

CONSIDERATION OF THE FAMILY BOND IN ALGERIAN CRIMINAL LAW

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Abstract:

This research paper aims to highlight the importance of the family bond in Algerian criminal legislation. It examines how the legislator takes this bond into account when establishing rules for the criminalisation and punishment of family-related offences. The paper discusses the different approaches taken by the legislature, including mitigating penalties in some cases, exempting individuals from punishment in others, and imposing stricter penalties in certain situations. It also examines the role of the prosecutor in family cases. The paper concludes by highlighting the importance of raising awareness of the importance of the family bond among the general population, through the efforts of state institutions and civil society organisations.

Keywords: Family ties, mitigating sentences, offenders, harsher sentences, family.

INTRODUCTION:

The family unit is considered one of the most sacred social relationships. The family is the cornerstone of society and its well-being has a direct impact on the well-being of society as a whole. Recognising the importance of the family, the Algerian legislature has dedicated a separate law to family matters, first enacted in 1984 and amended in 2005. This law outlines the rights and responsibilities of each individual within the family and emphasises the importance of love, mercy and good behaviour.

However, when one member of the family violates his or her obligations to other members, it can lead to the breakdown of that family bond, replacing happiness and good relations with suffering, injustice and abuse. Throughout history, the family has been a breeding ground for crime because of such violations.

The Algerian Penal Code, which was first issued in 1966 and has been amended several times, contains various legal provisions that criminalise acts that harm the family and establish appropriate penalties for them. The question arises: Does the Algerian legislator take the family bond into account when establishing rules for the criminalisation and punishment of family-related offences?

In order to answer this question, this paper will adopt an analytical approach that will be divided into two main axes:

- The consideration of family ties in substantive criminal law.
- Consideration of family ties in procedural criminal law.

First section: Consideration of the family bond in objective criminal legislation.

The Penal Code contains numerous provisions that criminalise and punish any assault that undermines the unity of the family, jeopardises its cohesion and does not respect the family bond, which is supposed to be built on a solid foundation of love, affection, cooperation and mutual respect. The rules in this regard have fluctuated between exempting the offender from punishment in some cases, mitigating the punishment when there are justifications, and increasing it when circumstances warrant. The following points illustrate this:

First demand: Criminalisation of acts that threaten the unity and cohesion of the family.

In order to preserve the unity and cohesion of the family, the legislator has taken measures to criminalise all acts that could disrupt this unity and undermine this bond, as follows:

First subsection: Criminalisation of acts that damage the marital relationship.

This is manifested by some as a violation of family obligations, such as the crime of abandoning the family home, the crime of desertion by the husband and the crime of failure to provide financial



support. These acts are explicitly defined and punishable under articles 330 and 331 of the Penal Code¹.

Second subsection: Criminalisation of acts harmful to children.

This includes offences related to the civil status of the child, such as the offence of failing to declare birth, which is explicitly mentioned and punishable under article 442 of the Penal Code. In addition, the offence of falsifying a child's identity, which makes it difficult to verify the child's identity, is punishable under article 320 of the Penal Code. In order to protect the family, the legislator has also criminalised acts constituting neglect in the care of children. This includes the offence of failing to hand over a child in the care of another person, as provided for in Article 327 of the Penal Code. In addition, the act of handing over a child to a shelter or charitable institution is also criminalised under Article 442 of the Penal Code. The legislator has also criminalised the act of disobeying a court order concerning a child, as stated in article 328 of the Criminal Code. In addition, the legislator has criminalised acts that endanger the life of children and vulnerable persons, which are explicitly mentioned and punishable under articles 314 to 318 of the Criminal Code².

Third subsection: Criminalisation of acts contrary to morality.

Examples of these offences are crimes such as rape or sexual assault, which are explicitly mentioned and punishable under article 336 of the Penal Code. Another example is the crime of indecent assault, which is explicitly mentioned and punishable under Article 335 of the same law. Other forms of these crimes include the crime of incest and the crime of adultery, as well as inciting minors to immoral behaviour. These offences are specified and punished respectively in articles 337 bis, 339 and 342 of the Penal Code.

There are numerous offences that are detrimental to morality and that directly or indirectly affect the interests of the family³.

Fourth subsection: Criminalisation of the misappropriation of funds within the same family.

One of the most prominent examples of this is the offence of misappropriation of inheritances before their distribution by fraudulent means. This act is explicitly mentioned and punishable under Article 263 of the Penal Code. In addition, theft, embezzlement and concealment of stolen property are also criminalised. These acts are specified and punishable under Articles 368, 377 and 389 of the Penal Code respectively⁴.

The second demand: Exemption from punishment on the grounds of family ties.

Article 52 of the Penal Code defines excuses as "specific cases established by law which, when the crime is committed, result in the non-punishment of the accused, in the case of exculpatory excuses, or in the reduction of the penalty, in the case of mitigating excuses"⁵.

One of the most famous examples of this is the crime of theft between relatives, as set out in Article 368 of the amended and supplemented Penal Code⁶. The article states: "Theft committed by the following persons shall not be punished, and they shall only be entitled to civil compensation:

The ascendants: for causing damage to their children or other members of the branch.

The branches: for causing damage to their descendants.

¹- See Abdulaziz Saad, Crimes against the Family System, National Book Institution, Algeria, Tunisian Publishing House, Tunisia, 1990, pp. 12-35.

²- See: For more detail, Ahsen Bouskiàa, Concise in Algerian Private Law, Dar Homa, Algeria, 15th edition, 2012-2013, Vol. 1, pp. 139-215.

³- See: Nabil Saqr, The Intermediary in Crimes against Persons, Dar Al-Huda, Ain M'lila, Algeria, 2009, p. 251 and beyond.

⁴- Arbi Belhadj, Research and Theses in Law and Islamic Jurisprudence, Diwan of University Publications, Algeria, 1996, pp. 375-376.

⁵- Decree No. 66-156, amending and supplementing the Penal Code, Official Gazette of the Algerian Republic for the year 1966, Issue 49.

⁶- Law No. 15/19 amending the Penal Code, Official Gazette for the year 2015, Issue 71.



This article has narrowed the scope of exemption in this crime, as it previously extended to spouses if one of them caused harm to the other. This is in line with the provisions of Article 37 of the Family Code, which emphasises the financial independence of each spouse¹.

The third demand: Mitigation and enhancement of punishment taking into account family ties.

Preserving the family unit is undoubtedly an essential objective that the judge takes into account when dealing with crimes that affect the family. The judge may decide to mitigate the sentence if it appears that such mitigation would contribute to strengthening relations between family members and preserving the family unit. On the other hand, the judge may decide to increase the penalty if it appears that this is more appropriate for the interests of the family.

First subsection: Consideration of family ties as a mitigating circumstance.

Algerian legislation considers the marital bond as a legal excuse that mitigates the punishment in cases of murder, assault and injury when one spouse commits these acts against the other spouse or his or her partner at the moment of catching them in the act of adultery. The legislator considers the act of catching one's spouse in the act of adultery as a provocation that causes the perpetrator to feel a sense of rage that temporarily renders him or her incapable of exercising sound judgement².

Unlike French law and some other Arab laws, such as Egyptian, Syrian and Moroccan laws, which limit this mitigating excuse to the husband, Algerian law treats both spouses equally in benefiting from this excuse³.

Some argue that it is not fair for Algerian legislation to limit this excuse to the spouse and not extend it to other family members, such as a father defending his daughter's honour or a brother defending his sister's honour, among others. They believe that the legislation should at least allow close relatives to benefit from the same excuse, taking into account the provocative reactions that such heinous crimes provoke within the family⁴.

Second subsection: Consideration of family ties as an aggravating factor in punishment.

An example of this is the Algerian legislator's decision to increase the penalty for killing the offspring (children) of the roots (parents), as stated in Article 261 of the Penal Code. The punishment for killing descendants (children) has been increased to the death penalty, whereas the original punishment was life imprisonment.

Professor Abdelaziz Saad believes that the reason for the increase in the penalty is the prevailing belief that a child who commits the crime of killing his father, mother, grandmother or grandfather is a disobedient child who denies all the blood and kinship ties that bind him to his roots. This act also violates all feelings of parenthood and filial duty, which justifies the most severe punishment⁵. Professor Arabi Belhaj argues that the philosophy behind the increase in the penalty for this crime includes the penal legislator's policy of forcing roots and branches to respect family ties, preserve the Algerian family unit and maintain its cohesion in an environment of love, affection and the avoidance of violence and cruelty. This is in line with the provisions of the Family Code, which calls for the establishment of a family based on cohesion, mutual support, good behaviour, good upbringing and the rejection of social vices. All these principles are inspired by the spirit of Islamic legislation⁶.

The second subsection: Respect for family ties in criminal procedural law.

An examination of the procedural texts in the Penal Code, the Code of Criminal Procedure and the Child Protection Act reveals several provisions that take the family bond into consideration and take it into account. These provisions can be summarised as follows

¹- Law No. 05-09 dated 04/05/2005, Official Gazette of the Algerian Republic for the year 2005, Issue 43.

²- See: Belkheir Sdid, Family and its Protection in Islamic Jurisprudence and Algerian Law, Comparative Study - Dar Al-Khaldooniya, Algeria, 2009, p. 198.

³- See: Arbi Belhadj, the previous reference, p. 365.

⁴- See: Belkheir Sdid, the previous reference, pp. 199, 200.

⁵- Abdulaziz Saad, the previous reference, pp. 107, 108.

⁶- Arbi Belhadj, the previous reference, pp. 368, 369.



First requirement: The family bond limits the authority of the public prosecutor to initiate public prosecution, and the forgiveness of the victim ends the criminal proceedings.

First subsection: Limitation of the authority of the public prosecutor to initiate public prosecution.

In the case of certain crimes that affect the family, the victim does not have the right to initiate public prosecution. This depends on a complaint being filed by the victim or the aggrieved party. The purpose of requiring a complaint for these crimes is to preserve the stability of the family. Sometimes the punishment can be more damaging to the family unit than the crime itself. Examples of these crimes, where the prosecutor's authority is limited to a complaint from the person concerned, are offences related to the violation of family obligations, as defined in article 330 of the Criminal Code, and offences related to domestic violence, as defined in articles 266 and 266 bis of the Criminal Code¹.

However, the right to file a complaint remains valid within the statute of limitations for public prosecution. As long as these offences require a complaint describing the nature of the offence, the right to file a complaint remains valid for a period of three years and the public prosecutor may not take any legal action in the absence of a complaint².

The second subsection: Victim forgiveness terminates criminal proceedings.

The legislator considers the forgiveness of the offender by the victim as a procedural mechanism to protect the family by putting an end to the criminal proceedings, despite the wide powers of the public prosecutor to continue such proceedings.

With reference to Article 6 of the Code of Criminal Procedure, the withdrawal of a complaint is considered a reason for the termination of the prosecution. In the Criminal Code, for offences that require a complaint before public prosecution can be initiated, such as desertion of the family and adultery, the legislator uses the term "forgiveness of the victim" to express the withdrawal of the complaint. The term "renunciation of the complaint" is also used in article 369 of the Criminal Code, which deals with crimes of theft committed between spouses, relatives, in-laws and up to the fourth degree.

It should be noted that there are many offences for which the victim's forgiveness terminates the criminal proceedings, without being linked to the power of the Public Prosecutor to initiate the public prosecution through a complaint. For example, in the case of the offence of non-payment of alimony, provided for in article 331 of the Penal Code, the last paragraph states that once the sums due have been paid, the victim's forgiveness terminates the criminal proceedings. In this case, a report must be drawn up by a public official to prove this³.

Second demand: Respect for family ties in dealing with juvenile offenders.

Article 49 of the Penal Code stipulates that a minor under the age of ten cannot be prosecuted. A minor aged between 10 and less than 13 may only be subjected to protective measures or rehabilitation. However, in the case of misdemeanours, a minor may only be reprimanded. A minor between the ages of 13 and 18 shall be subject to protective measures, rehabilitation or mitigated penalties⁴.

The potential for reform and rehabilitation of juvenile offenders should not lead to despair in their treatment, but rather to working towards their reintegration as productive members of society, providing them with rehabilitative, protective and preventive measures, rather than imposing punishments that they may not be able to bear. It is the duty of the judge always to offer young offenders opportunities and to treat them in a special way, in accordance with the legislative

¹- See: Issa Ben Mustafa, Pedagogical Print on Crimes Against the Family, Faculty of Law and Political Science, University of Djelfa, Academic Year 2018/2019, pp. 54, 55.

²- Omar Khoury, Explanation of the Criminal Procedure Law Supported by Judicial Jurisprudence of the Supreme Court, Faculty of Law, University of Algiers, 2011/2010, p. 20.

³- See: Ahsen Bouskiàa, the previous reference, p. 187.

⁴- Law No. 14-01, dated February 4, 2014, amended and supplemented to the Penal Code, Official Gazette of the Algerian Republic for the year 2014, Issue 71.



objective of their rehabilitation and correction, using educational and rehabilitative measures rather than strict deterrence¹.

In order to respect family ties and protect the privacy of juvenile offenders, the Algerian legislature has established a separate judicial system for juvenile offenders. Article 15 of Law No. 10/22, which regulates the judiciary, establishes a chamber for juvenile offenders at the level of the Council of Justice, while Article 21 of the same law establishes a section for juvenile offenders at the level of the courts².

Furthermore, the legislator has enacted a separate law for young offenders, namely Law 15/12 on Child Protection, which aims to establish rules and mechanisms for the protection of children. The third section of this law, consisting of 68 articles, deals specifically with the rules relating to juvenile offenders, including the preliminary investigation stage, the judicial investigation stage, civil claims, social research issues and the possible temporary measures that can be taken in relation to the juvenile offender.

The law also deals with appeals against the decisions of the juvenile judge, the establishment of the juvenile division, the trial procedure, the execution of judgments and decisions and other relevant matters³.

In contrast to mediation in criminal proceedings and specifically for adults, which is limited to four family offences eligible for mediation, namely abandonment of the family, failure to give birth to a child, deliberate refusal to provide financial support and fraudulent misappropriation of inheritance funds before distribution, Article 110 of the Child Protection Act has made all offences and infringements committed by juvenile offenders eligible for mediation. This serves to protect both the child and the family⁴.

The third requirement: The role of the public prosecutor in the protection of the family.

The Public Prosecutor's Office is an important procedural body whose task is to initiate prosecutions on behalf of society and to seek the application of the law. It accompanies the prosecution process from the moment the crime is committed until the right to punishment is established.

In recognition of the family bond, and in contrast to its traditional role before the criminal courts, the Algerian legislature has made the public prosecutor the main party in civil family cases. This procedural role of the public prosecutor in family matters stems from the specific nature of family law, which regulates a vital social unit, the family. Family disputes differ from other civil, commercial or property disputes in that they have a high degree of sensitivity. For this reason, the legislator has paid great attention to them in order to preserve their unity and cohesion⁵.

As the main party, the Public Prosecutor's Office has the power to initiate proceedings from the outset, to direct the course of the case, to present claims and defences, to submit evidence and arguments, to be present at all stages of the proceedings, to deliver the opening statement when acting as plaintiff and to deliver the closing statement when acting as defendant. The Public Prosecutor must personally deliver his motions to the opposing party, and the proceedings cannot be conducted in his absence. Otherwise, the trial would be null and void, and any judgment rendered would be invalid. In addition, the Public Prosecution Service has the right to appeal against civil judgments and decisions issued against its requests, provided that the appeal is based on grounds relating to respect for the application of the law and the public interest⁶.

¹- See: Arbi Belhadj, the previous reference, Vol. 2, p. 405.

²- Official Gazette of the Algerian Republic for the year 2022, Issue 41.

³- See: Jamal Njimi, Law on Child Protection in Algeria: Analysis and Foundations, Dar Homa, Algeria, 2016, pp. 9, 10, 11.

⁴- Mohammed Tahar Belmouhoub, Judicial Mediation - A Comparative Study between Islamic Jurisprudence and Algerian Law, Doctoral Thesis, Batna University, 2016-2017, pp. 195, 233.

⁵- See: Imane Si Bouazza, The Role of the Public Prosecutor in Family Matters, Doctoral Thesis in Private Law, Faculty of Law and Political Science, University of Tlemcen, 2018/2019, p. 67.

⁶- See: El Hashmi Tafrount, The Role of the Public Prosecutor in Family Cases in Algerian Legislation, Journal of Law and Political Science, University of Khenchela, Issue 8, Part I, June 2017, pp. 200, 201.

According to Professor Omar Zouda, the Public Prosecutor's Office is considered to be an intervening party in family cases, and this is evidenced by the fact that the legislator did not abolish Articles 102, 114 and 182 of the Family Code. If the legislator had intended to make the Public Prosecutor's Office the main party in all family cases, it would have repealed the other articles that allow it to act as the main party and would have been satisfied with the repeated text of Article 3.

His opinion is supported by the wording of the repeated article 3 itself, which considers the Public Prosecutor's Office to be the principal party in all cases aimed at implementing the provisions of this law. Its sole objective is to ensure the application of the provisions of this law, and this objective can only be achieved through its intervention as an intervening party¹.

CONCLUSION:

After researching this topic, the research paper has reached the following conclusions:

-The Algerian legislator has been somewhat successful in using the educational function of the law, in moving away from strict and deterrent texts, and in achieving some consistency between the rules of the Family Code issued in 1984 and the rules of the Penal Code issued in 1966. These amendments sometimes reduced and sometimes waived penalties, with the aim of preserving the cohesion and unity of the family, together with the provisions of the Child Protection Act, which provided for special procedures for juvenile offenders based on the best interests of the child.

-More recently, however, it has been influenced by the international legal system as a result of the globalisation of law. This is evident in the 2005 amendment to the Family Law, which abolished Article 39, which considered the husband to be the head of the family, and the 2015 amendment to the Penal Code, which introduced Articles 266 and 266 repeats 1, which criminalise physical, verbal and psychological assault between spouses. This contradicts the husband's right to discipline his wife according to the provisions of Islamic jurisprudence, which is a substantive source of family law.

-It is the responsibility of the state, with all its institutions, and civil society, with all its factions, to raise awareness of the importance and significance of the family unit and the need to preserve it. They should revive religious and moral values in the hearts of family members, strengthen its foundation and prevent any attack on it through educational programmes, mosque lessons, media sessions and others.

-The direction of establishing effective family formations that benefit young people, prepare them for marriage, develop their skills and guide them in a sound direction to create a safe environment for the family is essential.

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¹ Omar Zouda, The Nature of the Role of the Public Prosecutor under the Provisions of Article 3 Repeated of Family Law - Order No. 05/02, Supreme Court Journal, Documentation Section, 2005, Issue 2, pp. 42, 43.



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