Protecting consumer health in Algerian Criminal Law Legislation**

Referring to the provisions of Title IV of the Algerian Penal Code entitled "Cheating on the Sale of Goods and Fraud in Food and Medical Items", chapter 2 of Law No. 09-03 on consumer protection and suppression of the aforementioned fraud, entitled "Offences and Penalties under Title IV Suppression of Fraud", the Algerian legislator provided for criminal penalties and precautionary measures to contain all crimes related to consumer products and are limited to non-conformity offences when it comes to food consumption.

### **Section 1: The Crime of Fraudulent Presentation of a Food Product:**

The consumer may trust a particular food product given its fundamental characteristics or qualities or the brand it carries of a world-renowned and international quality of consumption, and, in the interest of the Algerian legislator, in the spirit of the right of the consumer to safety when consuming food products, criminalizes any deception or attempt to deceive the consumer when it comes to the features or characteristics of a food product. (Boudali, 2000; p.250)

### **First: Defining the crime of Fraud**

Jurisprudence defined it as: "Actions and lies that would show something that is not true or portraying it in a way that is contrary to what it really is in reality". (Misbah Al-Qadi, n.d.p: 51) It also adds: "Behavior that would make the consumer be mistaken about a product, such as making some false statements or tricks or a display of goods that hides their defects", Also: "False and unclear conduct or false statements about the truth of the product, its nature, its essential characteristics, elements, source or ability," the Algerian legislator called it "the crime of deception or attempted deception in food products".

### **Second: The Main Components of the Crime of Fraud**

The crime of fraud (deception) or attempted deception in the characteristics of the food product is based on three components:

**1.The Legal Component:** The Algerian legislator defined the offence of fraud/deception or attempted deception in the characteristics of food products under article 429 of the Algerian Penal Code. The content of the aforementioned article 429 has failed to tackle aspects such as deception or attempted deception on the date of validity, the usability of the food product, the precautions of use and the expected results of use, as a result the Algerian legislator has remedied this omission under article 68 of Law No. 09/03 on consumer protection and fraud suppression, which states: "Punishable by the penalties stipulated in article 429 of the Penal Code, anyone who deceives or tries to deceive the consumer by any means or method that was about: - the quantity of products delivered, - delivery of

products other than those previously specified, usability of the product, date or validity of the product.”

**2.The Material Aspect:** Based on the legal component of the crime of fraud or attempted deception in the attributes of food products, the physical component is be checked in this type of crime when the economic intervention comes in a certain material conduct that leads to the manipulation of the consumer's will and lying about the nature of the food product or in the proportion of ingredients necessary for its composition, type, source, or when it comes to its essential characteristics, the quantity of products delivered or in the product's usability, methods of use and precautions of use. Or in the duration of validity or in the desired results. In this regard the offender in this type of crime does not change the components of the food product or decrease them as in the case of the crime of cheating but rather manipulates the consumer and makes him consume the food product with its defects and shortcomings without them being felt by the consumer during the acquisition.

**3.The Non-Material Aspect:** Based on the legal component of this crime, the crime of deception (fraud) or attempted deception in the characteristics of the food product may be classified as an intentional crime. For that to happen, however, two requirements related to the criminal intent of the perpetrator must be established; first, that the offender should be aware of the elements of the crime; i.e. his knowledge of the absence of the essential characteristics or attributes of the food product, and the second is the will of the offender should be directed to the elements of the crime and to initiating it; I.e. the will and tendency to lie to the consumer and to get him to acquire the food product without the required advantages. Based on that, we can say that the intent of committing a crime cannot be considered present if the perpetrator misunderstood the truth of the product himself —without intentionally being ignorant of its reality or telling the consumer before completing the transaction that the product is faulty. Furthermore, in the case of defects being obvious in the product, the offender in this case cannot play the card of, and so the intention of deception is clear and

consistent. On the other hand, we ought to mention that the case of hidden defects in the product and the lack of verification of defects may be clear evidence of bad faith, which means the purpose of deception is still there (Bin Barih, 2016; p.240)

### **Section Two: The Crime of Violating Mandatory Safety Regulations of Food Product**

#### **First: Defining the Crime of Violating Mandatory Safety Regulations of Food Product**

Jurisprudence addressed the crime of not respecting the mandatory safety regulations of food products under the label of: "The crime of making or producing food products harmful to health", and defined it by saying: "Contamination in processed foods harmful to human health means the introduction of substances that are not of their nature or infected with microbes or parasites that would cause the disease, or that these foods may be placed in packages or coils that contain substances harmful to health or that may mix dust and impurities in excess of the prescribed proportions or it is impossible to purify or if it is circulated by people with infectious diseases from which infection can be transmitted through food or drink. (Baia, 2015; p.130)

Jurisprudence in this regard also indicated that the incidences of this type of crime occurring has increased in recent years as a result of increased sources of pollution, which may occur during the production phase through the use of contaminated water in the irrigation of agricultural food crops and in the use of pesticides and fertilizers absorbed by some plants and fruit trees.

#### **Second: The Components of the Crime of Violating Mandatory Safety Regulations of Food Product**

1. **The Legal Aspect:** Article 71 of Law No. 09/03 on Consumer Protection and Fraud Suppression states: "A fine of 200,000,000.00 Algerian dinars to 500,000,000 Algerian dinars for anyone who violates the mandatory regulations of food safety provided for in articles 4 and 5 of this Law.

2. **The Material Aspect:** The materiality of the crime of not respecting the mandatory integrity of the food product is not

specified by law but by regulation on the basis of legislative authorization. Therefore, in reference to the provisions of regulations issued by the executive in the area of the conditions and manners of the safety of the food product from water pollution and pollution with unacceptable or toxic natural substances, we find that the physical pillar of the crime of not respecting the mandatory regulation of food product safety is present when at the stage of consumption that leads to the introduction of microbes, parasites or viruses. Or natural substances such as dust and minerals in proportions that exceed what is specified in regulation.

**3. The Non-Material Aspect:** The crime of violating food safety regulations is an offence stipulated in article 71 of Law No. 09/03 on consumer protection and the suppression of the aforementioned fraud and intentional crimes. It requires the presence of criminal intent and deliberate misconduct. (Baia, 2015; p.144)

**Conclusion:**

What we can draw from this study is that there is penal protection in Algerian law when it comes to health. It is guaranteed by many legislative texts, including specific texts directly stated by the legislator, as well as indirect protectionist texts. Nevertheless, despite all of these texts, direct and indirect, being important and necessary, they still contain many flaws and shortcomings that need to be remedied.

The most important of our work's results are as follows:

1. At the international level, States have negotiated a large number of agreements aimed at addressing environmental and economic challenges.
2. Individually or jointly, States are making efforts, among other things, to make technologies available for improving epidemic control and data collection systems on a detailed basis, implementing or strengthening immunization programs and other strategies to combat infectious diseases. Under the Covid-19 pandemic, the importance of these state efforts has emerged.
3. Algerian legislation provides for a number of protectionist rules of a penal nature within the framework of health

protection, which are scattered in both the Penal Code, the Health Act and other laws indirectly related to health, such as the Environment Act and the Consumer Protection Act.

4. Some provisions on penal protection of health came preventively, as was the case with the Environmental Protection Act, and others were of a deterrent nature, as were the provisions of the Penal Code or some provisions of the Consumer Protection Act.

As for our recommendations, we mention:

1. We propose the drafting of clear and specific provisions in criminalizing health-damaging behavior, particularly in the Consumer Protection Act, where, for example, a term such as deception or fraud calls for legal interpretation.

2. The Algerian legislator should collect texts on criminal protection of health in a single law that includes all provisions on criminal consumer protection and health protection against environmental crimes.

#### **References:**

##### **International Conventions:**

1. UN. (2006). Convention on the Rights of Persons with Disabilities
2. UN. (1979). Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
3. UN. (1989). Convention on the Rights of the Child (CNRC).
4. AU. (1981). African Charter on Human and Peoples' Rights.
5. Organization of American States (OAS). (1999). Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").
6. Council of Europe. (1961). European Social Charter.

##### **Laws and Decrees:**

1. The Official Journal of the Algerian Republic. (2002). Law No.02/08 Concerning the Establishment and Preparation of New Cities Legislated on 08/05/2002. Volume 34.
2. The Official Journal of the Algerian Republic. (2003). Law No.10/03 relative to the protection of the environment within the

framework of sustainable development, legislated on 07/19/2003. Volume 43.

3. Ordinance No. 66-156 of June 8, 1966 on the Penal Code, amended and completed.

4. The Official Journal of the Algerian Republic. (1999). The Ministerial Decree of 27/10/1999 On the specifications of industrial milk powder and the conditions and procedures for its presentation, possession, use and marketing. Volume 80.

**Books:**

1. Baalabaki.R.(No Year). [ Kitab Jamharat El Lougha] The Book of the Popularization of Language. Part One. Dar El'Ilm li'Elmalayin.

2. Ben Amer.T.(1995). [ Almas'ouliya El douwaliya. International Responsibility (Illegal International Action as the Basis for International State Responsibility), Aleppo Publications, 1995.

3. Bodali Mohamed, Consumer Protection in Comparative Law: A Comparative Study with French Law, Homa Publishing House, 2000.

4. Mohammed Mohammed Misbah al-Qadi, Criminal Consumer Protection: A Comparative Study and Its Applications in Saudi Arabia, Arab Renaissance House, Cairo, without the year of publication.

5. Muammar Ratib Mohammed Abdul Hafiz, International Environmental Law and Pollution Phenomenon, Arab Publishing House, 2012.

6. Abu Ajaj Abdul Aziz, right to health under international treaties, article posted on the website: <https://www.sasapost.com/opinion/health2>.

**Articles:**

1. Yacoubi Leila, Right to a Healthy Environment, Generation Human Rights Journal, Gil Center for Scientific Research, Lebanon, Issue II, June 2001.

2. Ibrahim Mohammed Farid, Hazardous Medical Waste Problem Management Department, Management Magazine, Egypt, Issue 3, Volume 47.

3. Bousultan Mohammed, Marine Pollution with Petroleum, Journal of Legal and Administrative Sciences, Tlemcen University, Issue 1, 2003.

4. Benbeih Amal, Consumer Protection from Business Practices in light of Law 04/02 amended by Law 10/06, Journal of Legal and Political Research and Studies, published at the Faculty of Law and Political Science, Blida University, Issue 8, July 2016.

5. Noman Abdel Ghani, Human Rights in the Arab World, article posted on the website: <http://www.hrinfo.org/hotcase>.

6. Yacoub Issouf Al-Kandari, Culture, Health and Disease, Scientific Publishing Council, Kuwait University, 2003.

#### **Theses and Letters:**

1. Baya Fatiha, Legal Guarantees for the Protection of Food Product Security in Algerian Legislation, Doctoral Thesis, Branch of The General Law of the University of Algiers 1, 2015.

2. Nas Yahya, Legal Mechanisms for Environmental Protection in Algeria, Ph.D. Thesis in Public Law, Abu Bakr University, Qayed Tlemcen, 2007.

3. Noura Hiba and her, Environmental Crimes in Algerian Legislation, Master's Memorandum, Community Management and Conduct Law, University of Bonameh, Khamis Meliana, Algeria, 2019.

#### **References in French:**

1- Mathilde Boutonnet et Laurent Neyret: Préjudice moral et atteintes à l'environnement, Recueil Dalloz, N° 15 du 15/04/2010.

2- Walaa, Matalqah: Modeling of emissions from medical waste Incineration, thesis master, University of Jordan, 2012.