



The role of civil justice in achieving a balance between freedom of the press and the right to private life

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ABSTRACT:

Although achieving a balance between freedom of the press and the right to private life is a delicate and difficult matter—given that both rights rise to the level of constitutional principles and enjoy equal legal force—civil protection of the right to private life against press infringements nonetheless achieves a certain degree of balance, despite its lack of deterrent effect, particularly in halting an infringement once it has begun or preventing it before it occurs through the adoption of preventive measures provided for in comparative legislation. Nor can the role of compensation for such infringements be denied, especially where the infringement is of a significant nature.

Keywords: private life; freedom of the press; preventive measures.

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Introduction

Freedom of the press is one of the most fundamental human rights, owing to its vital role in enlightening society and raising awareness of public opinion issues, particularly in democratic societies. It constitutes the most important of all media tools. Most international legislations recognise freedom of the press, and national comparative legislations follow the same approach. However, this freedom has not been rendered absolute; rather, it has been restricted by the necessity of respecting the right to private life. The right to private life is as old as humanity itself and is based on protecting that aspect of an individual's life which they do not wish others to access. It is also a constitutional right that enjoys the same legal value as freedom of the press.

Journalistic publication raises a legal issue of considerable importance, namely the obligation upon journalists to respect individuals' privacy. A journalist must not exceed the limits of publication so as not to fall within the scope of abuse of rights, which would give rise to liability. Accordingly, a balance must be achieved between what is published in the press and the necessity of respecting individuals' right to private life—a delicate issue that is difficult to realise in practice.

The severity and danger of press violations of the right to private life have increased with the rapid development of media, particularly with the emergence of the internet and what is now referred to as electronic journalism. This has created intense competition among newspapers to publish incidents of moral corruption within society in pursuit of financial profit or journalistic exclusivity. States have not hesitated to enact legislation aimed at achieving a degree of balance between freedom of the press and the right to private life, particularly through civil law provisions. This raises the question of whether such laws have succeeded in achieving the desired balance, especially in judicial applications before the courts.

To answer this question, this study adopts the analytical method by examining the provisions of the Algerian Civil Code that provide protection for the right to private life against infringements resulting from journalistic publication.

Accordingly, this research is divided into two sections. The first section addresses the protection of the right to private life vis-à-vis freedom of the press through preventive measures, while the second section is devoted to protection through actions for compensation.

Section One

Protection of the Right to Private Life vis-à-vis Freedom of the Press through Preventive Measures.

French legislation was pioneering in establishing protection of the right to private life against freedom of the press through preventive measures under Law No. 70/643 of 17 July 1970⁽¹⁾ by adding Article 9 to the French Civil Code. This amendment represented a qualitative leap towards restoring balance between the foundations of democracy—based on freedom of the press—and the right to private life, which is no less important.

The position of the Algerian legislator is reflected in Article 47 of the Civil Code, which provides that: *“Any person who suffers an unlawful infringement of the rights inherent in their personality may request that such infringement be halted, without prejudice to any compensation for the damage suffered.”*

It is clear from this provision that the Algerian legislator, by using the general expression “halting the infringement”, intended not only to stop an infringement that has already begun, but also to prevent an infringement before it occurs. This section examines the forms of preventive measures that a civil judge may order, followed by the conditions for ordering such measures before the urgent matters judge.

First Requirement

Forms of Preventive Measures

Article 9(2) of the French Civil Code provides examples of preventive measures that may be ordered by a civil judge, such as sequestration and seizure, without exhaustively listing them. This differs from the Algerian legislator, who did not specify any examples, following an approach similar to that adopted by the Egyptian legislator in Article 50 of the Egyptian Civil Code. This necessitates an examination of these measures in light of French legislative and judicial practice.

Section One

Suspension of Distribution or Seizure of Publications

One preventive measure that may be ordered against newspapers infringing individuals’ right to private life is the suspension of distribution or seizure of publications. Distribution includes the sale, offering for sale, dissemination, or display of publications in shop windows, or any other method making them accessible to a number of persons. Suspending distribution effectively eradicates the harm at its source.⁽²⁾

Seizure of publications constitutes a serious interference with freedom of the press; therefore, judges—particularly urgent matters judges—rarely order it, except where the infringement of the right to private life is intolerable and requires immediate cessation, despite the difficulty of determining when an infringement reaches such a serious level.

While the seizure of printed publications raises few issues, the seizure of electronic newspapers and magazines presents greater challenges. Although Algerian courts have scarcely addressed such cases, French courts have dealt with this issue. In an urgent ruling issued by the Nanterre Court against the Mondadori publishing group, following the publication by *Closer* magazine of photographs depicting a person with their spouse, the court held that this constituted an infringement of their right to private life and ordered that electronic media be made available to the claimants while prohibiting future publication of the photographs.⁽³⁾

In another case, former French President Nicolas Sarkozy brought an action against a publishing institution that posted audio recordings on its website “fr.Atlantico”. The Paris Court of First Instance found this to be an infringement of his private life.⁽⁴⁾ Similarly, the Nanterre Court prohibited the sale, distribution, marketing, or reproduction of photographs revealing an intimate relationship between an individual and a

well-known singer, considering this an infringement of private life.⁽⁵⁾ and imposed a penalty of €10,000 for each breach of the prohibition.⁽⁶⁾

Although no Algerian judicial precedents exist in this regard, the Algerian legislator appears to have codified this approach in Law No. 09-04 of 5 August 2009 on the prevention and combating of offences related to information and communication technologies. Article 12 obliges internet service providers to intervene immediately to remove unlawful content, store it, or render access to it impossible.⁽⁷⁾

Section Two

Placing Publications under Judicial Sequestration

Judicial sequestration is a precautionary measure whereby a disputed item is placed in the custody of a third party who undertakes to return it to the person proven to be entitled to it after the dispute is resolved.⁽⁸⁾ In cases of press infringement of the right to private life or other personality rights, judicial sequestration entails placing the disputed publication under judicial control pending resolution of the dispute.⁽⁹⁾

Pursuant to Articles 47 and 603 of the Algerian Civil Code, this measure falls within the category of urgent measures aimed at halting or preventing infringement. The Algerian legislator did not limit the cases in which judicial sequestration may be ordered, as confirmed by Article 603, which grants the judge discretionary authority in such matter".⁽¹⁰⁾

Section Three

Deletion or Modification of Content

Although comparative legislation does not explicitly provide for the deletion of images or articles infringing private life, this measure may be encompassed within the general phrase "other measures" contained in Article 9 of the French Civil Code. French jurisprudence has adopted this approach, as demonstrated by a Paris Court of Appeal ruling ordering the deletion of passages from a book describing a homosexual relationship between two individuals holding political positions, which was deemed an infringement of their private life.⁽¹¹⁾ However, this measure is of limited effectiveness in the context of newspapers and magazines that reach readers immediately upon publication, making it difficult—if not impossible—to obtain an order for deletion or modification after distribution has commenced.⁽¹²⁾

Section Four

The Right of Reply and Rectification

The right of reply and rectification is among the most prominent rights recognised by press laws worldwide for individuals and public authorities alike. It enables the correction of inaccurate or misleading information published by the press and serves as a safeguard for both individual freedoms and freedom of the press itself.⁽¹³⁾ The Algerian legislator enshrined these rights in Organic Law No. 23-14 of 27 August 2023 on Information⁽¹⁴⁾ Articles 37 to 43, subjecting their exercise to conditions, notably that the facts published are incorrect or false.⁽¹⁵⁾ The right of reply is generally used by individuals, while the right of rectification is primarily exercised by public authorities.⁽¹⁶⁾

Second Requirement

Conditions for Resorting to Preventive Measures before the Urgent Matters Judge

Article 9(2) of the French Civil Code permits recourse to the urgent matters judge to obtain preventive measures. Although Algerian legislation does not explicitly address this issue, recourse to urgent proceedings is permissible where legal conditions are met, namely urgency, absence of a serious dispute, and non-interference with the substance of the right.

Section one

Urgency

The Algerian legislator has not defined the concept of urgency, unlike other comparative legislations, as it is a flexible notion that varies according to temporal and spatial circumstances, particularly in light of the developments witnessed by society in various fields. By referring to Article 299 of the Algerian Code of Civil and Administrative Procedure, it is evident that urgent actions must be adjudicated within the shortest possible time limits. Accordingly, an urgent action is one in which delay is feared to result in the loss of the right.⁽¹⁷⁾

Some legal scholars have defined urgent jurisdiction as a branch of civil justice concerned with adjudicating urgent matters in which the passage of time may cause irreparable harm, provided that the substance of the right is not affected. Its purpose is to avert the real and imminent danger surrounding the right sought to be protected until the merits of the dispute are determined by the trial judge. Although Article 9, paragraph 2, of the French Civil Code refers to this requirement, it does not specify a clear criterion for its existence, thereby leaving the matter to judicial discretion.

Section one

Non-interference with the Substance of the Right

Article 303 of the same Code stipulates that urgent orders must not affect the substance of the right. The urgent matters judge is limited to providing temporary protection without establishing or extinguishing rights..⁽¹⁸⁾

Section one

Absence of a Serious Dispute

Although not expressly stated in Algerian law, this condition is derived from French law, which requires that no serious dispute exist regarding the right itself. Any encroachment upon the merits of the case would constitute an excess of judicial authority.

Section Two

Action for Compensation

Preventive measures may fail to prevent an infringement or may be deemed inappropriate by the judge. In such cases, compensation constitutes the primary remedy, which may be awarded alongside preventive measures.

First Requirement

Conditions for Awarding Compensation

Comparative legislations afford special protection to the right to private life by departing from traditional rules of civil liability. Compensation is due upon the mere occurrence of infringement. This study focuses on fault and damage, as causation adds little in this context.

Section one

Fault

When a journalist publishes a subject in a newspaper, they rely on a constitutional right relating to freedom of expression and freedom of the press. If this right does not possess a degree of legal strength capable of equalling that of the right infringed, or if the journalist abuses their right of publication for purposes unrelated to its legitimate foundations—such as public benefit or public interest—then fault is established in their conduct, and they become civilly liable upon the fulfilment of the remaining elements of civil liability. The difficulty therefore lies in identifying the point of balance between the right to criticism and freedom of opinion, on the one hand, and the prohibition of infringement of the right to private life, on the other..⁽¹⁹⁾

In the field of press infringement of the right to private life, fault is constituted by the mere publication of facts relating to private life without the consent of the person concerned. Accordingly, when a journalist publishes information concerning an individual's private life without their authorisation, fault is deemed to exist. The injured party is not required to prove such fault, as liability in this context is presumed. Nor is fault excluded merely because the facts of private life published had previously been disclosed, whether with the express or implied consent of the person concerned, or due to their tolerance of earlier publication that occurred without their consent.⁽²⁰⁾

Section Two

Damage

Damage, in its general sense, is defined as "the harm suffered by a person as a result of an infringement of a legitimate interest or one of their rights."⁽²¹⁾ Undoubtedly, for the injured party to be entitled to compensation, the infringement must have caused harm. This is confirmed by Article 47 of the Algerian Civil Code, which provides that the cessation or prevention of an infringement does not prejudice the injured party's right to compensation for any damage sustained.

Damage may be material or moral, the latter being predominant in cases of press infringement on individuals' right to private life. Moral damage is defined as "the harm affecting a person's reputation or honour; "unlike material damage, it does not concern a financial interest".⁽²²⁾

Section Two

Methods of Compensation for Infringement of the Right to Private Life

Article 132, paragraph 2, of the Algerian Civil Code provides that: "*Compensation shall be assessed in monetary terms; however, depending on the circumstances and at the request of the injured party, the court may order the restoration of the situation to its previous state, or rule by way of compensation through the provision of certain benefits related to the unlawful act.*"

From the text of this article, it is clear that compensation is not limited to a single form. It may be monetary or in kind, and the court does not award it automatically but rather upon the request of the injured party. Furthermore, the court may combine both forms of compensation.

Section one Monetary Compensation

It is evident from Article 132 of the Algerian Civil Code, cited above, that monetary compensation is the primary form, covering both material and moral damage. Compensation for material damage must be comprehensive, encompassing both the direct harm and any losses or missed gains suffered by the injured party. Consideration must also be given to the surrounding circumstances, which generally refer to the specific conditions of the injured party, such as their health and the extent to which the harmful act affected them.

In the context of press violations of the right to private life, taking the surrounding circumstances into account requires examining the conditions of both the journalist responsible for the publication and the injured party, as well as the extent of the newspaper's circulation—that is, the degree of publicity or dissemination of the publication that infringed upon the right to private life.⁽²³⁾

While compensation for material damage is relatively straightforward, as it involves calculating the loss suffered by the injured party and any profits they were deprived of, assigning a monetary value to moral damage is considerably more difficult. This is because the infringement concerns a non-monetary right, as the right to private life is a personal right. Moreover, it is inherently challenging for the judge to analyse the psychological state of the injured party in order to determine the extent of the suffering and emotional distress caused by the journalist's wrongful act.⁽²⁴⁾

Given that the assessment of compensation for harm resulting from press violations of individuals' right to private life falls within the judge's discretionary authority, judges have consistently adopted specific

methods to evaluate moral damages, such as taking into account the circulation of the newspapers. Widely circulated newspapers are treated differently from those with limited circulation, which has led to variations in the amount of compensation awarded from one court to another.⁽²⁵⁾

It appears that the position adopted by the researcher Al-Mawsous Atto is the most inclined towards realism, as he argues that the assessment of compensation for harm resulting from press violations of the right to private life should be based on the value of the profit obtained by the offender. This is because symbolic compensation may encourage repeated violations of private life, as the offender would not be deterred by the amount of compensation paid in comparison to the profit gained.⁽²⁶⁾

Section Two

In-Kind Compensation

In addition to monetary compensation, there is the possibility of in-kind compensation. It is permissible to combine both types of compensation, as provided for in Article 132 of the Algerian Civil Code. In the context of violations of the right to private life, in-kind compensation is generally the preferred form whenever feasible. Some forms of in-kind compensation are absolute, such as the publication of the court judgment, while others are relative, such as the imposition of a coercive fine.

First: Order to Publish the Judgment: The publication of a conviction judgment is considered one of the most significant decisions issued by courts of first and second instance concerning violations of the right to private life. This is evident in numerous rulings issued by the French judiciary.⁽²⁷⁾ This measure is generally considered a standard sanction imposed in certain criminal offences; however, it may also be permitted as a form of civil compensation, as is the case in matters concerning violations of the right to private life.

Second: Coercive Fine (Astreinte): The court may impose a coercive fine to ensure the publication of the judgment. The judge imposes this fine to compel the debtor — who is the offender against another's private life — to fulfil their obligation in kind within a specified period. The financial amount of the coercive fine may be fixed or calculated based on a time unit that elapses without compliance with the obligation in kind, such as per day, week, or month.⁽²⁸⁾

Conclusion

It is evident from the present study that the Algerian legislator has provided protection for the right to private life in relation to freedom of the press, in order to achieve a balance between the two, considering them as relative and sometimes conflicting constitutional principles. The broader the scope of press freedom, the narrower the scope of the right to private life; conversely, the more limited the freedom of the press, the wider the protection of private life becomes.

However, the protection of the right to private life under Algerian law is generally framed as a personal right, as stipulated in Article 47 of the Civil Code. It thus appears likely that this right should receive protection as an independent right, particularly in light of the increasing number of violations, especially by the press.

Moreover, the Algerian legislator did not specify preventive measures to stop or prevent violations of the right to private life in Article 47 of the Civil Code. It therefore seems advisable to include such measures in the text of the article so that judges can enforce them.

Finally, Article 47 contains two expressions that convey the same meaning: "any unlawful violation...". It may be preferable to remove the term "unlawful" from this provision, as it is conceivable that a violation could, in some circumstances, be lawful.

Footnote

(1) -Loi 70/643 du 17 juillet 1970 renforcer la garantie individuelle des citoyens.

(4) Muhammad Bahi Abu Younis, *The Legal Restriction of Freedom of the Press, a Comparative Study*, New University Publishing House, Alexandria, Egypt, 1996, p. 712 .

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(5). T GI Paris, 04 décembre 2014.disponible sur le site :<https://www.legalis.net/jurisprudences>. Consulté le : 07-06-2019.

(⁶) T G I Nanterre, 1ere chambre, 28 avril 2011.

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(⁹) Article 12 states that "...Internet service providers must do the following:

A- Immediate intervention to withdraw the content that they allow access to as soon as they learn, directly or indirectly, that it violates the laws, and to store it or make access to it impossible,

b- Establishing technical arrangements that allow limiting access to distributors that contain information that violates public order or public morals and informing their subscribers of its existence. See, Official Gazette of the Algerian Republic, No. 47, dated 08-16-2009, p. 08.

(⁸)Article 602 of Order 75-58 of 09-26-1975 containing the amended and supplemented BC, Official Gazette of the Algerian Republic, No. 78 of 09-30-1975, p. 102.

(⁹)Mamdouh Khalil Bahr, *Protection of Private Life in Criminal Law, a Comparative Study*, Dar Al Nahda Al Arabiya Library, Egypt, 2006, p. 348.

(¹⁰)Article 603 of Order 75-58 of 09-26-1975 containing the amended and supplemented BC, Official Gazette of the Algerian Republic, No. 78 of 09-30-1975, p. 102.

(¹¹)CA de Paris, 19 décembre 2013, n° 13/23969, disponible sur :

http://actu.dalloz-etudiant.fr/fileadmin/actualites/pdfs/MARS_2014/Paris.pdf.consulté le : 15-01-2018.

(¹²)Safia Bachaten, *Legal Protection of Private Life, a Comparative Study*, PhD Thesis, Faculty of Law and Political Science, Mouloud Mammeri University, 2012, p. 360.

(¹³) Tayeb Belouadhih, *The Right of Refutation and Correction in Publishing Crimes and Its Impact on Criminal Liability Under Media Law No. 90-07*, PhD Thesis in Law, Faculty of Law and Political Science, University of Biskra, 2012, 2013, p. 154.

(¹⁴)Official Gazette of the Algerian Republic, No. 56, dated August 29, 2023.

(¹⁵)Article 37, 38 of Organic Law No. 23-14 relating to the media.

(¹⁶)Hussein Abdullah Qayed, *Freedom of the Press, A Comparative Study of French and Egyptian Legalists*, Dar Al Nahda Al Arabiya, Cairo, Egypt, 1994, p. 585.

(¹⁷)Resolution No. 207383 dated 10/07/1998, *Judicial Journal*, Issue 01, 1998, p. 108

(¹⁸)Ghouthi Ben Melha, *Urgent Judiciary and its Applications in the Algerian Judicial System*, First Edition, National Office of Educational Works, Algeria, 2000, p. 21.

(¹⁹)Saman Muzi Omar, *The Civil Responsibility of Journalists: A Comparative Study*, Nile Publishing House, Jordan, 2007, p. 106.

(²⁰)Mustafa Ahmed Abdel Gawad Hegazy, *The Civil Liability of a Journalist for Violating the Sanctity of Private Life*, Dar Al Nahda Al Arabiya, Cairo, Egypt, 2004, p. 243.

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(²²)Muhammad Sabri Al-Saadi, *ibid.*, p. 82.

⁽²³⁾Imad Hamdi Hijazi, *The Right to Privacy and the Responsibility of Journalists in Light of Islamic Sharia and Civil Law*, Dar Al Fikr Al Jami'i, Alexandria, Egypt, 2008, p. 469.

⁽²⁴⁾Khaled Mustafa Fahmy, *The Civil Responsibility of a Journalist for His Journalistic Works*, New University Publishing House, Alexandria, Egypt, p. 482.

⁽²⁵⁾ –Safia Bashatin, *op. cit.*, p. 479.

⁽²⁶⁾Al-Moussous Atou, *Protecting the Right to Privacy in Algerian Law in Light of Technological Development, a Comparative Study*, PhD Thesis in Law, Sidi Bel Abbes University, 2014-2015, p. 216.

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⁽²⁸⁾Safia Bashatin, *op. cit.*, p. 459.

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