



## A CRITICAL COMPARATIVE READING OF THE PROJECT OF MEDIA IN ALEGRIA - A PROSPECTIVE STUDY

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### **Abstract:**

*This study aims to highlight the essential points contained in the new organic law project related to media recently proposed by the government. The study employs critical analysis at times and comparative assessment at others, in comparison with the provisions of previous media laws.*

*Among the most significant topics raised by the project is the prohibition of dual citizens from investing in the media sector, the requirement of obtaining prior approval from the Minister responsible for communication to engage in written and electronic press activities, and the necessity of obtaining prior accreditation from the Minister in charge of communication for engaging in audiovisual activities under different criteria.*

**Keywords:** law Project; organic law; media sector; media law; freedom of the press.

### **INTRODUCTION:**

Media law is defined as a set of legal rules that regulate the operations of media outlets. The law establishes general guidelines that proactively define the behavior of individuals in their interactions within the field of media. These guidelines consistently aim to restrict the freedoms of individuals in order to preserve the freedoms of others and the public interest. The law includes provisions that govern professional practice and the media sector as a whole. It encompasses defining media activities and journalists, specifying requirements and conditions for directors, outlining the obligations of media institutions, addressing the rights and responsibilities of journalists, and other regulatory matters, notably including the issuance of newspapers, freedom of access to information, and its limitations.

Media laws are intertwined with a country's public policy and its governing nature. General political changes in Algeria have had a direct impact on the media sector, and these effects continue to the present day. The sector has undergone several significant transformations as a result of the overall state of the country, manifested through the enactment of three media laws.

The first of these is the Law on Media 82-01, which solidifies the socialist system and the control of the state and the single party over the media sector. Then came the Law on Media 90-07, which followed the constitutional change and the shift in the country's governance system from a single-party system to a multiparty system. This law allowed private individuals to invest in the written press. Finally, the Organic Law 12-05 was issued within the framework of political reforms that the country witnessed at that time. It is the first organic law specifically dedicated to the media sector in the history of independent Algeria. This law was issued on 18 Safar, year 1433 Hijri, corresponding to January 12, 2012.

Referring back to the Algerian Constitution, specifically Article 143 of the latest constitutional amendment of 2020, there are two ways to enact a law. The first is through a proposed law presented by elected representatives or a bill submitted by the Prime Minister or the head of the government. The article explicitly states, "Both the Prime Minister or the head of the government, as the case may be, and the representatives and members of the Council of the Nation have the right to initiate laws".

The government began drafting a new organic law for the media, considering that media regulations are only established through organic laws according to Article 140 of the current



constitution. This draft was then presented to both chambers of the parliament for discussion and voting, with approval as outlined in Article 145 of the constitution.

Practical experience has demonstrated the government's dominance over legislative initiatives, as most of the legal texts issued by the parliament begin as bills proposed by the Prime Minister or the head of the government. This trend is consistent across various legislative sessions of the parliament. This can be attributed to the fact that the government possesses financial and technological resources that enable it to initiate legislation in various fields according to its programs and priorities. Consequently, the government's control over legislative initiatives has become evident in both theory and practice.

Government initiatives are characterized by seriousness, well-crafted formulations, and alignment with the state's public policy and available resources. Furthermore, the government's advantage in initiating laws is evident through its prioritized consideration of its own bills when they are deemed urgent<sup>1</sup>.

In reality, the legislative arena in Algeria, including media legislations, is dominated and monopolized by government initiatives in presenting draft laws. According to Article 1 of the draft law, its primary objective is to define the principles and rules that regulate the activity of media and its practice with freedom.

This raises the following question: What new aspects does the new organic media law draft bring compared to the previous media laws in Algeria? To answer this question, we will adopt a critical analysis approach to the most important provisions of the draft at times, and a comparative approach at other times, by referring back to the previous media laws and comparing their contents with the new draft introduced by the government recently.

We will focus on the most significant topics addressed by the draft law, which we consider most deserving of examination. These include:

- Entities authorized to engage in media activities.
- Prior authorization and accreditation requirements for practicing media activities.
- Regulatory bodies and their authorities.
- The right to access information.
- Ethical standards of the journalism profession.

The significance of our study lies in providing a critical analysis of the new media law draft, as well as offering a comparative reading of the proposed draft in comparison to previous media laws. This is done with the aim of anticipating and contributing to the enhancement of the proposed media law by presenting suggestions and recommendations that the study has arrived at. Such contributions have a substantial impact on the future of media in Algeria.

## **1. The Project in Terms of General Form**

### **1.1. Background of the Project's Issuance**

The indications of the new project emerged during the current presidency, especially after the constitutional amendment of 2020, which explicitly guarantees freedom of the press and media. This is outlined in the first chapter of the second section that includes fundamental rights and public freedoms. Article 54 specifically states:

"Freedom of the press, written, auditory, visual, and electronic, is guaranteed. Freedom of the press includes in particular:

- The freedom of expression and creativity of journalists and media collaborators.
- The journalist's right to access sources of information within the framework of the law.
- The right to protect the independence of journalists and professional confidentiality.
- The right to establish newspapers and publications upon declaration.
- The right to establish television and radio channels and electronic newspapers and sites under conditions determined by the law.
- The right to publish news, ideas, images, and opinions within the framework of the law, while respecting the nation's religious, ethical, and cultural values.

Freedom of the press cannot be used to infringe upon the dignity, freedoms, and rights of others.

The publication of discourse of discrimination and hatred is prohibited.



Press offenses cannot be subjected to penalties that restrict freedom.

The activities of newspapers, publications, television channels, radio stations, electronic sites, and newspapers cannot be suspended except by judicial order."

The assurance or guarantee here refers to the state's provision of all possible means and methods to achieve freedom of the press and media.

## **1.2. Distribution of Articles and Chapters**

The project comprises 55 articles distributed across eight sections, as follows:

Chapter 1: General Provisions - Consists of four articles (from Article 01 to Article 04)

Chapter 2: Media Activities - Contains four articles (from Article 05 to Article 08) distributed equally over two sections. The first section is titled "Written and Electronic Press Activities," while the second section focuses on "Audiovisual Activities."

Chapter 3: Common Provisions for Media - Includes four articles (from Article 09 to Article 12)

Chapter 4: Regulation Mechanisms for Media Activities - Comprises two sections. The first section deals with the authority to regulate written and electronic press activities and consists of one article, Article 13. The second section introduces the independent national authority for regulating audiovisual activities, represented by Article 14.

Chapter 5: Journalism Profession, Ethics, and Morals - Contains 22 articles distributed over three sections:

- The first section focuses on the journalism profession, comprising eight articles (from Article 15 to Article 22).

- The second section addresses the protection of journalists, encompassing articles from Article 23 to Article 33.

- The third section discusses the ethics and morals of the journalism profession, covering articles from Article 34 to Article 36.

Chapter 6: Right to Reply and Correction - Contains seven articles (from Article 37 to Article 43)

Chapter 7: Violations Committed within the Context of Media Activities - Includes ten articles (from Article 44 to Article 53)

Chapter 8: Transitional and Concluding Provisions - Consists of two articles, Article 54 and Article 55.

Through the distribution of articles according to chapters, it can be inferred that the project did not give significant importance to defining media activities and their types, functions, and responsibilities, as well as how to invest in them. Additionally, the project did not extensively elaborate on regulatory authorities, mentioning them briefly in only two articles. On the other hand, the project delved into the journalism profession, its definition, the right to reply and correction, along with violations committed within the context of media activities.

## **2. Content of the Draft Law:**

### **2.1 Entities Authorized to Engage in Media Activities:**

The new media law draft did not clearly define the concept of written press, electronic press, or audio-visual activities. It deferred to other regulations that are expected to be issued later after the approval of the draft law. Article 2 of the draft law provided a general definition of media activities as "any publication or broadcasting of events, messages, opinions, ideas, or knowledge through any written, electronic, or audio-visual means, directed to the public or a specific audience".

It's worth noting that the draft law still confuses information with opinion. Accurate information from reliable sources is the goal of any media outlet, while spreading false information falls under defamation laws. On the other hand, expressing opinions is a fundamental right and falls under freedom of expression and the press, except for specific exceptions defined by the law<sup>2</sup>.

Article 04 of the draft law has specified the entities that are allowed to engage in media activities. These include media outlets affiliated with public bodies and public sector institutions, associations, and political parties within the limits set by their respective regulating laws. Additionally, natural persons of Algerian nationality exclusively, as well as legal entities subject to Algerian law and whose capital is owned by natural persons holding Algerian nationality exclusively,



or legal entities subject to Algerian law with contributors and partners holding Algerian nationality exclusively, are permitted to engage in media activities.

It's noticeable that this article doesn't differ significantly from Article 04 of the Media Law 12-05, except for the restriction on media engagement by citizens holding solely Algerian nationality. The prohibition for Algerian dual nationals from investing in the media sector has been seen by some as a deprivation of their constitutional rights related to equality among Algerian citizens.

Referring to the 2020 constitution, we find that its articles emphasize equality among citizens. Article 35 ensures fundamental rights and freedoms for all citizens and adds that the republic's institutions aim to guarantee equality for all citizens by removing obstacles that hinder individual potential and effective participation in political, economic, social, and cultural life. Additionally, Article 67 states that all citizens are equal in assuming tasks and positions in the state, except those related to sovereignty and national security.

While some consider the exclusion of dual nationals from investing in the media sector as doubting their loyalty, the supervisory ministry views the matter as merely "closing the doors in the face of entities hostile to Algeria, which await opportunities to invest in media to interfere in the country's internal affairs, posing a threat to national sovereignty"<sup>3</sup>.

Indeed, as observed, the legislature still appears to conflate - as in the Media Law 12-05 - between the public sector and the state sector. When we refer to international media law literature, a distinction is made between the state sector and the public sector. The mentioned article refers to the state sector as the public sector. However, the concept of the public sector encompasses the principle of partnership in funding the media outlet and its engagement in public service, as seen with institutions like the BBC in Britain and PBS in America. Public institutions rely on three resources: viewer fees, commercial advertising, and state aid, with the aim of producing high-quality programs with a significant degree of independence. On the other hand, the public sector mentioned in the article appears to refer to the state sector, which is currently prevalent, and therefore, its mention is apt<sup>4</sup>.

## **2.2 Pre-Approval and Accreditation for Media Activities**

In reality, regulating the exercise of public freedoms falls within three main categories: adopting a repressive or punitive system, a preventive system, or a declarative system<sup>5</sup>.

Some countries opt for a notification system for newspaper issuance, while others require obtaining prior permission to secure approval for engaging in media activities.

Administrative licensing is the permission or approval granted by a competent administrative authority to engage in a specific activity, provided that the legal conditions are met. Administrative licensing falls within the realm of preventive regulatory measures that administrative authorities are empowered to employ in order to regulate certain individual freedoms. These freedoms can only be exercised after obtaining prior approval from the administrative authority<sup>6</sup>. Administrative licensing serves as a tool to regulate and control activities that are either unlawful or deemed inappropriate. It is applied to activities that are prohibited until administrative approval is obtained.

This distinct concept sets administrative licensing apart from similar legal notions.

As for the declaration or notification, it involves an individual simply informing the administrative authority of their intention to engage in a specific activity or exercise one of their rights and freedoms<sup>7</sup>. The declaration is merely notifying the relevant administrative entity of the desire to publish a newspaper, for example. In contrast, a license requires the necessity of obtaining prior permission and authorization. It is considered a preventive system within the authority of the administration to prevent an individual from carrying out the intended activity and to hinder them through various means.

What is noteworthy is that the new draft of the Media Law emphasizes the need to obtain prior licensing from the Minister responsible for communication to engage in audiovisual activities, regardless of the medium. Article 08 of the draft states the necessity of obtaining a pre-issued license from the Minister responsible for communication for establishing any audiovisual communication service, whether through cable, terrestrial broadcasting, satellite, or the internet.



The article excludes audiovisual communication services belonging to the public sector that were established by decree.

Indeed, a simple declaration is sufficient with the Minister responsible for communication to engage in the activity of written or electronic media. This is what is known as the notification system. Article 06 of the draft states that "the practice of written press and electronic press activities is subject to notification with the Minister responsible for communication".

It's true that this article aligns with the fourth provision of Article 54 of the current constitution, as mentioned above. However, obtaining a license may be required to engage in written media activities, similar to what is outlined in the Media Law 12-05. It appears that only prior notification is necessary according to Article 11 of this law. This article stipulates that "the issuance of each periodic publication is done freely. The issuance of each periodic publication is subject to registration and the monitoring of information accuracy. This is achieved by submitting a prior declaration to the responsible director of the publication to the authority regulating the written press, as specified in this organic law, and it is immediately handed over."

However, Article 13 of the Media Law mandates the necessity of obtaining accreditation after submitting the declaration and receiving the deposit receipt. It states, "After depositing the declaration mentioned in Articles 11 and 12 above and delivering the receipt, the authority regulating the written press grants accreditation within a period of sixty (60) days from the date of depositing the declaration. Accreditation is granted to the publishing institution." The same article reaffirms in its last paragraph that accreditation is considered "equivalent to approval for publication".

The legislator did not stop at these explanations and clarifications. In Article 21, the law prohibits the printing of any periodical unless a duly approved copy of the accreditation is obtained. It states that "the responsible printer must request from the publisher a copy of the accreditation duly authenticated before printing the first issue of any periodic publication, and printing is prohibited in its absence".

All of these confirmations regarding the necessity of obtaining accreditation before printing indicate the legislator's strong commitment to establishing a licensing system rather than a notification-based one. In fact, in the Media Law 12-05, the legislator went even further by requiring newspapers published under Media Law 90-07 to align with the organic law and obtain accreditation. This measure touches upon the principle of non-retroactivity of laws.

The Algerian legislator in the Media Law 12-05 indeed mixes the notification-based system with the pre-licensing system, contradicting itself and the democratic system as a whole.

Therefore, we cannot definitively conclude that obtaining a prior notification is sufficient to practice written journalism, as Article 06 of the new draft refers to other legislative texts that provide more detailed explanations.

Looking back at previous media laws, we find that Media Law 90-07 only established the notification-based system. Article 14 of that law stipulates that "publishing a periodic publication is free; however, for its registration and health control, submitting a prior notification is required within a period of no less than thirty days from the issuance of the first issue. The notification is registered with the competent regional prosecutor in the place of publication of the publication, and the notification is submitted in a stamped paper signed by the publication's director. A receipt is provided immediately. Delivering the receipt to the printer is sufficient for the issuance of the first issue of the periodic publication".

Looking back at Media Law 90-07, we find that it reinforces the system of freedom, where any natural or legal person can issue a publication by simply submitting a prior notification within a period of 30 days from the issuance of the first issue. This is done with the Office of the Public Prosecutor, represented by the regional prosecutor in the place of publication of the newspaper. Thus, it becomes evident that the legislator at that time chose the judiciary over administrative authorities, despite the establishment of the Higher Council of the Media.

The legislator's preference for submitting notifications before the judiciary rather than administrative authorities was not arbitrary. The judiciary is expected to always protect rights and





freedoms, serving as a safe haven from the arbitrary actions of administrative powers. On one hand, administrative authorities are often seen as persistent opponents of public freedoms, in addition to their known administrative complications<sup>8</sup>. The system of prior notification was abolished and replaced with the pre-licensing system and the requirement to obtain accreditation before engaging in media activities, whether written, audiovisual, or online, with the enactment of Media Law 12-05. However, the current draft project combines both systems. It requires only a prior notification for written journalism, while accreditation is necessary for audiovisual activities. It's noticeable that the legislator has fallen into contradiction. It's ironic that both systems converge within a single notion of freedom, considering that Article 03 of the draft law acknowledges that "media activities are practiced freely".

While the regional prosecutor is responsible for receiving prior notifications under Media Law 90-07, despite the existence of the Higher Council of the Media as an independent administrative body, the regulatory authorities are responsible for granting accreditation under the current law. This makes the Minister responsible for communication the sole authority in issuing either prior notifications or licenses based on the type of media activity, as per the proposed draft law. This is happening in the context of the existence of independent administrative bodies, including the Regulatory Authority for Written and Electronic Press and the Independent National Authority for Audiovisual Regulation.

Here, the state's new approach is apparent through regulation and centralization in providing licenses and prior notifications for media activities. This is especially noteworthy, considering the requirement for journalists working for foreign institutions to obtain prior accreditation according to Article 22 of the draft law. This article stipulates that "journalists working in Algeria for foreign-law media outlets shall be required to obtain prior accreditation, and the application of this article shall be defined through regulations".

### **2.3 Regulatory Bodies and Their Authorities**

The draft law has indicated two regulatory bodies:

- The Authority for Regulating Print and Electronic Press: The definition of the Authority for Regulating Print and Electronic Press in Article 13 of the draft law corresponds to Article 40 of the Media Law 12/05. It is considered an independent entity endowed with legal personality, financial autonomy, and independence. The draft law has additionally introduced the notion of administrative independence. The determination of its tasks and structure has been referred to the upcoming law related to print and electronic press.

- The second body is introduced under a new name, "The Independent National Authority for Regulating Audiovisual Content." Article 14 of the draft law defines this authority as having a distinct nature, possessing legal personality, administrative autonomy, and financial independence. The law related to audiovisual activities will specify the tasks and authorities of this authority.

It is noteworthy that the draft law only makes reference to these regulatory bodies in two articles, and in an unjustified manner, deferring to other laws. This stands in contrast to the Media Law 12/05, which extensively delineated the composition, tasks, and authorities of these bodies. Moreover, the draft law has revoked the principal function of these authorities, which was the examination of applications and the issuance of prior permits for engaging in media activities. These tasks have been transferred to the Minister responsible for communication, as mentioned earlier.

In this context, one may inquire about the significance and authority of these independent administrative bodies.

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### **2.4 The Right to Access Information**

Among the noteworthy articles of the draft law are Articles 32 and 33. Article 32 of the draft stipulates that journalists have the right to access information sources, except when the news concerns:



- National defense secrets as defined by the applicable legislation,
- State security and/or national sovereignty,
- The confidentiality of preliminary and judicial investigations,
- The legitimate interests of institutions,
- The private life and rights of others.

As for Article 33, it states that public bodies and institutions must ensure journalists' access to information while respecting the constitution and applicable legislation.

It is good to discuss the journalist's right to obtain information, but the draft law did not bring anything new and did not elaborate on this right compared to Article 48 of Organic Law 12/05, despite its significant importance. The draft limited itself to addressing the right to access information in only two concise articles. Additionally, it provided protection for information in Article 32 while dealing with the right to access it in Article 33, which is not logical. It is worth noting that there is a legal gap in the Algerian legislative landscape regarding freedom of information and its circulation. We notice the absence of an explicit legal framework that governs the right to access information, except for a few scattered provisions within the current media law or specific laws related to municipalities, provinces, the national archive, and other matters<sup>9</sup>. This reflects the lack of comprehensive regulations governing the right to access information and its stagnation.

It would have been more appropriate for the draft media law to refer to a separate regulation specifically dedicated to the right to access and protect information, similar to what some Arab countries have done. For instance, Jordan took the initiative by enacting Law No. 47 in 2007 to ensure the right to access information.

### **2.5 Media Ethics:**

Historically, discussions of media ethics have been associated with Western media, as the concept of "media ethics" emerged due to the violations resulting from media practices operating within the framework of liberal theory. This theory is based on the principles of freedom of expression and the public's right to information, aiming to establish democratic values<sup>10</sup>. This approach lacked laws imposing the acquisition and dissemination of information and preventing harmful transgressions.

The first document in this regard, known as the "canons of journalism," emerged in the United States in 1926 by the American Society of Newspaper Editors. It was formalized on April 28, 1929, and includes principles such as responsibility, freedom of the press, independence, seriousness, accuracy, impartiality, fairness, and decency.

Western academic literature also delved into media ethics, primarily through the lens of codes of journalistic ethics. It relied on the authority of "professionals" within the field, akin to the saying that "those closest to a profession know it best"<sup>11</sup>. As a result, professional institutions and organizations for journalists serve as the primary source of journalism and media ethics.

In Algeria, prior to the adoption of political pluralism in 1989, there was no discussion of journalistic ethics and codes of conduct. Journalists during that era were essentially employees serving the agendas of the political system and its ideology. The ethical sources and principles of the journalistic profession in Algeria were a reflection of the nature of the political system and its evolution, given the role of media in society<sup>12</sup>. However, this didn't prevent the existence of some provisions in the Law on Information 82-01 that address the ethics of journalism.

With the enactment of the Organic Law on Information 12-05, there was a direct and explicit emphasis on the necessity for journalists to adhere to the ethics and codes of the journalism profession. This is stated in the second section of the sixth chapter titled "Ethics and Codes of Journalism".

The new draft of the Media Law addresses the ethics and codes of conduct of journalists in Chapter 5, Article 34. This article establishes the High Council for the Ethics and Codes of Journalism, composed of 12 members. Six of these members are appointed by the President of the Republic from among experienced figures and researchers in the field of journalism, while the other six are elected from among journalists who are members of professional organizations. It's worth noting



that the aforementioned article does not clearly specify the powers of the Council in formulating the journalist's code of ethics.

Article 36 further extends these powers to include defining the nature of disciplinary penalties and the process for appealing against them.

The foundation of professional ethics is self-regulation, where the state or government rarely intervenes in their regulation. However, the draft law establishes these ethics with a centralized and controlling tendency, appointing half of the members of the High Council for Ethics and Codes of Journalism.

Referring back to the Media Law 12-05, Article 96 explicitly states that the High Council for Ethics and Codes of Journalism will formulate the Code of Ethics for journalism and approve it. Significant changes are observed in the composition of the Council, as Article 94 specifies that it is established and its members are elected by professional journalists. The remaining details of the Council's composition and the number of its members remain unknown until its general assembly is formed. It's worth noting that the High Council for Ethics and Codes of Journalism, as stipulated in the Media Law 12-05, has not been formed up to the present day.

### 3. CONCLUSION:

In democratic countries, the principle of media practice is freedom, while restrictions are imposed in exceptional cases defined by the law. What distinguishes Algeria's legislative landscape is the government's control over lawmaking, especially in sensitive sectors like the media. The Algerian legislature tries to adapt laws to various socio-political and technological changes in the country, aiming to uphold citizens' right to information and freedom of the press, while also protecting stability and public security. This is what the new media law project seeks to achieve.

However, the project is concise and falls short of meeting the desired aspirations for advancing the media sector. Particularly notable is its reference to subsequent regulations. Looking back at the history of media laws, we observe delays and sluggishness in issuing regulating legislation. For instance, Law 82-01 on media was issued twenty years after independence, and Law 14-04 on audiovisual media was enacted nearly three years after the sector was opened to private entities. Additionally, the High Council for Ethics and Codes of Journalism, stipulated in the Organic Media Law 12-05, has not yet been established.

To enhance the project, we recommend:

- Clearly distinguishing between information and opinion by providing precise definitions for media activities, including written, electronic, and audiovisual journalism. The general concept introduced in Article 02 of the project for media activities should not be the sole reference.
- Revisiting certain articles that have sparked controversy, such as Article 04 and Article 22, to assess their constitutionality.
- Reordering Articles 32 and 33 logically to first establish the right to access information and then address the circumstances necessitating its protection.
- Avoiding extensive definitions of journalists and professional journalists, as well as the process of obtaining a professional card, and instead referring to separate legislation specifically for journalists.
- Considering the establishment of a separate law for the right to access information, following the example of countries that have enacted such laws.
- Addressing the legal void in the advertising sector.
- Clearly separating the Media Law from journalism ethics. While the law is usually regulated by the relevant ministry, professional ethics are self-regulated through journalists' codes of ethics. Legislative interference in self-regulated professional bodies should be avoided at all costs.





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