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## **What is the perspective of Algerian law regarding the right to control one's own body ?**

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**Abstract :**

Some medical and biological advances can influence the decision-making that a person can make about to dispose of one's body. These advances are sometimes a source of complexity in the relationship between the body and the law. The legal recognition of euthanasia, artificial procreation, or the voluntary termination of pregnancy are all recurring examples and call for deep reflection on human existence and individual freedom.

The need to legislate on this point is therefore necessary. Jurisdictions around the world continue to place limits on the free disposal of the body. Even if these limits are often misunderstood, they are nevertheless issued for the interest of the person and of humanity.

The purpose of this study is to deal with this subject on the basis of some legislation and above all to situate the approach of the Algerian legislator to define the freedom of to dispose of one's body.

**Keywords:** Human body; freedom; unavailability; Algerian criminal law; protection.

## INTRODUCTION:

Scientific knowledge and its technical applications have brought considerable benefits to humanity. Thanks to them, not only has the human mind been liberated to better understand itself and the universe around it, but also its material existence has significantly improved<sup>1</sup>.

However, this progress can be a source of danger to human rights, either because it is diverted for oppressive purposes or because its impact has not been subject to ethical and sociological reflection for sufficient prevention and legal regulation<sup>2</sup>.

Scientific advances in the field of biology and medicine have brought many benefits to humankind in the form of improved medical care<sup>3</sup>.

However, these same advancements herald radical changes in the relationship between humans and their bodies, as well as the future of humanity.

Indeed, the concept of body autonomy is often at the heart of debates related to advances in biology and molecular genetics, thereby generating new freedoms for individuals. The freedom of each person over their own body allows them to consent to certain acts concerning their body and its elements and products, either through their own actions or by authorizing the actions of others. But this freedom can be strictly regulated or completely excluded in certain circumstances, meaning that individuals are protected against themselves, against their own will.

Thus, the right to dispose of one's body has limitations that render the individual's will ineffective. The non-availability of the body is a principle closely linked to human dignity, which protects the human being in their body and prohibits any type of agreement (whether for consideration or gratuitous) concerning humans.

Therefore, is the principle of non-availability of the human body truly an effective limit on the use of various medical advancements in the face of sometimes vague and confusing legislation?

For a long time, in Algeria as well as abroad, respecting the eminent human dignity has been summarized in safeguarding it against all degrading bodily attacks, both self-inflicted and those that can affect the right to life and the right to a healthy body.

## 1. THE RIGHT TO LIFE

The continuity of human life is of utmost importance both in Islam and in legislation, which explains the concern of the legislator to guarantee the continuity of life. This concern consists of criminalizing acts that infringe upon human life by the individual themselves, such as euthanasia, suicide, and abortion.

### 1.1. Euthanasia

Etymologically, euthanasia corresponds to a "gentle death" or "good death," with the word being constructed from "eù" meaning "well" and "thanatos," meaning "death." The origin of the word is the relief of suffering, which today corresponds to "palliative care."<sup>4</sup>

Euthanasia should be understood as the act of causing the death of an incurably ill patient at their urgent request in order to alleviate their suffering. There are two forms of euthanasia: active euthanasia, which directly involves the administration of increasing doses of medication such as morphine until the dosages reach the lethal threshold for the patient, and passive euthanasia or orthoethanasia, which simply involves allowing the patient to die naturally through the withholding of treatment or the cessation of treatments intended to delay the fatal outcome.

In other words, it is an authorization for an act that is definitively destructive to one's own body. The question arises: Should euthanasia be legalized? This question divides scientists and jurists. Supporters of the evolving context towards a measured decriminalization of euthanasia argue that it is essential for the patient to have control over their own body. Indeed, it is intolerable and well-known that the distress of the patient primarily arises from a torturous doubt about the value of their own life. The social uselessness and the fact of becoming a burden on others are unacceptable for many patients, and this inevitably increases their pain and discomfort.

Therefore, a necessary reform of criminal law is required. Western countries have taken a big step in this direction. In French law, euthanasia is subject to the provisions of Law No. 2005-370 concerning the rights of patients and the end of life<sup>5</sup>.

This law imposes both substantial and formal conditions on doctors. As a result, euthanasia is allowed in France but under certain conditions, the assessment of which depends on the specific case.

However, this concept of euthanasia faces opponents who raise criticisms of a spiritual, material, or medical nature<sup>6</sup>.

- In a spiritualistic conception of existence, while recognizing that the act of death can be an act of love for one's neighbor, euthanasia is not admitted

because life does not belong to the individual, regardless of the degree of their suffering, but to the Creator alone, who is the only one who can take a person's life.

- In a materialistic conception, euthanasia is condemned due to the excesses it would inevitably generate in practice if it were legalized. There are concerns that once legalization is established, there would be more or less systematic elimination of human beings deemed irrecoverable.
- Finally, from a medical standpoint, other reasons can lead to the rejection of euthanasia, such as the progress of medicine, uncertainty about incurability, and the very vocation of the physician, who must exclusively ensure the preservation of human life.

In criminal matters, euthanasia is not a specific offense. Algerian legislation does not explicitly address euthanasia, but it falls within the purview of offenses protecting the human body. Two scenarios must be distinguished: one in which a third party actively causes harm to the life of a patient, and one in which the third party refrains from implementing means to ensure the patient's survival. Both cases are subject to criminal law, even if the patient is the instigator of the action or abstention by the third party. This is why euthanasia is an example of the disregard for the consent of the victim. The application of criminal charges is also explained by the indifference of motives in criminal law<sup>7</sup>, which allows for the characterization of intent even if the perpetrator of the offense pursued an honorable motive, as is the case in euthanasia.

A person who harms the life of another can be guilty of murder or manslaughter. These offenses are among the most serious in offenses against persons and are therefore punished with severe penalties<sup>8</sup>.

The prohibition against causing harm to a patient's life has been included in the code of medical ethics for healthcare professionals<sup>9</sup>. The Algerian legislator thus imposes on doctors the continuous obligation to respect the patient's right to life. In this regard, Article 7 of the code states: "The vocation of physicians and dentists is to defend the physical and mental health of human beings and to alleviate suffering while respecting the life and dignity of the individual."

If a person fails to preserve the life of a patient, the applicable offense is that of failure to assist a person in danger. This offense can specifically apply to medical personnel.

## 1.2. Suicide

Suicide exists in all countries around the world and affects all age groups, both the rich and the poor, as well as various ethnic and cultural groups, but it particularly affects individuals with mental health problems.

However, it is important to note that deaths by suicide, while having a significant impact on many members of the victim's immediate circle and the community, are nonetheless rare events when compared to suicide attempts and other self-destructive behaviors.

Thus, if intentionally killing someone affects all of humanity, the act of taking one's own life is even more dangerous as it directly impacts an individual's integrity and dignity.

Suicide is typically defined as an intentional self-caused death. Suicide involves the voluntary actions taken by the victim that lead to their own death<sup>10</sup>.

The topic of suicide remains controversial and is deeply influenced by preconceived notions stemming from educational, philosophical, or religious reflections.

From a legal standpoint, suicide is not punishable by law, as individuals have the "freedom" to end their own lives, provided it represents genuine freedom<sup>11</sup>.

The same applies to suicide attempts. Suicide attempts are intentional acts undertaken by an individual with the aim of ending their own life but do not result in death. Suicide attempts can vary in severity, ranging from "serious attempts" such as hanging oneself with a rope but surviving, to so-called "minor attempts" like ingesting an insufficient quantity of medication to cause death.

A person who lightly cuts their veins without causing significant harm, or someone who overdoses on medication<sup>12</sup>.

Regarding Algerian criminal law, the legislator has not criminalized attempted suicide. However, the question that arises in the face of this legal gap is whether the act of suicide is less serious compared to other social ills, or simply a recognition of a person's freedom to dispose of their own life. It is clear that ending one's life and destroying one's body is an act of disposal that terminates the unity between the body and the mind, which ensures human dignity. This perspective is based on comparing the right to dispose of one's body with the power exercised over an object. However, thinking in this way results in reducing the body to an object. Human life is sacred, and the decriminalization of suicide does not mean that it is viewed favorably in our society. It remains a profoundly immoral act because the humanity present in each individual is the only link between members of a society. By taking one's own life, the person infringes upon their own humanity, and society can only be offended by it<sup>13</sup>; since only God decides the death of a person. Therefore, the provisions of Islamic

Sharia are clear on this issue, prohibiting suicide in all its forms and emphasizing mercy for those who abstain from it<sup>14</sup>.

However, sometimes mercy and hope prove futile because some individuals do not respond to this call. Intimidation thus becomes inevitable to demonstrate the consequences of suicide and prevent individuals from committing this criminal behavior, as indicated in the Quran<sup>15</sup> and the Sunna Ennabawia.

Furthermore, several legislations criminalize assisting and inciting suicide<sup>16</sup>. In this regard, Algerian law does not criminalize incitement to suicide but penalizes assisted suicide under Article 273 of the Algerian Penal Code, which states: "Anyone who knowingly assists a person in acts preparing or facilitating their suicide, or provides weapons, poison, or instruments intended for suicide, knowing that they will be used for that purpose, shall be punished, if suicide is achieved, with imprisonment for one to five years." Thus, according to Algerian law, assisted suicide involves providing means or information to an individual wishing to end their life. However, the punishment can only be applied to the suicide assistant once the outcome is achieved, i.e., the death of the person who committed suicide.

### **1.3. Abortion**

Abortion is the voluntary expulsion of the product of conception before the term of pregnancy<sup>17</sup>. These words are enough to evoke the problem of abortion, a complex scourge to which world legislations have continuously provided varied and often contradictory solutions. Jurists are aware of the complexity in determining the status of the fetus. By considering the fetus as a human being, they must consequently admit that it deserves all the rights attached to human persons, notably the right to life. Therefore, one fundamental condition seems to be that abortion appears as a principle offense and be condemned by the legislator, as it consists of guilty acts carried out with the intention of artificially expelling the product of conception<sup>18</sup>, thus an infringement upon the life of the fetus.

However, this hypothesis risks challenging women's rights since the decision to have or not have a child belongs to them. In this regard, voluntary termination of pregnancy (VTP) is indeed an act of disposing of one's body practiced by the mother, and not an act of disposing of another's body, which is the embryo. The mother has this right because the in-utero embryo is not considered as another person: it is the mother's body, her person, that is concerned by the abortion.

Therefore, the prohibition of abortion violates a series of women's rights and undermines the essence of their fundamental freedoms, such as their right to physical integrity, freedom of conscience, moral autonomy, the right to make

decisions freely, and the right to freely choose motherhood, a fundamental right recognized worldwide <sup>19</sup>.

Criminal law recognizes the right to life of the fetus. Consequently, it has all the rights as long as it is born alive and viable. Its destruction constitutes a criminal offense punishable by law.

In France, the 1975 law significantly expanded the conditions for therapeutic abortion. It is now provided not only to safeguard "the life of the mother seriously threatened" but also in cases of "serious peril to her health." It is also allowed in cases where there is a "strong probability that the unborn child will have a particularly serious and incurable condition at the time of diagnosis."

The liberalization of abortion also allowed women to undergo voluntary termination of pregnancy before the end of the tenth week, as long as they are in a distressing situation that only they can appreciate within that timeframe <sup>20</sup>.

This termination can be carried out until the twelfth week of pregnancy, according to the law of July 4, 2001. The absence of control over the woman's distressing situation highlights the freedom recognized for women over their bodies.

In Algeria, the offense of abortion can be classified as a crime or a misdemeanor. However, when committed by the woman herself, the offense is considered a misdemeanor.

Self-abortion refers to a woman who procures or attempts to procure an abortion. There are three scenarios:

Either she submits to abortion practices carried out by a third party on her. Or she acts on herself, knowingly and consciously.

Or she uses the means indicated or administered to her for this purpose.

In these three cases, the woman is considered the principal offender <sup>21</sup>.

However, Article 309 of the Algerian Penal Code imposes a significantly reduced penalty (imprisonment from six months to two years and a fine ranging from 20,000 to 100,000 Algerian dinars). This is because the woman who undergoes an abortion is often driven by circumstances that make her both a victim and a perpetrator.

On the other hand, the Algerian legislator gives a lawful aspect to this offense: therapeutic abortion, which is related to the preservation of the mother's life under strict regulations. The Algerian legislator only allows therapeutic abortion when it is necessary to save the mother's life <sup>22</sup>. It is required that the mother's life is threatened and that the termination of pregnancy is likely to lead to her recovery. There are no other means to avert this danger other than ending the pregnancy.



According to Algerian law, it can be concluded that pregnant women are not free to dispose of their bodies and terminate their pregnancies.

## **2. THE RIGHT TO A HEALTHY BODY**

The biological revolution has been accompanied by a change in customs and mentalities that emphasize the claim for new rights and freedoms for individuals over their bodies. One of these claims is associated with the liberal and individualistic movement: the right to dispose of one's body and the right to choose.

Regulating an individual's freedom over their own body means recognizing the principle of the non-availability of the body. In reality, the existence of the principle of non-availability of the human body is expressed through the legislator's adoption of a "personifying" view of the body, avoiding reducing it to a source of freely transferable biological resources. This principle takes into account the unity of the body and the person in such a way that selling one's body would be equivalent to selling oneself and therefore violating one's human dignity. This makes the non-availability of the human body a principle with limits on the freedom to dispose of oneself. According to this principle, the human body cannot be treated as an object that can be commercialized (prostitution, surrogacy) or modified (gender reassignment, sterilization).

### **2.1. Prohibition of commercializing one's body**

The legal principle of the non-availability of the human body excludes the human body from being considered as "things that are tradeable." It means that one cannot sell all or part of their own body. Case law has added another principle, that of the non-patrimoniaity of the human body, which extends to prohibit agreements that confer a patrimonial value on the body.

Based on the principle of non-availability of the body, which rejects the idea of exerting power over it and treating it as an object of transaction, the penal code uses this principle to sanction offenses such as human trafficking. Regarding human trafficking and pimping, these acts committed by third parties are explicitly criminalized in the penal code <sup>23</sup>.

However, this is not the case for prostitution and surrogacy because it is the individual themselves who choose these practices in the name of their freedom to dispose of their bodies.

#### **a. Prostitution**

One may wonder about the reasons behind the criminalization of prostitution contracts, considering it is merely a work contract involving the body. However, it is inappropriate to accept prostitution as a rental of one's body, as this

contract would reduce the person to an object and instrumentalize them, which goes against human dignity.

There is no legal definition of prostitution, although the term appears several times in the penal code. Prostitution consists of engaging in physical contact, of any kind, in exchange for payment, to satisfy the sexual needs of others<sup>24</sup>.

Regarding this practice, two different situations can be distinguished: legal prostitution in some countries where there are no specific laws prohibiting it, and regulated legal prostitution in other countries with specific laws explicitly allowing this practice under certain conditions, often permitting brothels.

In France, the penal code has gone as far as excluding prostitution from criminal charges, considering it as decent work, even taxable employment.

However, pimping is punished in the same country with a sentence of up to 7 years' imprisonment and a fine of €150,000, or heavier penalties in aggravated circumstances<sup>25</sup>.

Furthermore, since the main measure of Law No. 2016-444 of April 13, 2016, aimed at strengthening the fight against the prostitution system and supporting sex workers<sup>26</sup>, the purchase of sexual services is now punishable by a fine of €1,500, transforming clients of sex workers into offenders.

In Algeria, this activity is prohibited as it is seen as a form of slavery that undermines dignity and victimizes the prostitutes. The state aims to eliminate prostitution by using criminal law to target third parties rather than the prostitutes themselves.

These third parties are defined according to Article 343 of the Algerian Penal Code as those who assist, aid, or protect another person's prostitution or solicitation for prostitution, those who also share in the proceeds of another person's prostitution or receive subsistence from a person who engages in prostitution or derives resources from another person's prostitution. These third parties also include those who employ, train, or maintain, even with consent, a person, even if they are of legal age, for the purpose of prostitution or deliver them for prostitution or debauchery, or individuals who cannot justify resources corresponding to their lifestyle while living with persons who engage in prostitution habitually. These third parties are subject to imprisonment from two (2) to five (5) years and a fine ranging from twenty thousand (20,000) to one hundred thousand (100,000) Algerian dinars.

Algeria is considered a prohibitionist country, meaning it sees individuals engaged in prostitution and pimps as criminals. The police and justice system can penalize these activities, especially in public places, as well as the clients of prostitutes.

Moreover, prostitution is also prohibited from a religious perspective and from a moral standpoint, as it necessarily involves the consent of the person engaging in prostitution <sup>27</sup>.

However, this consent is somewhat coerced as prostitutes find themselves in a state of great social vulnerability that indirectly pushes them into prostitution. Their vulnerability weighs on the freedom of their consent, suggesting that there is never truly voluntary prostitution <sup>28</sup>.

This is why prostitution cannot be considered a form of sexual freedom expression.

### **b. Surrogacy**

This phenomenon, regardless of the name given to it, was initially driven by medically assisted procreation, which remains subject to regulation by public authorities regarding the practice of medicine. It is also subject to territorial laws that establish the conditions for the realization of procreation by qualified medical personnel<sup>29</sup>. Subsequently, it took on another dimension with the acceptance in certain countries of privatizing the procreation mechanism through contractual arrangements. This is what is referred to as a surrogacy contract, a surrogate motherhood contract, or a substitution maternity contract.

The techniques known as "surrogate mothers" or "renting of wombs," now more commonly referred to as surrogacy or substitution maternity, encompass diverse practices<sup>30</sup>. For example, the child may not be genetically related to the intended parents: the biological mother gives or sells the child she conceived with her own partner or with the sperm of a third party, whom she carried during pregnancy (substitution maternity hypothesis). Alternatively, the child can be conceived through the insemination of the surrogate mother with the sperm of the biological father (whether married or not); the child is then the biological child of the man but not of his wife or the woman with whom he lives, with the surrogate mother being the biological mother. Finally, the child can even be genetically related to the intended parents, with the woman who gives birth agreeing to carry the embryo created from the gametes of the intended couple (surrogacy hypothesis)<sup>31</sup>.

France has taken a position on this issue and is a prohibitive state. In domestic law, there is no freedom or ownership; there is a prohibition on surrogacy and substitution maternity carried out on French territory <sup>32</sup>. Under the laws of bioethics of July 29, 1994, the French legislator solemnly declared in Article 16-7 of the Civil Code that "any agreement relating to procreation or gestation on behalf of others is null and void." This prohibition applies to all agreements, whether the surrogate mother is the genetic mother or only the

gestational mother, and whether the agreement is made for monetary or non-monetary purposes. Furthermore, this prohibition was extended to criminal law. Thus, the penal code of 1992 prohibited substitution maternity and gestation on behalf of others, which is the subject of a specific section titled "Offenses against Filiation."

Cross-border movements have led infertile couples to present the French authorities with an "internationally accomplished fact." These couples return to France with a child born from an agreement that is null and void under domestic law. The question that arises concerns the recognition of surrogacy carried out abroad by French law and the possibility of transcribing the civil status acts of children born abroad in France<sup>33</sup>. The solution was provided by the issuance of the Taubira circular in January 2013, which allows issuing French nationality certificates to children and preventing them from being stateless. This has been approved by French courts. However, objectors have considered this recognition as lifting the criminalization of surrogacy, but the Minister of Justice at the time denied this view and stated that it was solely for the best interests of the child<sup>34</sup>.

The Algerian legislator explicitly prohibited artificial insemination by a surrogate mother according to Article 45 bis of the Family Code<sup>35</sup>. This prohibition was reinforced by the penal code without a specific text dedicated to it. The legislator primarily criminalized the act of inciting parents, or one of them, to abandon their child born or unborn through donation, promise, threat, or abuse of authority<sup>36</sup>.

It should be noted that certain legislations have allowed the practice of surrogacy, such as the United States, Canada, England, and Russia<sup>37</sup>. It is also worth mentioning that the primary reason for resorting to surrogacy is often the infertility of the couple, but this has not prevented some women in these countries from engaging in the practice to preserve their bodies and avoid the discomforts of pregnancy and childbirth in the name of the freedom to dispose of their bodies<sup>38</sup>.

## **2.2. The prohibition of modifying one's body**

The freedom of an individual over their body can also manifest itself through the feeling of rejection one may experience towards their own body and the desire to change it. This pertains to transsexuality and sterilization.

### **a. Trans-sexuality or sex change**

Today, due to medical advancements, the human body has become the subject of various interventions in different fields, such as organ transplantation,

artificial insemination, and sexual ambiguity. All of these interventions are subject to strict conditions.

Interventions of a similar nature performed on individuals with transsexuality are subject to the same authorization by law. Transsexual individuals are considered to be ill due to the risks associated with this condition, such as self-mutilation or suicide. This consideration allows for the recognition of the therapeutic interest of these interventions.

Trans-sexuality can be defined as "the absolute conviction in a person of one gender to belong to the other gender, with an intense and obsessive desire to change their sexual state, including anatomy, in order to live in accordance with the image they have formed"<sup>39</sup>. An intervention is intended to align the person's physical appearance with their psychological identity.

Trans-sexuality is based on a suffered and therefore pathological discordance. The person experiences an obsessive desire to belong to the opposite sex. They suffer from a radical mismatch between their physical appearance and their gender identity. However, it is important to differentiate between transsexuality and homosexuality, as homosexuals do not have the desire to morphologically belong to the opposite sex. Homosexuality is characterized by sexual desire and attraction towards individuals of the same sex without resorting to a sex change.

Several countries, including France, have granted transsexual individuals the possibility to modify their civil status. France complied with the jurisprudence of the European Court of Human Rights, which had condemned it for violating Article 8 of the Convention (right to respect for private life) due to hindrances in recognizing trans-sexuality. After years of legal battle during which France, regrettably, distanced itself from other European countries, it finally aligned itself with Sweden, Italy, the Netherlands, Denmark, Turkey, Finland, and Spain<sup>40</sup>.

Indeed, this freedom of choice, through which one rejects their initial gender identity, can reduce the body to a mere object that can be easily and freely replaced or reshaped. That is why these countries have concluded that gender reassignment must be regulated by conditions based on medically proven cases.

It should be noted that there is no Algerian legislative text that explicitly prohibits or authorizes gender reassignment. Therefore, in the absence of a solution in positive law, jurisprudence refers to Islamic doctrine (fiqh).

Gender reassignment is contrary to the principles of the Islamic religion. According to a Prophetic hadith, "God curses men who resemble women and women who resemble men." Our religion curses even a simple resemblance between men and women, so what about gender change?

According to Muslim theologians, gender reassignment is prohibited by Islamic Sharia<sup>41</sup>. No one can go against divine will and nature. No one is responsible for their physical and anatomical conformation. No one is responsible for their sex, their color, their height, their physique.

Several verses in the Holy Quran prohibit homosexuality<sup>42</sup>. The Islamic view is indeed based on harmony rooted in the notion of a couple : a man and a woman united in marriage. Any violation of this order leads to disorder and anarchy. Male homosexuality (liwât) is included among the sexual deviations mentioned in the Quran, with the punishment being death according to the Prophetic tradition. Female homosexuality (sihâq), on the other hand, is not explicitly mentioned in the Quran.

One can also refer to texts related to the Family Code or the Penal Code. The Algerian legislator stipulates that marriage is a consensual contract between a man and a woman<sup>43</sup>. Therefore, marriage between two individuals of the same sex is not recognized.

If a surgical intervention is performed with the aim of transforming a man into a woman or vice versa, solely due to the desire to change one's sex and without explicit and clear physical reasons, it is considered prohibited by law and religion. The practice of such surgical procedures can lead to criminal liability for the physician, as they can only intervene for therapeutic reasons<sup>44</sup>.

Therefore, any surgical intervention must be carried out for a therapeutic medical purpose. If this purpose is absent, as in the case of sex change, the intervention may be subject to Articles 274 (castration) and 273 (mutilation) of the penal code.

### **b- Sterilization**

Sterilization raises a conflict between individual rights and the rights of humanity. Indeed, there is a resurgence of practices related to sterilization in Western countries, while they are practically nonexistent in Muslim countries. Sterilization involves the permanent, intentional, and often irreversible removal of the physical attributes necessary for reproduction. It is the destruction of the capacity to procreate.

Legally, it is important to distinguish between surgical sterilization with a therapeutic purpose and surgical sterilization for contraceptive purposes. In the first case, for example, if it is done to avoid a pregnancy harmful to the woman's health when no other reasonable contraceptive method is available, the surgical procedure is perfectly lawful.

However, if the purpose is specifically contraceptive, the individual is then in a situation of illegality that could lead them to criminal courts<sup>45</sup>.

Despite this analysis, sterilization has become a widely used method of contraception worldwide<sup>46</sup>. According to its advocates, this procedure has undeniable advantages as it protects individuals from the dangers or secondary risks resulting from clandestine abortions, for example.

Furthermore, sterilization avoids the termination of an already conceived life. Unlike abortion, sterilization does not infringe upon the life of another. Therefore, the argument put forward by those opposed to abortion, which claims that the freedom to dispose of oneself conflicts with the need to respect the life of another, does not apply here.

In France, a law enacted on July 4, 2001, introduced Articles L. 2123-1 and following of the Public Health Code, allowing for sterilization for contraceptive purposes. The first of these texts expressly requires the individual to express a "free, motivated, and deliberate"<sup>47</sup>.

As for gender reassignment, Algerian legislative texts are silent and do not address sterilization specifically. One can rely on Article 34 of the medical code of ethics, which states: "No mutilation or organ removal can be performed without a very serious medical reason, except in cases of emergency or impossibility, and only after informing and obtaining the consent of the person concerned or their legal guardian."

Therefore, sterilization is permitted if it is performed for strict medical reasons. Otherwise, it remains prohibited for any other motive, including contraceptive purposes.

## **CONCLUSION:**

Depriving a person of their freedom often leads to enslavement. On the other hand, granting total freedom to dispose of one's body reduces it to an object. To address this ambivalence, a consensus must be reached that preserves the right to non-limitation of an individual's freedom over their body but within a framework that maintains its inherent sanctity.

The criminal protection of the human body becomes essential as it aims to limit excesses related to individual will or freedom through the establishment of strict legislation that aims to preserve the dignity of the human person. This goes beyond guaranteeing the right to life but also aims to protect individuals from any harm that may affect them.

While some legislations have extensively argued for the non-availability of the body, Algerian legislation is increasingly addressing this issue, although it would be desirable to further enrich the current provisions of the penal code, which are not sufficient for optimal protection.

Nevertheless, moral and religious principles in Algeria play a crucial role in regulating the excesses of freedoms. It appears that the non-availability of the human body not only raises a legal issue but also social, political, economic, and cultural ones. It is a matter of personal conscience and morality, certainly, but it should also contribute to shaping collective awareness and social responsibility.

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- <sup>17</sup> - Dekeuwer-Defossez F. "Voluntary Termination of Pregnancy". Dalloz, 1996, p. 6, No. 35.



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<sup>19</sup> - H. Hammas, previously cited work, p 3.

<sup>20</sup> - Hellenbrand Marc, previously cited work , p73.

<sup>21</sup> - H. Hammas , previously cited work, p87.

<sup>22</sup> - Article 308 of the Algerian penal code. see also article 33 of the Algerian code of medical ethics.

<sup>23</sup> - Trafficking in persons is punishable by imprisonment of three (3) to ten (10) years and a fine of 300,000 DA to 1,000,000 DA, Article 303 bis 4 of the Algerian penal code. for pimping see art 343 and following of the Algerian penal code .

<sup>24</sup> - Aurore Catherine, Amandine Cayol, and Jean-Manuel Larralde, The Human Body Seized by the Law: Between Freedom and Property, Fundamental rights research papers, 15, 2017,p 66.

<sup>25</sup> - Articles 225-5 and following of the French penal code.

<sup>26</sup> - Official Journal of the French Republic, n°88, April 14, 2016.

<sup>27</sup> - This consent is protected by article 336 of the Penal Code since any act of sexual penetration committed on the person of another without their consent is considered as rape.

<sup>28</sup> - Aurore Catherine, Amandine Cayol, and Jean-Manuel Larralde, , previously cited work , p 69.

<sup>29</sup> - In Algeria, for example, artificial insemination is permitted under certain conditions, according to article 45 bis of the family code which stipulates “Both spouses may resort to artificial insemination.

Artificial insemination is subject to the following conditions:

- the marriage must be legal,
- insemination must be done with the consent of both spouses and during their lifetime,
- the husband's sperm and the wife's egg must be used, to the exclusion of any other person. ».

<sup>30</sup> - Aurore Catherine, Amandine Cayol, and Jean-Manuel Larralde, , previously cited work , p 69.

<sup>31</sup> - Delaisi de Parseval Geneviève, Collard Chantal - Surrogacy - The man – Edition l'EHESS - 3/2007 - No. 183, p 29 – 53. Dolto Catherine - Reflections on Surrogacy: The Debate, Gallimard Editions, 3/2014 - No. 180, p 147 – 153.

<sup>32</sup>- Kayser P., Moral and Legal Limits of Artificial Procreation, Dalloz Collection, 1987,p 190 .

<sup>33</sup>- Salamé G., The Future of the Family in Private International Law, Aix-Marseille University Press, p59.

- <sup>34</sup> - Corpart Isabelle, Entry into Force of the TAUBIRA Circular on the Issuance of Certificates of French Nationality, General Review of Law, University of Saarland - 2013 - No. 5060, p 93 – 102 .
- <sup>35</sup>- Article 45 bis/2: “Artificial insemination by the surrogate mother process cannot be used. ”.
- <sup>36</sup> - article 320 of the Algerian penal code.
- <sup>37</sup>- Brunet Laurence, The International Globalization of Surrogacy - Work, Gender, and Societies - Discovery Edition - 2/2012 - No. 28.
- <sup>38</sup> - Dolto Catherine , previously cited work, p 147 – 153, Geneviève DELAISI de PARSEVAL, Chantal COLLARD, p 29 – 53 .
- <sup>39</sup> - Arnoux I., Human Rights over One's Body. university presses of Bordeaux, 1994,p 204.
- <sup>40</sup>- Marc Hellenbrand, previously cited work, p 90.
- <sup>41</sup>- It should be noted that sex change is different from sexual ambiguity, which is considered a medical condition, requiring each patient to seek treatment. Sharia advises intervening as early as possible in such cases to align the ambiguous child with their exact biological and anatomical sex.
- <sup>42</sup>- Surat Aaraf verse 80-81, surat chouaraa verse 161-165, surat hud verse 77-79.
- <sup>43</sup>- Article 4 of Law No. 84-11 of June 9, 1984 on the Family Code, amended and supplemented.
- <sup>44</sup>- Article 34 of the code of medical ethics stipulates: “No mutilation or ablation of an organ may be performed without very serious medical reason and except in an emergency or impossible, only after information and consent of the person concerned or his legal guardian
- <sup>45</sup>- Marc Hellenbrand, previously cited work, p 83.
- <sup>46</sup>- "Sterilization is authorized in Japan, Great Britain, Germany, and in most American states. Soutoul and Pierre support voluntary sterilization in France and worldwide, Practitioner's Review 1981.
- <sup>47</sup>- article L2123-1 stipulates "Tubal ligation or vasectomy for contraceptive purposes cannot be performed on a minor. It can only be performed if the consenting adult has expressed a free, motivated, and deliberate will, considering clear and complete information about its consequences."

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