

Dissemination of false or misleading information as a crime
The principle of transparency in the stock market
(A comparative study between Algerian and French legislation)

نشر معلومات خاطئة أو مضللة بوصفها جريمة

ماسة بمبدأ الشفافية في سوق الأوراق المالية

(دراسة مقارنة بين التشريعين الجزائري والفرنسي)

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Date of send: 04/12/2022

date of acceptance: 23/11/2023

date of publication: 18/07/2024

abstract:

The proper and normal execution of operations on the stock market depends on the issuers of securities transparency. Transactions in the stock market rely on the commitment of issuers of securities to provide information on their conditions and development. They are expected to demonstrate an accurate and correct picture of their status and make it available to the public, brokers and investors, as it is the main driving force that affects the buying or selling of securities. However, sometimes issuers of securities publish a misleading and false information that may have an impact on prices. For such potential occurrence risk, the Algerian legislator intervened, in the light of the legislation regulating the stock markets, especially the French legislation, to establish criminal liability for every person who violates the transparency, accuracy and credibility of the information.

Keywords stock market, false or misleading information, transparency, penal liability.

الملخص:

إن ضمان الأداء السليم والطبيعي للمعاملات في سوق الأوراق المالية متوقف على مدى قدرة الجهات المصدرة للأوراق المالية على احترام مبدأ الشفافية من خلال التزامها بتوفير معلومات حول وضعيتها أو عن التطورات التي تطرأ على حالة الأوراق المالية وإتاحتها

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للجمهور المتعاملين والمستثمرين على قدم المساواة، صحيحة ودقيقة و غير مضللة، لكونها المحرك الرئيسي الذي يدفعهم إلى شراء أو بيع الأوراق المالية أو الإحجام عنها، غير أنه في بعض الأحيان قد تنشر هذه المعلومات بشكل مضلل ومزيف ومخالف للواقع من الممكن أن يكون لها تأثير على الأسعار، ونظرا لهذه الخطورة المحتملة الحدوث، دفع المشرع الجزائري التدخل ساريا على نهج التشريعات المقارنة المنظمة لسوق الأوراق المالية، لاسيما منها التشريع الفرنسي، بإقامة المسؤولية الجنائية على كل شخص تسول له نفس المساس بشفافية المعلومة ودقتها ومصداقيتها.

الكلمات المفتاحية:

سوق الأوراق المالية، المعلومات الخاطئة أو المضللة، الشفافية، المسؤولية الجزائية.

Introduction:

The stock market or stock exchange is the preferred space for companies and financial institutions to expand their investment projects and accumulate financial wealth. This purpose can only be achieved through the good conduct of transactions related to the traded securities.

The proper conduct of these transactions depends on the extent of the issuers' commitment to publish honest, reliable and accurate information related to their activities and make them available to the public of investors and dealers. Such demeanor would provide a fair investment environment, which is called "the principle of transparency" in stock exchange transactions. Transparency is one of the most important principles on which the efficiency and the natural performance of the stock market are built.

Due to the importance of this information in influencing the prices of traded securities in the stock market, sometimes it is used in a manner that contradicts the way it is in reality, i.e. publishing false information. The latter is called in the legislation related to the stock exchange activity "the crime of publishing false or misleading information."

The seriousness of this crime on the stock market, its dealers and the national economy as a whole pushed the Algerian legislator to follow the approach of comparative legislation regulating the stock market, especially the French legislator, by establishing legal rules criminalizing the behavior of publishing false or misleading information.

Accordingly, the researcher poses the following study problem: What is the extent of the adequacy of the legal texts in reducing the crime of publishing false or misleading information, imparting transparency and credibility to the stock market and protecting the rights of its shareholders?

In order to answer and investigate the study problem, the researcher adopted three methods. First of all, - The descriptive method was used to describe the problem of the study by extrapolating the French and Algerian texts of the legislation that regulates the activity of the stock exchange.

- The analytical method to review the legal texts regulating the financial market and its related systems. In addition, it was used to analyze and discuss them, and demonstrate the extent of their effectiveness in achieving deterrence against the perpetrators of this crime.

- The comparative method, which is the basis of this study, was adopted in light of the absence of judicial precedents, and the weakness of the texts regulating the Stock Exchange in Algeria. This study relies on and cites what the French judiciary and legislation settled on, benefiting from the French experience in this field, and comparing it to what the Algerian legislator enacts to show the shortcomings that afflicted the Algerian texts regulating the Stock Exchange.

The research plan is divided into two chapters. The chapter is designed for the legal framework of the crime of publishing false or misleading information. Whereas, the second chapter is devoted to the elements of publishing false or misleading information crime and the penalties imposed against it.

Chapter One: The legal framework for the crime of publishing false or misleading information.

The Algerian and French legislators were interested in stipulating the crime of publishing false or misleading information in the stock market, because of its negative impact on the transparency of transactions. The French legislator has included the crime of disseminating false or misleading information in Article L465-3-2 of the monetary and financial code, paragraph 3 of Article 10-1 of Ordinance 28-833 September 28, 1967. The article says “The penalties, mentioned in (A) of Article L.465-1, are imposed on any person who, by any means, publishes information that gives false or misleading indications of the status or expectations of the issuer, supply and demand, or the price of a financial instrument. They are imposed on the person who determines or is likely to fix the price of a financial instrument at an abnormal or faked level.”¹

On the other hand, the Algerian legislator has stipulated this crime in Article 60 in the third paragraph of Legislative Decree No. 93-10², amended and supplemented by Law 03/04. This article says, “Any person who has deliberately published false or misleading information among the public in various ways and means shall be punished on the status of an issuer whose bonds are traded on the stock exchange, or on the development of an accepted bond for trading on the stock exchange that would affect prices.”³

In view of the foregoing, it is evident that both the French and Algerian legislation target information that gives an incorrect and false impression about the source of the securities or about developments in the condition of those securities that are likely to affect the prices in the stock exchange and cause disturbances in it. They, both, incriminate such behaviors to control the market and embody transparency in it. Although the aforementioned texts include the crime of publishing false or misleading information, however, the special nature of this crime and its negative effects on the stock market requires an explanation of its nature and purpose (section one) in addition to its characteristics (section two).

Section one: false or misleading information: their nature and subject.

The idea of false or misleading information is considered the basis for the rise of this crime. Therefore, it is necessary to define its nature (Part one) and its subject (Part two).

Part One: The nature of False or misleading information.

Based on the two Articles mentioned above, it is clear that for false or misleading information to be described as a crime, the published information must be incorrect and false which is likely to have an impact on the price of financial instruments or their issuers.

It is noted that the criminal wording of Article L465-3-2 of the French monetary and financial code imposes the retention of only correct and accurate information, which are identical to the privileged information that spread out from “insiders”⁴. Therefore, it is not possible to take into consideration that the wrong and misleading information are the expectations and guesses that give indications regarding the situation of a company listed on the stock exchange.

Referring to the Algerian legislator, through Article 60, the third paragraph, it is clear that the published false or misleading information must relate to the status of the companies issuing the trading securities, such as shares, or the developments that occur in the securities themselves. In addition, the Algerian legislature stipulates the possibility of their impact on the price in the stock exchange in order not to lose its criminal nature. This article resembles the French one, considering that it is transferred from the last paragraph of the text of Article 10-1, of French Order No. 67-833, dated 9/28/1967, related to the stock exchange of movable values.

It seems that the goal that the legislator - French and Algerian - aspires to, by drafting the criminal text in this way, targets the impact that this information can have on the price of securities, either negatively or positively, and not the information itself⁵.

In this context, we mention, for example, a press release that was drafted in an overly optimistic manner in light of the difficulties faced by the

issuer. It may fall within the scope of criminal incrimination insofar as it provides false information, even if it is not possible to judge that the information itself is inaccurate⁶.

It is also noted that the Algerian legislator, similar to the French legislator in characterizing this crime, limits the published false or tendentious information to the extent of its potential impact on the prices of the stock exchange. However, the publication of this information can not only affect prices but also affects the efficiency of the financial market and the national economy as a whole because rumors alone can fuel the situation in the financial market and destroy the hopes of its investors.

It should also be clarified that both of the legislations under study mean wide-ranging false and misleading information, which may include all information that the issuer is obligated to disclose on the stock exchange, such as general information related to the company, “definition of its history, objectives, properties, location, presentation of capital expenditures, and other general information. As well as it may include administrative information represented in “information of the members of the Board of Directors, their names, and information about managers and key dealers.” Besides, it perhaps contain information about the company’s capital, which includes “general information about capital financing and a list of changes in stock prices.” Also, it can involve financial information such as a historical summary of the financial statements, financial statements, and reports. Moreover, information related to the recent and expected developments of the facility⁷, as well as information that is not required to be disclosed, such as information that is provided to exporters voluntarily and by choice of investors in order to take care of them⁸.

In addition, the information should include all securities listed in the stock market⁹, without exception, whether shares, bonds or other financial instruments and at any stage of issuance or trading.

Part Two: the subject of the false or misleading information.

The provisions of Article 2L465-3- of the Monetary and financial code say “the situation or expectations of the issuer supply and demand, or the price of a financial instrument, or that determines or is likely to fix the price of an instrument at an abnormal or faked level.” It should be noted in this context that the French legislator targets information that identifies, or is likely to give an incorrect or misleading impression, about securities or the condition or prospects of the issuer.

The same is the case for the Algerian legislator. Article 60 paragraph 3 of Law 03-04, says “from the perspective or situation of a source whose bonds are traded on the stock exchange, or from the perspective of the development of a bond accepted for trading on the stock exchange that would

influence on prices.”It does not mean the information that its publication results in an actual impact on the status of the issuing companies or the traded bonds themselves. This article also targets the subject of false or misleading information, which is related to the status of the issuer or prospects for a financial instrument, which possibly has an impact on prices in the stock exchange.

It is worth clarifying in this context, that false or misleading information with a broad subject cannot be taken into consideration. The mentioned articles do not target the information that the financial market, in general, is interested in even if they have an influential impact as long as they do not relate to the price of securities or their issuers such as the publication of false information of a political or social nature. Promoting a coup is a famous example in countries that produce basic commodities or spread goods, whose perpetrators cannot be punished, as they are not related to the source¹⁰.

Section two: The characteristics of the false or misleading information

The criminal texts under study came as a whole to punish persons who intend to publish false or misleading information that is likely or expected to affect the price of securities or the status of their source. Hence, it is required to clarify the meaning of the false or misleading information (Part One) and the extent of its impact on stock prices.

Part one: the concept of false or misleading information

Referring to the provisions of Article L465-3-2 of the monetary and financial code and Article 60 of Law 03-04 related to the Algerian Stock Exchange, it is clear that the wording in these criminal texts refers to two types of behavior. The first is “publishing wrong or false information”, i.e. data that differs from reality or is inconsistent with it. The second is spreading misleading information to create perceptions and expectations among the investor that contradict their beliefs in reality¹¹.

False information means, "Every false, inaccurate or misleading information published to cause a movement in the company's securities prices¹²".

In this context, information and data are wrong when they are presented explicitly or implicitly as real data, but they contradict reality and are likely to affect the decision of the person who receives them by mistake. Often this information is numeric data or objective information and it can be of any other nature¹³.

In view of the above, what is the importance of the false information that is likely to have an impact on the price of the securities?

Sometimes the information may be “substantial¹⁴”, which is expected to affect the price of financial instruments in the market once it is marred by a

very small and simple error¹⁵, so the crime is committed even if one of the data or part of it is wrong or incorrect.

For example, it is considered false information to publish a false increase in the Inventory Turnover Ratio of the issuing company in order to give the best opportunity to issue cash shares. Otherwise, it may be a material error related to secondary information but it is unlikely to have an impact on the price of the securities, such as reports and documents submitted to the Financial Markets Authority, which contain false and incorrect data.

All in all, the significance of information abuse is the effect that this information may have on the price of securities or the efficiency of the market in reality, not the size of the errors that they contain.

As for misleading information, it means "any statement that is inaccurate in any of its essential elements." Describing information as such was not mentioned in the selected law articles. It appears through the criminal texts under study that the intended misleading information that results in the occurrence of the crime is false data and is not wrong. They lead to a misconception that is closely related to substantial information, as it affects the validity of the information contained in the documents and the decisions of dealers and investors when buying, selling or holding securities¹⁶.

A misleading information example is the press release from a company confirming that it is at the height of performance, and declaring numbers and information contrary to what it is in reality, in order to achieve profits and attract investors while it is on the verge of bankruptcy.

Part Two: Information that will affect the price

The issue of false or misleading information that is likely or probably to affect the prices of stocks and based on which the perpetrator can be prosecuted is one of the issues that has sparked controversy between jurisprudence and the judiciary, especially in France.

some French judiciary believe that the information cannot be taken into account according to the accuracy of what is contained in it, but rather the extent of the disturbance it caused on the price of the transferred values. Therefore, they do not care about the content of the information, but rather the extent to which it can affect prices¹⁷.

As for some French jurisprudence, it is believed that if the information is incomplete, but it is likely to have an impact on the prices, then it undoubtedly imposes a penalty on those responsible for publishing it¹⁸. Incomplete information means that information is known, but it does not have all the elements to understand it¹⁹.

It is also noted, with reference to the aforementioned criminal texts, that the French legislator no longer considers the potential impact on prices on the Stock Exchange as a condition for the crime of publishing false or

misleading information. This is clearly expressed in the text "...which determines or is likely to fix the price of an instrument at an abnormal or faked level²⁰."

On the other hand, the Algerian legislator in using the phrase "would affect prices" is still taking into account the potential impact on prices without requiring the occurrence of an actual impact as a prerequisite for criminalization. The Algerian legislator authorizes the experts of the Capital Markets Authority to determine the extent of the impact of information on a price.

Chapter Two: The elements of publishing false or misleading information crime and the penalties imposed against it.

As regards the effects that the published false or misleading information may have on investors, the financial market, as well as companies, Securities Regulation, such as the French legislation and the Algerian legislation, was pushed to criminalize such behaviors. Both considered it a complete crime with all its constituent elements (section one) and decided on appropriate penalties for it (section two).

Section one: The commission of the crime

If the crime of exploiting privileged information affects the stock prices and the transparency of the stock market and destabilizes it, the crime of spreading false or misleading information will not be different and leaves the same effect.

Part one: The physical evidence (the physical element)

With respect to the previous criminal texts, it is clear that both Algerian and French legislators used the term "every person", without specifying, from whom false or misleading information could or is likely to be issued. Hence, it is clear that this information may be issued by any person, whether employees of companies, shareholders, auditors, financial analysts, journalists, non-specialists in the stock market²¹ or any other person inside or outside the market. It is also required that this crime be committed from a physical point of view and that the false or misleading information must be published to the public in any way or means of publication whatsoever.

First: the scene of the crime "wrong and misleading information"

Through our induction of the aforementioned Article L465-3-2 of the French Monetary and Money code, it becomes clear that in order for this element to arise, the information that was presented to the public must be incorrect and false i.e. involves fraud. As soon as it was published, investors would fall into fallacies, which would lead them to invest in financial instruments, buying or selling, without knowing their actual condition in the financial market²².

As for the Algerian legislator, and by referring to the previous Article 60 of the legislative decree in the third paragraph related to the stock exchange, it is clear that the Algerian legislator agreed in general with what was stipulated in the French legislation in terms of the physical evidence. The Algerian legislature requires the existence of the material element of this crime and the availability of the crime scene represented in false information or misleading that involves fraud and deception. Accordingly, if the investor or the dealer knew the financial position of the issuer, he would not have decided to invest in it.

It is also noted that criminal legal texts have made the behavior of publishing false or misleading information associated with the extent to which it can affect the price of the stocks. The mere expectation of influencing the prices in the stock exchange is sufficient for the occurrence of this crime without establishing a causal link between the criminal act and the criminal result²³.

Second: Criminal Behavior: "Dissemination of information to the public by any means."

Referring to the selected texts in this paper, the researcher attempted to determine the nature of the criminal behavior required for the commission of this crime, whether positive or negative. It turns out that this crime does not contain, by its nature, only positive behavior, which is the publication of false and incorrect information to the public by any means of media. A practical example is when a company manager makes a statement to a specialized financial magazine about the financial situation of the company and its profits, in contrast to what is in reality²⁴.

The legislation under examination does not require a specific method, which is relied upon in the process of disseminating false or misleading information²⁵. Publishing is accomplished by any means such as "pamphlets, media statements, dialogues, written press articles, lectures or statements made in radio sessions, or television or on the occasion of a meeting with financial analysts²⁶.

Likewise, we find the French legislator's use of the phrase "by any means", and on the other hand, the Algerian legislator's use of the phrase "in various ways and means." It appears from this formulation that the goal of the legislator is to expand physical behavior in order to crack down on the perpetrators and prevent them from impunity, by including all the ways in which this behavior is achieved on one hand. On the other hand, this phrase also aims to include all developments and changes that may occur in the Stock Exchange, considering the latter as the fertile and preferred hotbed for misleading manipulators and the spread of false information by various means that are difficult to be contained by the legislative mechanisms.

In addition, there are other phrases that arouse attention and require clarification, such as the French legislator's use of the phrase "determines or is likely to fix a price" and the Algerian legislator's phrase "would influence prices", which leaves no room for doubt that the legislator does not require that a certain result be reached in the crime. Thus, as soon as the prohibited behavior occurs, the crime occurs and is therefore considered one of the "crimes with dangerous consequences"²⁷. However, this criminal risk is an actual risk that must be proven for the occurrence of the crime to be considered a disruption to the regulation in the stock market²⁸.

With regard to the studied legal texts, the legislator aims to prevent any threat that may befall the system in the stock market, as a proactive step before the occurrence of actual damage or consequences harms the interest of savers and shareholders on the one hand and the efficiency of the financial market on the other hand.

Part Two: The moral pillar

Based on what was stated in the text of Article 465-2- of the French monetary and Money code and Article 60, the third paragraph of Law 03-04 mentioned above, It is clear that the organizer used the term "intentionally", which indicates that this crime is intentional. Its occurrence requires the general criminal intent with its two elements, knowledge and will. The offender realized that the information announced to the public was false and misleading, and his intention was to broadcast it by any means, to influence the price of the stocks by increasing or decreasing it, or maintaining its stability.

In view of these two articles, it is clear that the Algerian organizer followed the example of his French counterpart, regarding the obligation of general criminal intent for the commission of this crime, which is based on the elements of knowledge and will, and that they are devoid of any statement indicating the requirement of special criminal intent²⁹. If the offender deliberately publishes false or misleading information, the crime is committed, regardless of whether or not the result has been achieved.

The researcher observed that the compared legislations under study are limited to "general intent". Such restriction is due to two things:

a) Reducing pressure off the Public Prosecution and avoiding it from proving the intention of the perpetrator, because it is very difficult to extract an intention latent in the psyche of the perpetrator. this would lead to the absence of responsibility and paves the way for the impunity of the perpetrator.

b) The requirement of the special criminal intent contradicts the nature of the moral element of the crime of publishing false or misleading information. The crime is considered an economic crime in which only

general intent is sufficient and even if there is a special criminal intent it would be small and weak.

Section Two: the penalties against publishing false or misleading information

Similar to the crime of exploiting privileged information, in most cases, the crime of disseminating false or misleading information is committed by professionals, but there is no objection to it being committed by any normal person. In general, any person who committed this behavior, whether inside or outside the financial market, can be prosecuted, as we mentioned earlier, with criminal penalties. Regardless of whether it is a natural person (part one) or a legal person (part two).

Part one: the penalties imposed on the natural person

Referring to the French legislation and in accordance with Article 3-2-465L of the French Monetary and Financial Code referred to above, the crime of publishing false or misleading information is punishable by a penalty similar to the crime of exploiting privileged information, with a prison sentence of five years and a fine of 100 million euros. This amount can be increased up to ten times the amount investigated, without the fine being less than the amount due. Also, the French legislator incriminates the attempt of publishing false information and the same penalties were imposed for it³⁰.

As for the Algerian legislator, according to the provisions of Article 60, the third paragraph of Law 03-04, we find that the penalty imposed for this crime does not differ from the crime of exploiting privileged information, as the offender is punished with imprisonment from six (06) months to five (05) years and a fine of 30,000 DZD. the can be raised until it reaches four times the amount of the potential profit, without being less than the amount of the profit itself. In some cases, the penalty would be one of these two penalties.

Consequently, the researcher observes the following notes on the criminal penalties applied to the natural person who committed this crime stipulated in the criminal texts under study:

1- Penalties are limited to custodial penalties and financial penalties. It was noticed with regard to the prison sentence, that the Algerian legislator followed the pace of the French legislator with the dominance of delinquent strictness by imposing imprisonment for five (05) years. As for the financial penalties, it was characterized by the predominance of the proportional fine, which is measured by the amount of "potential profit from the crime." However, there is a difference between the two legislations in terms of the amount of the fine. The French legislator increases the fine up to 100 million euros, while the Algerian legislator stipulated a fine of "30,000 DA" It is considered insignificant for the perpetrator of this crime and for the harmful actions he caused as undermining the entire financial market, and damaging

the national economy as a whole. The Algerian legislator took a different position with regard to the French legislator, in terms of punishment for the attempt. The researcher finds that the latter punishes for the initiation or attempt of this crime with the same penalties imposed for the crime itself. On the other hand, the Algerian legal texts did not mention any penalties for the attempt of publishing false or misleading information. The researcher's analysis clarifies the absence of penalties against the attempt. Publishing false or misleading information is considered an economic crime with dangerous consequences in the Algerian legal text. Therefore, the legislator did not link the attempt always to the attainment of harmful results. The Algerian legal text against this crime is an interfering and preventive text. It is sufficient only for criminal behavior to occur that lacks a harmful result, therefore it is not envisaged that it will be attempted.

2-This study has observed a difference between the two legislations in terms of individualizing the penalty. The French legislator did not make the prison sentence optional with the fine, while the Algerian legislator had a contrary position to that, as it left the freedom to the judge to choose whether the penalty is lower or higher (imprisonment from six months to five years) or "one of these two penalties only". Also, the Algerian legislator opens up the choice between imprisonment and a fine, and this is what is called the Legislative Convenience. In addition, by drafting the text in this way, it is clear that it granted a wide discretionary power to the judge, in choosing the appropriate penalty for the offender, taking into account the circumstances surrounding him, and then the judge has the choice between the severe or reduced sentence.

Part Two: The Penalty Imposed On the Legal Person

A legal person can be considered criminally liable with penalties similar to the crime of exploiting privileged information, and the same provisions stipulated in Article 131-38 of the French Penal Code apply to it. The financial fine is estimated at five times the fine imposed on a person for a natural person³¹. In addition, there are complementary penalties also stipulated in Article 39-131 of the French Penal Code, such as dissolving a legal person or placing him under control for a period not exceeding five years or deporting him from participating in public markets permanently or for a period not exceeding five years³².

As for the Algerian legislator, and by reference to Article 18 of the Penal Code, it punishes the legal person offender with a fine equal to one (01) to five (05) times the maximum fine imposed for the crime committed by the natural person. In addition, the Algerian legislator imposes one or more than one complementary penalty mentioned in the same Article 18 in the second paragraph. The complementary penalties can take many forms. They can be

the dissolution of the legal person or the closure of the institution or one of its branches for a period not exceeding five (5) years. Also, they can expand to the exclusion from public transactions for a period not exceeding five (5) years or the prohibition from practicing an activity or several activities professional or social, directly or indirectly, permanently or for a period not exceeding five (5) years. The complementary penalties are able to confiscate the tool that was used in the commission of the crime or resulting in it. The legislator also can impose the publication and suspension of the judgment of conviction, placing it under judicial receivership for a period not exceeding five (5) years, and fixing custody of the activity that led to the crime or in connection with which the crime was committed³³.

It is worth paying commendation to the Algerian legislator in its agreement with the French legislature in terms of punishment by imposing a penalty commensurate with the nature of the legal person and determining the amount of the fine applied to the natural and legal person. The latter's nature requires the legislator not to apply a prison sentence; so instead, it raised the fine as an alternative punishment to the prison sentence.

Conclusion

After studying the publishing of false or misleading information as a crime against the principle of transparency in the stock market, it can be deduced that the reliance on the advanced French experience in this field can be adopted in Algeria as a source for fighting stock crimes.

The researcher suggested the examination of the Algerian legislator's reliance on the French experience, which is known for its richness in terms of legal texts and judicial precedent, to be in two chapters. The paper dealt in the first chapter with the legal framework for the crime of publishing false or misleading information. The second chapter dealt with the elements of this crime and the penal punishment imposed for it. Finally, we arrived at several results, the most important were:

1- The crime of publishing false or misleading information is considered one of the crimes that violate the transparency of the stock market. It is no less important the crime of exploiting privileged information, in terms of severity and complexity, because it is distinguished by an activity of a special nature. It is very difficult to identify the behaviors emanating from its perpetrators, without the use of technical expertise to detect perpetrators.

2- The wording of the criminal texts under study did not consider the false or faked information by its nature sufficient to be described as a crime, as it is necessary to look at the disturbance and the impact that it can cause on prices in the stock market.

3- The Algerian legislator followed the example of the French legislator by expanding the scope of criminalization and punishment in this

crime, to include all persons without exception, whether they are professionals or ordinary persons, in contrast to the crime of exploiting privileged information, in which the punishment was limited to professionals.

4- The Algerian legislator followed the approach of the French legislator, as it targets information that gives an incorrect and false impression about the status of a source of securities or about developments in the status of those securities that would have an impact on prices.

5- The physical element in the crime of publishing false or misleading information is based on two main factors. The first is the information has to be false or misleading. The second is the information ought to be published to the public in any way or means of publication.

6- The criminal texts under study were limited to the general intent rather than the specific one, due to the moral element in the crime.

7- The penalty for this crime does not differ from the crime of exploiting privileged information, in terms of the criminal penalties applied to its perpetrators. Penalties varied between deprivation of liberty and financial penalties, as we noticed through this study that the Algerian legislator followed the example of his French counterpart with regard to the penalty of deprivation of liberty, which was characterized by a severe misdemeanor, by applying a prison sentence of five (05) years to the perpetrators. Likewise, the fine was characterized by giving priority to the proportional fine, which is measured by "the amount of potential profit from the crime." it was noted a difference in terms of Individualization of Punishment. The Algerian legislator left the judge free to issue the penalty, as he can rule with a lower or higher prison sentence, "imprisonment from six months to five years." He also has the freedom to choose the punishment, either by imposing a prison sentence and a fine or with one of these two punishments only. Whereas, the French legislator took a different position that did not stipulate a choice between them, and stipulated a single prison sentence, "imprisonment for a period of five years," or imposing a fine on the offender.

8- The Algerian legislator took a different position with regard to the French legislator, in terms of punishment for the attempt, as we find that the latter is punished for the attempt of this crime with the same penalties imposed for the crime itself. While the Algerian legislator did not impose any punishment for the attempt of publishing false or misleading information. It rather intervenes in advance by criminalizing dangerous results as a preventive incrimination before the damage occurs, so the dangerous results are punished instead of the attempt.

10- The Algerian legislator followed the approach of his French counterpart as well, in terms of imposing punishment on the legal person, by

imposing a penalty commensurate with the nature of the legal person, represented by a fine instead of a prison sentence.

In this modest study, it was noted some shortcomings and deficiencies. The researcher suggests and calls on the Algerian legislator to:

1- To reconsider the wording of Article 60 of Legislative Decree 93-10, related to the stock exchange.

2- To add a severe penalty for the professional perpetrator instead of the equality in punishment between the latter and the ordinary person.

2- To hold the moral person criminally accountable along with the natural person.

3- The need to establish a specialized judiciary to deal with cases of stock market crimes.

4-The necessity of training and benefiting from the experiences of some developed countries in the field of combating such crimes.

Bibliography:

1- Article L465-3-2 of the Monetary and Financial Code Version in effect since July 3, 2016

Creation LAW n° 2016-819 of June 21, 2016 - art. 1: "I – The penalties provided for A to I of Article L. 465-1 shall be imposed on the fact, by any person, of disseminating, by any means, information which gives false or misleading indications on the situation or the prospects of an issuer or on the supply, demand or price of a financial instrument or which fix or are likely to fix the price of a financial instrument at an abnormal or faked level...." https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032745429, consulté le 22/10/2022.

2- Legislative Decree No. 93-10 of 05/23/1993 related to the stock exchange, Official Gazette No. 34, issued on 05/23/1993.

3- This is a copy taken from the last paragraph of the text of Article 10-1 of French Ordinance No. 67-833 of 9/28/1967, related to the Stock Exchange, and it was included in Legislative Decree No.: 93-10, related to the Stock Exchange, after Law 03-04 of February 17, 2003 amended it.

4- Insiders: They are the persons who obtain privileged information that has a substantial impact on prices due to their job or professional position in the establishment or company.

5- MARTIN D. et al., market abuses, Lexis Nexis, , Paris, 2nd ed, 2021 , P. 317.

6- Franck Auckenther, Offense of dissemination of false or misleading information, JCP. No. 18, ed. E 1995, p.460. cited from Hussein Muhammad Musleh Muhammad and Awni Salem Al-Naqrahi, price manipulation in the stock market and its relationship to market mechanisms, a comparative study according to the provisions of French, Egyptian, and Kuwaiti law, Nass Printing Company, Cairo, Egypt, 1st edition, 2016, p. 120.

7- Mazen Muhammad Reda Musa Al-Mursi, Criminal Protection for Dealers in the Stock Exchange, A Comparative Study, Dar Al-FikrWal-Qanun, Mansoura, Egypt, 2021, p. 220.

8- MARTIN D. et al., market abuses, Lexis Nexis, , Paris, 2nd ed, op.cit, 2021, P. 319.

9- WilfridJeandider, Business Criminal Law, Dalloz 5th edition, 2003, P.158

10- Ibid-P. 320.

- 11- MARTIN D. et al. 2021 ,market abuses, Lexis Nexis, Paris, 2nd ed, p. 321.
- 12- "Information distorts any misleading, inaccurate or misleading information, disseminated with the aim of causing a movement on the prices of the company's securities" .Stock market offences, P12, <http://d1n7iqsz6ob2ad.cloudfront.net/document/pdf/537f12328429c.pdf>, accessed 10/14/2022.
- 13- MARTIN D. et al. 2021 , market abuses, Lexis Nexis, , Paris, 2nd ed,op.cit, p321..
- 14- Material information means any fact or information that may affect the decisions of the public of investors to buy, keep, sell or dispose of the security, al-Masarwah, Sayf Ibrahim, previous reference, p. 254.
- 15- Fahd bin Muhammad Alnefaey, Criminal Protection of the Saudi Financial Market, Comparative Analytical Study, PhD thesis in Security Sciences, Riyadh, Saudi Arabia, year 2006, pg. 247.
- 16- Al-Masarwah, Sayf Ibrahim, Trading in Securities and Penal Protection, a comparative study, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2012, pg. 255
- 17- DE VAUPLANE (H) and BORNET (J-P), Financial market law, Paris, 3rd ed. Litec, 2001, p.921
- 18- Ibid
- 19- MARTIN D. et al, market abuses, Lexis Nexis, Paris, 2nd ed, 2021,op.cit, p.326.
- 20- Article L465-3-2 of the Monetary and Financial Code "... the demand or the price of a financial instrument or which fix or are likely to fix the price of a financial instrument at an abnormal or faked level".
- 21- Frédéric Stasiak, business criminal law, L.G.D.J, Paris, 2nd Edition, 2009, P. 262.
- 22- Ahcen Bouskia, ibid, p. 267.
- 23- DE VAUPLANE (H) and BORNET (J-P), Financial market law, op.cit, p 921.
- 24- Wilfrid Jeandidier, Business Criminal Law, Dalloz 2nd edition, 2003, P.158.
- 25- The fifth article of n. to. P.M. No: 2000-02 "...by means of press releases and by every other means allowing the widest possible dissemination..."
- 26- Fateh AitMouloud, Protection of Invested Savings in Transferred Values in Algerian Law, A Thesis submitted for the fulfillment of Ph.D. in Science, University of MouloudMamariTiziOuzou, Faculty of Law and Political Sciences, the academic year 2011-2012, pg. 421.
- 27- A part of jurisprudence prefers to call them serious crimes instead of naming them formal crimes or as crimes of abstract behavior, because if this crime is said to be formal, it means that there is no subject in it, and if it is said to have abstract behavior, it means that there are no results in it. For more details, see Adam Sumyan. Dhiyab Al-Ghurairy, Descriptions of Early Crimes, Tikrit University Journal of Law, Year 2, Volume 2, Issue 2, Part 1 December 2017, p. 08.
- 28- For more details, see: BouchiYoucef, Substantive Provisions in Economic Criminal Law, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2018. Page 275-276.
- 29- Previously, the French legislator required the availability of special criminal intent in Article 10-1 of Ordinance No. 67-833 of 9/28/1967 related to the stock exchange, stipulating that the information should be published "in order to influence the price of bonds." It difficult for the authority to follow up, which led to a judicial vacuum around this crime, which made the French legislator reconsider this text by replacing the phrase "in order to influence the bonds" with the phrase "would affect the prices." Ahcen Bouskia previous reference, p. 268.

30- Article L465-3-2 of the Monetary and Financial Code “II. – Attempting the offense provided for in I of this article is punishable by the same penalties”.

https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032745429

31- Article 131-38 Version in effect since March 10, 2004 Amended by Law No. 2004-204 of March 9, 2004 "The maximum average of the fine applicable to legal persons is equal to five times that provided for natural persons by law which punishes the offence.

In the case of a crime for which no fine is provided for natural persons, the fine incurred by legal persons is 1,000,000 euros”.

32- Criminal Code - Art. 131-39 “when the law makes provision for this against a legal person, a crime or misdemeanor may be punished with one or more of the following penalties:

1° Dissolution, when the legal person has been created or, when it is a crime or misdemeanor punishable in the case of natural persons by a prison sentence greater than or equal to three years , diverted from its purpose to commit the incriminated acts.”

33- See Article 18 bis, Order No. 66-156 of June 8, 1966. It includes the Penal Code, Official Gazette No. 48, dated June 10, 1966.