



The Accused's Right to Be Informed of the Modified Legal Classification and to Respond Thereto: A Comparative Study between Algerian and French Law in Light of Fair Trial Standards

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Abstract:

The accused's right to be informed of the modified legal classification and to respond thereto is considered one of the guarantees of a fair trial. Legal classification determines the nature of the offence, the penalty, jurisdiction, and the limits of the defence. Therefore, its modification during trial is not legitimate unless the accused is informed of it and enabled to discuss it.

Through this study, we concluded that the criminal judge has the authority to reclassify the facts, but only within the limits of the facts subject to prosecution and without adding new elements that were not discussed. The study also showed that French law is clearer in protecting this right through judicial case law, whereas Algerian law needs more explicit provisions requiring the court to alert the accused to the new classification and grant him sufficient opportunity to respond.

Keywords: legal classification, accused, rights of defence, fair trial, adversarial principle.

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Introduction:

The rights of defence occupy a fundamental place in a fair criminal trial, as defence cannot be effective unless the accused has clear knowledge of the nature of the charge brought against him and its legal basis. The importance of this knowledge increases when the court modifies the legal classification of the facts during trial, because classification is not merely a formal description, but rather determines the nature of the offence, the possible penalty, judicial jurisdiction, and the limits of the possible defence.

Although the criminal judge has the authority to give the facts their correct legal description and is not always bound by the classification submitted by the prosecution authority, this authority should not be exercised in a manner that surprises the accused or deprives him of the opportunity to discuss the new description. Convicting the accused on the basis of a modified classification without informing him thereof and without enabling him to respond thereto affects the rights of defence and the adversarial principle, and weakens the guarantees of a fair trial.

The importance of this study lies in the fact that it addresses a delicate issue directly related to the balance between the court's authority to apply the law correctly and the accused's right to defend himself on a clear and specific basis. Its importance also appears in highlighting the effect of modifying the legal classification on the position of the accused, especially in terms of the nature of the offence, the penalty, and means of defence, as well as in showing the extent to which the guarantees established in Algerian law are sufficient compared with French law in light of fair trial standards.

The importance of comparison between Algerian law and French law is evident in the fact that both systems recognize, in principle, the judge's authority to reclassify the facts. However, the difference appears in the extent of clarity of the procedural guarantees associated with this modification. In Algerian law, the court's authority to reclassify appears to exist, yet the provisions do not always clearly reveal the duty to alert the accused to the new classification and grant him sufficient time to respond thereto. As for French law, judicial case law, especially under the influence of the European Court of Human Rights, has tended to link reclassification to the necessity of enabling the accused to discuss the new legal description before it becomes the basis for conviction.

This study aims to define the concept of modified legal classification and distinguish it from the facts subject to prosecution, and to clarify the limits of the criminal judge's authority to reclassify without infringing the rights of defence. It also seeks to highlight the extent to which Algerian and French law comply with the guarantee of informing the accused of the new classification and enabling him to respond thereto, while assessing the need to enshrine more explicit provisions in Algerian law guaranteeing alerting, discussion, and adjournment where necessary.

Accordingly, the element of the accused's knowledge of the modified classification represents an essential point of comparison between the two systems, since French law appears clearer in requiring that the new classification be submitted to adversarial discussion, while Algerian law remains in need of a more explicit enshrinement of this guarantee, whether in terms of the obligation to alert, its recording in the hearing minutes, or enabling the defence to request an adjournment where necessary.

On this basis, the following issue arises: To what extent do Algerian law and French law guarantee the accused's right to be informed of the modified legal classification and enabled to respond thereto, as an essential manifestation of the rights of defence and a fair trial?

Several questions arise from this issue, the most important of which are: What are the limits of the criminal judge's authority to modify the legal classification of the facts? Is the accused's knowledge of the facts sufficient, or must he also be informed of the new legal description? What procedural guarantees are required when the classification is modified? What sanction results from a judgment based on a modified classification without enabling the accused to respond?

To address this issue, the article relies on the analytical method through the analysis of legal provisions and international standards related to the rights of defence and a fair trial, especially those relating to the accused's right to be informed of the nature and cause of the charge. It also relies on the comparative method to highlight the similarities and differences between Algerian law and French law in regulating the judge's authority to reclassify and the guarantees of informing the accused of the new classification. The critical method is used to assess the sufficiency of the protection established in Algerian law and to indicate the need for clearer provisions guaranteeing alerting, response, and adjournment where necessary.

Accordingly, the subject will be studied through two sections: the first addresses the legal and rights-based foundation of the accused's right to be informed of the modified legal classification, while the second examines the applications of this right in Algerian and French law and the extent of their consistency with fair trial standards.

The First Section: The Conceptual and Rights-Based Framework of the Modified Legal Classification

The legal classification of facts is considered one of the essential issues in criminal proceedings, because it determines the nature of the charge, its punitive effects, and the limits of the defence. The court does not deal with facts as mere material events, but rather grants them the legal description that determines the position of the accused within the judicial proceedings.

However, the judge's authority to refer the facts to their correct description remains restricted by the requirement not to surprise the accused with a new classification that he has not had the opportunity to discuss. Therefore, the research requires examining the nature of the modified legal classification and the

limits of the judge's authority, then clarifying the connection between knowledge of this classification and the guarantees of a fair trial, especially the adversarial principle and the right of response.

The First Subsection: The Nature of the Modified Legal Classification and the Limits of the Criminal Judge's Authority

Researching the accused's right to be informed of the modified legal classification requires first examining the nature of classification itself, as the process through which material facts are referred to the criminal provision applicable to them. However, this process is not separate from the limits of the criminal judge's authority, since the latter has the power to give the facts their correct legal description, yet this remains conditional upon not going beyond the facts subject to prosecution and not surprising the accused with a new description that he has not had the opportunity to discuss. Accordingly, this subsection aims to clarify the concept of legal classification and distinguish it from the facts, then determine the scope of the judge's authority to modify it and the restrictions imposed by the rights of defence and the guarantees of a fair trial.

The First Branch: The Concept of Legal Classification and Its Distinction from Facts

Legal classification in criminal matters performs a precise function based on linking the material fact to the criminal provision that encompasses it. It is not sufficient to observe the conduct attributed to the accused in its external form; rather, it must be inserted into the legal model of the offence established by the legislator. From this perspective, classification is not merely a linguistic description of the act, but a legal process through which the nature of the fact and the extent of its subjection to the provision of criminalization and punishment are determined. The classification of the fact represents a fixed description of it at the moment the offence is committed, allowing it to be referred to the legal rule appropriate to it¹.

The difference between material facts and legal description appears in that the former relate to what actually occurred in terms of acts, conduct, and circumstances, whereas the latter relates to the legal form conferred by the judicial authority upon those facts. Jurisprudence distinguishes between the classification of the fact and the classification of the offence. The classification of the offence means referring it to its general category in terms of being a felony, misdemeanour, or contravention, whereas the classification of the fact means determining its place among the facts that share with it the same legal name. This distinction is of great importance because an error in understanding the fact differs from an error in referring it to the legal provision that must be applied².

At the level of legal effects, classification does not stop at the limits of theoretical description, but its effect extends to determining the nature of the offence, judicial jurisdiction, the penalty, the limitation period, and the rules of investigation and evidence. The Algerian legislator adopted the tripartite division of offences into felony, misdemeanour, and contravention pursuant to Article 27 of the Penal Code. Jurisprudence has also shown that this division has procedural and substantive effects, appearing especially in the limitation period, investigation, evidence, and judicial jurisdiction, which reveals that changing the description from a misdemeanour to a felony, for example, is not merely a terminological modification, but changes the procedural and punitive position of the accused³.

It is no secret that aggravating or mitigating circumstances may in turn affect the classification, as the criminal description may move to a more serious degree whenever the law provides for a penalty originally applied to another type of offence because of a specific circumstance. Malika Hadjadj has shown that the existence of the circumstance of night or the use of a weapon in theft may change the description from a misdemeanour to a felony, based on Article 29 of the Penal Code, which provides that the type of offence changes if the law provides for a penalty originally applied to another type that is more serious due to certain circumstances⁴.

Legal classification constitutes the link between the fact and the provision. Therefore, distinguishing it from the facts is not a theoretical luxury, but a methodological necessity for regulating the court's authority. The more closely the legal description is connected to the established elements of the fact, the closer the judgment is to legality. Conversely, whenever the judge slips into giving the fact a description that is not encompassed by the provision or is not supported by the material and moral elements, classification

becomes a source of infringement upon the position of the accused. Ben Lagha Akila has held that classification is a legal process that means clothing the fact, as established by the trial judge, in a legal garment, and that error therein constitutes an error in the application of the law.

The Second Branch: Legal Reclassification within the Limits of the Facts Subject to Prosecution

Legal reclassification finds its basis in the duty of the criminal court to apply the law correctly to the facts presented before it. However, this duty does not mean granting the judge unrestricted authority to reconstruct the charge anew. The modified classification remains legitimate when it concerns the same facts in respect of which the proceedings were initiated. However, if it extends to other facts or material elements that were not subject to prosecution or discussion, the matter is no longer a correction of the legal description, but becomes a modification of the scope of the charge itself. This direction is supported by what Article 1 of the Algerian Code of Criminal Procedure of 2025 provides, namely that proceedings are based on the principles of legality, fair trial, and respect for human dignity and human rights, principles that make the authority of reclassification restricted by the guarantees of the accused and not separate from them⁵.

It follows from this that the court does not view classification as an abstract authority, but exercises it within the limits of the fact that has come into its possession by virtue of the prosecution procedures. If it appears to the court that the initial description is inaccurate, it may refer the fact to its correct description, provided that it does not add to its elements anything that was not included in the case file or raised at the hearing. This idea appears more clearly in Article 441 of the Algerian Code of Criminal Procedure of 2025, which links the finding of an aggravating circumstance or a description contrary to that contained in the referral to hearing the submissions of the prosecution and the explanation of the defence, which indicates that changing the description is only valid when it remains within the scope of judicial discussion⁶.

It is not sufficient for the new classification to be legally correct; it must also respect the accused's right to knowledge and response. Article 438 of the Algerian Code of Criminal Procedure of 2025 allows the court to adjourn the case when it is not ready for adjudication, which may constitute a procedural mechanism to protect the defence when the new classification changes the position of the accused or requires additional preparation to respond. Thus, adjournment, where necessary, becomes a means of ensuring that modification of the description does not turn into an element of surprise that infringes the rights of defence⁷.

In French law, the general framework is based on the same rule, as the preliminary article of the French Code of Criminal Procedure provides that criminal proceedings must be fair and adversarial and must preserve the balance of the rights of the parties. It also establishes the right of the suspected or prosecuted person to be informed of the charges attributed to him and to be assisted by a defence counsel. Accordingly, reclassification is not separate from these principles, because it affects the substance of the charge and requires the court to place the new description within the sphere of knowledge and discussion⁸.

Article 388 of the French Code of Criminal Procedure determines the methods by which the French criminal court is seized of the case, which makes its jurisdiction linked to the facts legally referred to it. Accordingly, the court's authority to reclassify does not mean going beyond the facts subject to prosecution, but only means searching for the correct legal description of those facts. If the matter requires adding new elements or independent facts, we are no longer before reclassification in the precise sense, but before an expansion of the charge, which requires stronger procedural guarantees⁹.

These limits are consistent with the international standards of a fair trial. Article 14 of the International Covenant on Civil and Political Rights establishes the accused's right to be informed of the nature and cause of the charge and to be enabled to prepare his defence¹⁰. Article 6 of the European Convention on Human Rights also affirms his right to be informed of the charge and to have the time and facilities necessary for the defence. The implication of this is that reclassification, even if it remains within the same facts, is not substantively legitimate unless it is accompanied by the guarantee of knowledge and discussion¹¹.

Legal reclassification does not constitute a departure from the charge when it is limited to correcting the description within the facts subject to prosecution. However, it turns into an infringement of the rights of defence if it adds a new fact or relies on a description of which the accused was not informed and which he did not discuss. Therefore, the dividing line between legitimacy and surprise lies in two interconnected matters: the court remaining within the facts referred to it, and enabling the accused to be informed of the new classification and to respond thereto before it becomes the basis of the judgment.

The Second Subsection: The Accused's Right to Be Informed of the Modified Classification as a Guarantee of a Fair Trial

The accused's right to be informed of the modified legal classification assumes particular importance within the system of a fair trial, because defence cannot be effective unless it is based on clear knowledge of the content and limits of the charge. A fair trial is not based only on the independence of the judiciary and the publicity of hearings, but also on enabling the accused to know the charge he faces so that he can prepare his response in conditions that preserve the balance between his position and that of the prosecuting authority. Accordingly, modifying the legal description of the facts should not be separated from the duty to inform and enable discussion; otherwise, the new classification turns into an element of surprise that affects the essence of the defence.

The First Branch: The International Basis of the Right to Be Informed of the Charge

The right to be informed of the charge finds its basis in the international standards of a fair trial, foremost among them Article 14 of the International Covenant on Civil and Political Rights, which establishes the right of every individual, in the determination of any criminal charge against him, to have his case heard by a competent, independent, and impartial tribunal established by law. The meaning of this guarantee is not complete unless the accused is enabled to understand the nature of the charge for which he is being tried, because appearing before an independent judiciary loses part of its value if the accused remains unaware of the legal and factual basis of the prosecution¹².

This guarantee is also affirmed in Article 6 of the European Convention on Human Rights, as this article includes a set of rights granted to every person charged with a criminal offence, including being informed promptly and in a language he understands of the charge against him, being enabled and facilitated to prepare his defence, as well as his right to defend himself in person or through counsel of his own choosing, his right to examine witnesses, and his right to the assistance of an interpreter where necessary. From this perspective, notification of the charge is not merely an informational procedure, but rather the natural gateway to exercising the remaining rights of defence¹³.

The content of knowledge of the charge is not limited to stating the material facts attributed to the accused, but extends to the nature and cause of the charge. The cause refers to the material acts on which the prosecution is based, whereas the nature refers to the legal description given to those acts. Accordingly, informing the accused of the facts alone is not sufficient when the legal classification is subject to change, because defending a fact classified as a misdemeanour differs from defending it if it is reclassified under a more serious or different description in terms of legal structure¹⁴.

The issue becomes more delicate when the classification is modified during the course of the trial, as the rights-based standard is not satisfied by the accused's knowledge of the original fact alone, but requires that he have precise and complete knowledge of the legal description that the court may adopt against him. Precise and complete information about the charges brought against the accused, including the legal classification that the judicial authority may retain, constitutes an essential condition for the fairness of the proceedings, and the right to be informed of the nature and cause of the charge must be read in light of the accused's right to prepare his defence¹⁵.

The international basis of this right reveals a broad conception of the charge, one that does not confine it to a narration of facts, but makes it encompass the legal data on which the judgment is based. Therefore, any modification affecting the description or adding a new dimension to the position of the accused must be subject to prior or contemporaneous notification during the trial, accompanied by sufficient time and

appropriate means to prepare the response, because mere knowledge without the possibility of defence does not achieve the purpose intended by fair trial standards.

The Second Branch: The Connection between the Right to Be Informed of the Classification and the Right of Response

The right to be informed of the modified classification is not valid unless it is coupled with the accused's right to respond thereto. Knowledge is not an end in itself, but rather a means of opening the way for the defence to discuss the new legal basis and present the pleas and observations it deems appropriate. Therefore, the right of defence includes the right to know the claims, legal and factual means, arguments, and documents presented by the other party, so that the opposing party may respond to them. This enshrines the adversarial principle as a procedural guarantee that prevents the judge or one of the parties from relying on an influential element in the proceedings without discussion¹⁶.

On this basis, the modified legal classification must be presented to the accused and his defence in a manner that allows for genuine discussion, not merely formal knowledge. The adversarial principle requires informing each party of what the other party is doing or what the judge relies upon in the proceedings, so that he may protect his interests. It is closely linked to the right of defence, because it gives the party the ability to know the arguments and claims and to respond to them. Accordingly, convicting the accused on the basis of a legal description that he did not discuss leads to emptying the right of defence of its practical content¹⁷.

The right of response requires enabling the defence to have the necessary means to perform its function. It is not sufficient to open the floor formally if the lawyer is not able to access the elements that allow him to build his position. Therefore, the guarantees of defence require enabling the lawyer to access the evidence, documents, and records that support the position of his client, and to perform his function freely, away from pressure and arbitrariness. This was affirmed by Article 176 of the Algerian Constitutional Amendment of 2020, when it provided that the lawyer benefits from the legal guarantees that protect him and enable him to practice his profession with complete freedom within the framework of the law¹⁸.

The relationship between knowledge of the classification and the right of response is also connected to the principle of equality between the parties, because the accused is not in a balanced position with the prosecuting authority if he is surprised by a new description without sufficient time or a real opportunity for discussion. Procedural balance aims to achieve equilibrium between the requirements of the public right to punishment and the requirements of protecting the rights of the parties. It is not limited to one stage of the case, but extends throughout its various stages and levels of litigation. Accordingly, granting time to prepare the defence or adjourning the hearing where necessary does not represent a privilege for the accused, but is a necessary guarantee for restoring procedural balance¹⁹.

The right of response represents the natural extension of the right to be informed of the modified classification. If the judge has the authority to refer the facts to their correct legal description, this authority does not attain its procedural legitimacy unless the accused is given the opportunity to discuss the new description at an appropriate time and with sufficient means. Thus, it becomes clear that the adversarial principle, equality between the parties, and the right of defence are not separate principles, but form a single system aimed at preventing surprise and ensuring that the judgment is issued on a legal basis that was subject to knowledge and discussion.

The Second Section: Applications of the Right to Be Informed of the Modified Legal Classification in Algerian and French Law

After establishing the basis of the accused's right to be informed of the modified legal classification, the research must move to its applications in Algerian and French law, because the value of this right is not measured merely by its theoretical recognition, but by the extent of its presence in procedural provisions and judicial practice.

The importance of comparison appears in the fact that both systems face the same issue, namely reconciling the court's authority to give the facts their correct legal description with the accused's right not to be surprised by a new classification that he has not had the opportunity to discuss. Therefore, this section examines the position of Algerian law on reclassification and the guarantees of defence, then the position of French law, which appears clearer in linking reclassification to the adversarial principle and the right of response.

The First Subsection: The Position of Algerian Law on Modifying Classification and the Guarantees of Defence

The position of Algerian law on modifying legal classification raises a delicate issue, because the criminal court is required, on the one hand, to apply the law correctly to the facts presented before it, and is bound, on the other hand, by the limits of prosecution and by what the right of defence requires in terms of knowledge and discussion. The Algerian procedural framework underwent an important reform with the issuance of Law No. 25-14 containing the Code of Criminal Procedure of 2025, which makes the examination of this issue linked to the extent to which the procedural text is capable of achieving balance between the judge's authority and the guarantees of the accused²⁰.

The First Branch: The Algerian Judge's Authority to Reclassify the Facts

When hearing the case, the criminal court has the authority to examine the facts referred to it and to search for the legal description most appropriate to them, because the classification given by the prosecuting authority does not have a final character and does not prevent the court from referring it to the correct description whenever it appears that the initial classification is unsound or insufficient. However, this authority does not mean reopening the case anew, but is exercised within the facts that have come into the court's possession and with regard to the persons referred to it²¹.

The Code of Criminal Procedure has regulated the scope of the criminal court's examination in light of this conception. Article 385 provides that the trial criminal court and the appellate criminal court have jurisdiction to rule on acts classified as felonies, as well as misdemeanours and contraventions connected with them, when they are referred to them by a final decision of the Indictment Chamber. Article 387 also provides that the criminal court has no jurisdiction to examine any other charge not mentioned in the decision of the Indictment Chamber, which clearly shows that the court's authority in classification remains confined within the referred fact and not beyond it²².

This authority becomes clearer in Article 441 of the Code of Criminal Procedure, as the criminal court may not infer an aggravating circumstance not mentioned in the referral judgment except after hearing the submissions of the prosecution and the explanation of the defence. Moreover, if it appears from the pleadings that the fact may bear a legal description contrary to that contained in the referral judgment, the presiding judge must put one or more subsidiary questions. This rule indicates that the Algerian legislator did not completely overlook the effect of changing the description, but linked it in this instance to the procedure of discussion within the hearing²³.

However, the dividing line between reclassification and the addition of new facts remains essential. Reclassification presupposes that the same fact remains while the legal description appropriate to it is changed, whereas the introduction of new material elements or circumstances not mentioned in the referral decision makes the court exceed the objective limits of the case. Accordingly, the judgment rendered must remain linked to the charge by which the proceedings were initiated, and may not extend to facts or persons that were not subject to prosecution²⁴.

On this basis, it becomes clear that the Algerian judge's authority to reclassify is not an absolute authority, but a corrective authority that derives its legitimacy from the duty to apply the correct law. However, it loses its procedural legitimacy when it turns into a means of introducing facts that were not referred or of basing the judgment on a description that the defence did not discuss. Accordingly, the strength of this authority does not lie in its unrestricted nature, but in its regulation by the limits of prosecution and by the guarantee of discussion within the hearing.

The Second Branch: The Sufficiency of the Guarantees Established for the Accused in Algerian Law

Despite the existence of provisions allowing the court to reconsider the legal description of the facts, the guarantee relating to alerting the accused to the new classification does not appear to be established generally and explicitly in all forms of criminal trial. The clearest provision remains linked to the criminal court through Article 441, which requires hearing the submissions of the prosecution and the explanation of the defence when an aggravating circumstance is inferred or when a different legal description appears through the pleadings. However, this does not amount to comprehensive regulation establishing the duty to inform the accused in every case of modification of classification²⁵.

As for the accused's right to request time to prepare his defence, the Code of Criminal Procedure allows the court, pursuant to Article 438, to order the adjournment of the case at any stage of the proceedings, either of its own motion or upon a reasoned request from the prosecution or from the accused's lawyer. However, this provision grants a general procedural possibility and does not make adjournment a necessary consequence whenever the matter concerns a new classification that may surprise the defence or change the scope of discussion²⁶.

From the perspective of procedural sanction, failure to enable the accused to defend himself regarding the new description may be viewed as an infringement of the rights of defence, because nullity in criminal procedure is essentially linked to ensuring the integrity of the proceedings and the validity of the procedures on which judgments are based. Whenever a procedure is affected by a defect that infringes the guarantees established for the parties to the case, it may be said that the legal model of the procedure has not been achieved and that the effect intended from it becomes subject to dispute²⁷.

The Supreme Court plays an important role in supervising the proper application of the law and respect for forms and procedural rules. It is a court of law and not a court of fact, except in the cases determined by law. Thus, it does not, in principle, intervene in the assessment of the facts themselves, but exercises its supervision over the proper application of the law and over the requirement to give reasons for judgments in a manner that reveals the facts, circumstances, and evidence on which the judgment was based²⁸.

The guarantees established in Algerian law still need further legislative regulation, because the existence of the authority to reclassify without a general provision requiring the accused to be alerted, the recording of this in the hearing minutes, and the granting of sufficient time to respond where necessary, may open the way to an imbalance between the requirements of applying the law and the rights of defence. Therefore, enshrining an explicit provision in the Code of Criminal Procedure appears necessary so that the accused's right to be informed of the modified classification does not remain dependent solely on the court's discretion.

The Second Subsection: The Position of French Law on Modifying Classification and the Guarantees of Response Thereto

The French conception of modifying legal classification is based on an attempt to regulate the balance between the judge's effectiveness in correctly applying the law and the protection of the rights of defence from the element of surprise. The preliminary article of the French Code of Criminal Procedure has enshrined a general principle according to which criminal proceedings must be fair and adversarial and must preserve the balance of the rights of the parties, which makes reclassification legitimate in principle, but not separate from the duty of discussion and enabling the accused to respond²⁹.

The French position in this field has undergone a notable development, as reclassification is no longer viewed only as a natural authority of the judge in correcting the legal description, but has also come to be measured by the extent to which the rights of defence are respected. The decisive criterion is no longer merely the fact that the facts remain within the case file, but rather that the accused is not surprised by a new description that he has not had the opportunity to discuss, especially when the modified classification is capable of affecting his defensive position or the elements of criminal liability attributed to him³⁰.

The First Branch: The French Judge's Authority to Reclassify

The French judge's authority to reclassify is determined on the basis of the scope of the court's referral of the case, as Article 388 of the French Code of Criminal Procedure provides that the French criminal court hears offences falling within its jurisdiction when it is seized of them through the voluntary appearance of the parties, summons to appear, summons by official report, immediate appearance, or referral issued by the investigating authority. It follows from this that the court does not move outside the framework through which the case came into its possession, but exercises its authority over the facts with which it has been lawfully seized³¹.

The French judge is not bound by the description submitted by the prosecution or the referring authority, because his duty requires him to refer the facts to their correct legal description. However, this duty does not mean that he has the authority to create a new charge. French case law establishes that the court may change the legal description of the acts when the initial label is inappropriate, provided that the elements of the new offence are included in the facts with which the court was seized and that this does not lead to judgment on facts different from those submitted for discussion³².

The distinction here appears between reclassification and the addition of new facts. Reclassification presupposes that the facts remain as stated in the instrument of prosecution, and that the court's role is limited to choosing the legal provision most appropriate to them. However, if the new description leads to the introduction of independent material elements or aggravating circumstances not mentioned in the prosecution, the matter leaves the scope of legal correction and enters into the expansion of the charge, which is not acceptable except by guaranteeing that the accused is enabled to discuss the new element or by his express acceptance in cases where this is required³³.

In this context, it is not sufficient for the new classification to be based on facts that have an origin in the file; rather, these facts must actually fall within the scope of the referral or prosecution faced by the accused. If the new description includes material elements not mentioned in the instrument of prosecution, the judge is not engaging in reclassification in the precise sense, but rather introducing new facts on the basis of which judgment may not be rendered unless the defence has been informed of them and enabled to discuss them, or unless the accused has expressly accepted being tried for them³⁴.

This logic has extended to the investigation stage, as it has been held that the investigation chamber may modify or complete the legal descriptions given to the facts by the prosecution or the investigating judge without ordering a new investigation, when the descriptions it adopts fall within the facts for which the charge was brought, and when the material elements on which the circumstance or new description is based were discussed during the investigation. This reveals that the criterion of legitimacy does not lie merely in changing the legal name of the offence, but in the fact that the facts and elements on which the new description is based have actually entered the field of discussion.

These limits appear more clearly when the matter concerns changing the accused's position from accomplice to principal offender or vice versa, because this type of reclassification does not affect merely the legal name of the offence, but may change the angle from which the act is attributed to the accused. Therefore, in such a case, the defence must be informed and granted the time and facilities necessary to present its explanations, because changing the accused's position within the fact may, in practice, lead to modifying the substance of the charge and not merely correcting its description³⁵.

On this basis, the French judge's authority to reclassify appears broad in principle and restricted in practice. It is broad because it makes the judge not captive to the description submitted by the prosecuting authority, and restricted because it does not allow him to add new facts or circumstances without respecting the limits of referral and the rights of defence. Thus, classification in the French model becomes a corrective judicial act, not a new accusatory act³⁶.

Section Two: The Enshrinement of the Right to Discuss the New Classification in French Law

The right to discuss the new classification in French law is linked to the European standards of a fair trial, particularly Article 6, paragraph 3(a) and paragraph 3(b) of the European Convention on Human Rights. The case of *Pélissier and Sassi v. France* confirmed that informing the accused is not limited to stating the

material facts attributed to him, but also includes the legal classification that the court may adopt against him, because precise and complete knowledge of the charge and of the possible classification is an essential condition for the fairness of proceedings and for enabling the defense to prepare effectively³⁷.

This trend continued in subsequent applications connected with the French judiciary, where the issue of failing to enable the accused to discuss the new classification adopted by the trial court was raised. The importance of this application lies in confirming that the right to be informed of the classification is inseparable from the right to adversarial discussion. The accused does not defend himself only against the facts attributed to him, but also against the legal reading that may make these facts a basis for conviction³⁸.

The effect of this principle appears clearly in the oversight exercised by the French Court of Cassation, as it held that although the criminal judge has the power to restore the facts to their correct classification, this is conditional upon the accused having been placed in a position that allows him to present his defense regarding the new classification. Accordingly, the judgment that reclassified the facts from bankruptcy to misuse of company assets without inviting the accused to submit his observations on this change was quashed³⁹.

The same trend appears in the case of reclassification from organized fraud to concealment of the proceeds of the same offenses, as the Court of Cassation considered that a judgment which changes the classification on its own initiative without inviting the accused persons to discuss this amendment is liable to be quashed. This confirms that the essence of the protection does not concern merely the correctness of the new classification, but primarily whether it was presented to the defense before becoming a basis for conviction⁴⁰.

Comparative European applications reveal that the issue is not limited to the French system, but relates to a general guarantee in a fair trial. Cases were brought before the European judiciary in which the act was reclassified from one description to another, and the criterion of examination was whether the accused had actually been able to exercise his defense against the new classification. Moreover, the possibility of remedying the breach at a later stage is acceptable only if the accused is given a genuine and effective opportunity to discuss the amended classification before a judicial body capable of addressing the effect of surprise⁴¹.

The strength of the guarantee becomes more evident when the accused is not present at the hearing, as the Court of Cassation held that the court may not uphold an acquittal merely because the accused is absent and cannot comment on the reclassification; rather, it should have postponed the case to a later hearing and summoned the accused to appear in order to discuss the new classification. This shows that the right of reply is not reduced to a formal procedure, but may require postponing the hearing whenever this is necessary to protect the defense⁴².

However, the personal presence of the accused is not always a necessary condition when he is represented by a lawyer who has actually been able to discuss the new classification. The Court of Cassation accepted the reclassification in a case where the accused was absent, but his lawyer submitted pleadings at the hearing and the new classification had been put up for discussion. It considered that the defense had been able to submit its observations and that the absence of the accused did not prevent respect for the adversarial principle⁴³.

European Union law also reinforces this trend from the perspective of the right to be informed of the accusation, as the issue arises when the legal classification is amended by the court without informing the accused before judgment is delivered. The importance of this approach lies in the fact that it does not make the criterion of protection dependent only on the severity of the new penalty, but rather on the extent to which the accused is enabled to know the classification on which the conviction may be based and to submit his observations on it in due time. Thus, informing the accused of the amended classification becomes a necessary procedural condition for the effectiveness of the defense, not merely a procedure subordinate to the correctness of the classification⁴⁴.

The French model recognizes the judge's power to reclassify, but restricts it by requiring that the new classification be submitted to adversarial discussion. The defect does not lie in changing the classification itself, but in adopting it without the accused's knowledge or without enabling him to defend himself, which leads to the quashing or annulment of the judgment whenever the conviction is based on a classification that was not discussed.

Conclusion:

It is clear from the foregoing that the amended legal classification is a fundamental issue in criminal proceedings, because it may affect the nature of the offense, the penalty, jurisdiction, and the scope of the defense. Therefore, the judge's power to reclassify, despite its legitimacy in achieving the correct application of the law, remains restricted by the requirement not to go beyond the facts subject to prosecution and by the obligation to respect the rights of the defense.

The study has shown that the accused's right to be informed of the new classification and to respond to it constitutes an essential guarantee of a fair trial. It is not sufficient for him to know only the facts; he must also know the legal description on which the conviction may be based. French law appears clearer in this regard through judicial precedent, whereas Algerian law needs a more explicit enshrinement of this guarantee.

On this basis, the study reached the following main findings:

1. Legal classification is not merely a secondary description of the facts, but rather a fundamental element of the accusation, given its effect on determining the nature of the offense, the penalty, jurisdiction, and the possible defenses.
2. The criminal judge's power to amend the classification is, in principle, a legitimate power, because it is linked to the court's duty to apply the law correctly; however, it is not an absolute power.
3. Reclassification must remain confined to the facts subject to prosecution. The court may not add new facts or circumstances that were not discussed under the guise of amending the legal description.
4. The accused's knowledge of the material facts alone is not sufficient to ensure the effectiveness of the defense, because defending against a fact differs according to its legal description and the punitive consequences resulting from it.
5. Informing the accused of the new legal classification represents a necessary condition for respecting the adversarial principle, because it enables him to discuss the legal basis on which the conviction may be founded.
6. French law appears clearer in linking reclassification to the need to enable the accused to respond, especially due to the case law of the French Court of Cassation and the influence of the European Court of Human Rights.
7. Algerian law recognizes, in principle, the court's power to reclassify, but the procedural provisions still need greater clarity regarding the duty to inform the accused of the amended classification and the mechanisms for responding to it.
8. The absence of precise regulation of the procedures for informing the accused of the new classification, responding to it, and postponement may lead to infringement of the rights of the defense, especially if the judgment is delivered on the basis of a legal description that the accused did not discuss or was not given sufficient time to respond to.
9. The fairness of the judgment is not linked only to the correctness of the legal classification adopted by the court, but also to the extent to which the accused was enabled to know it and discuss it before it became a basis for conviction. A fair trial is not achieved merely by reaching a correct legal outcome, but also by respecting the procedural path that led to it.

For this reason, we present some proposals:

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1. The need to expressly provide in the Algerian Code of Criminal Procedure for the obligation to inform the accused of any amended legal classification that the court intends to adopt as a basis for judgment.
2. The court should open discussion on the new legal description before pronouncing judgment, so that the amendment of the classification does not become an element of surprise that affects the rights of the defense.
3. The accused or his defense should be enabled to request sufficient time to prepare a response whenever the amended classification affects his legal position, the nature of the offense, or the possible penalty.
4. The accused's knowledge of the new classification must be recorded in the hearing minutes or in the reasons for the judgment, so that it is possible to review the extent to which the court respected the rights of the defense.
5. Nullity or cassation should be imposed when judgment is rendered on the basis of an amended legal classification without informing the accused of it and without enabling him to discuss it, whenever this affects his defensive position.
6. The role of the Supreme Court should be strengthened in reviewing the extent to which trial judges respect the limits of reclassification, especially in terms of not adding new facts or depriving the accused of the right to respond.
7. Benefit should be drawn from the French experience in this field, particularly in linking the power of reclassification to the adversarial principle and the obligation to enable the accused to defend himself against the new description.
8. Judges and lawyers should be trained in the effects of amending legal classification, as it is an issue that touches the essence of a fair trial and does not relate only to the technical application of criminal provisions.

List of Sources and References

First: References in Arabic

1. Legal Texts
2. People's Democratic Republic of Algeria, Law No. 25-14 dated 9 Safar 1447 corresponding to 3 August 2025, containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 54, Sixty-second Year, 13 August 2025.
3. University Dissertations
4. BeldiafKhazani, Classification in Criminal Matters, Doctoral Dissertation in Criminal Law, Faculty of Law, University of Constantine 1, 2015.
5. BlailiaMaamar, Classification of Facts in Criminal Matters, Doctoral Dissertation in Law, Specialization in Criminal Law and Criminal Sciences, Faculty of Law and Political Science, Abbas Laghrour University, Khenchela, Academic Year 2023/2024.
6. Ben Lagha Akila, Review of the Intimate Conviction of the Criminal Judge, Doctoral Dissertation in Law, Criminal Law Branch, University of Algiers 1 Ben Youcef Benkhedda, 2021.
7. Boudriat Mohamed, The Positive Role of the Judge in Managing Civil Litigation, Doctoral Dissertation in Law, Faculty of Law, University of Algiers 1, 2013.
8. Dif Naas, The Right to a Fair Trial According to International Standards and International Judicial Jurisprudence, Doctoral Dissertation in Law, University of Algiers 1, 2017.
9. Scientific Articles
10. Ahmed Chafii, Nullity in the Algerian Code of Criminal Procedure, Journal of Human Sciences, Mentouri University Constantine, No. 24, December 2005.

11. Oussif Said, The Right of Defense as One of the Guarantees of a Fair Criminal Trial, *Journal of Global Policy*, Vol. 9, No. 1, 2025.
12. Tikerdoudar Hassan, The Power of the Criminal Court to Reclassify, *Annals of the University of Algiers 1*, Vol. 36, No. 1, March 2022.
13. Abdelrahman Ben Djilali, Mediha Ben Nadji, Yaker Tahar, Guarantees of a Fair Trial in the Algerian Constitutional Amendment of 2020, *Journal of Rights and Freedoms*, Vol. 12, No. 1, 2024.
14. Abdelali Hefdhallah, Ibrahim Bouamra, Fawaz Ledjlat, Procedural Rules of the Principle of Balancing, *Journal of Legal Studies*, Vol. 7, No. 1, January 2021.
15. Messaoudi Mohamed Lamine, The Adversarial Principle Between Litigants Before the Judiciary: A Comparative Study Between Algerian Law and Islamic Sharia, *Journal of Islamic Studies*, No. 9, June 2017.
16. Mohamed Tahar Rahal, The Legal Reclassification of Facts Before the First-Instance Criminal Court, *Journal of Emir Abdelkader University of Islamic Sciences*, Vol. 33, No. 2, September 2019.
17. Malika Hadjadj, The Effect of the Classification of Crime in Islamic Criminal Legislation and the Algerian Penal Code, *Journal of Islamic Sciences and Civilization*, Vol. 7, No. 2, 2022.
18. International Documents
19. European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial, Criminal Limb, Updated Edition dated 31 August 2022.

Second: References in Foreign Languages

1. Legal Texts and International Conventions
2. Code de procédure pénale français, Institut Français d'Information Juridique, droit.org, dernière modification le 01 mai 2026, Lyon, 2026.
3. Conseil de l'Europe, Convention de sauvegarde des droits de l'homme et des libertés fondamentales, Rome, 1950.
4. Nations Unies, Pacte international relatif aux droits civils et politiques, New York, 1966.
5. Foreign Articles and Studies
6. Christine Gavalda-Moulenat, Comment renforcer le contradictoire dans le procès pénal français ? *Archives de politique criminelle*, 2007/1, n° 29.
7. Hatem A. M. El Shehhat, Requalification des faits en complicité et garanties de la défense : évolution de la jurisprudence pénale, *Faculté de droit, Université d'Elzagazig, Égypte*, s.d.
8. European Judicial Case Law
9. ECtHR, *Feldman v. France*, Application No. 53426/99, Decision of 6 June 2002.
10. ECtHR, *Pélissier and Sassi v. France*, Application No. 25444/94, Judgment of 25 March 1999.
11. European Court of Human Rights, *Mattei v. France*, Application No. 34043/02, Judgment of 19 December 2006.
12. European Court of Human Rights, *Sipavičius v. Lithuania*, Application No. 49093/99, Judgment of 21 February 2002.
13. Case Law of the French Court of Cassation
14. Court of Cassation, Criminal Chamber, 16 May 2001, Appeal No. 00-85.066.
15. Court of Cassation, Criminal Chamber, 5 March 2003, Appeal No. 01-87.045.
16. Court of Cassation, Criminal Chamber, 8 September 2004, Appeal No. 03-82.670.

17. Court of Cassation, Criminal Chamber, 1 June 2016, Appeal No. 14-87.173.
18. Court of Cassation, Criminal Chamber, 27 November 2018, Appeal No. 17-87.385.
19. Court of Cassation, Criminal Chamber, 13 January 2021, Appeal No. 20-85.791.
20. European Union Documents
21. Opinion of Advocate General Ćapeta, Case C-175/22, BK, delivered on 25 May 2023.

Footnotes:

1. BlailiaMaamar, "Classification of Facts in Criminal Matters," dissertation submitted for the degree of Doctor of Science in Law, specialization in Criminal Law and Criminal Sciences, Faculty of Law and Political Science, Abbas Laghrour University, Khenchela, academic year 2023/2024, pp. 8, 71.
2. BeldiafKhazani, "Classification in Criminal Matters," dissertation submitted for the degree of Doctor of Science in Criminal Law, Faculty of Law, University of Constantine 1, 2015, pp. 37, 38.
3. Malika Hadjadj, "The Effect of the Classification of Crime in Islamic Criminal Legislation and the Algerian Penal Code," *Journal of Islamic Sciences and Civilization*, Vol. 07, No. 02 (2022): pp. 231, 242.
4. Malika Hadjadj, previous reference, p. 241.
5. Law No. 25-14 dated 3 August 2025, containing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 54, 2025, Article 1.
6. Law No. 25-14 dated 3 August 2025, Article 441.
7. Law No. 25-14 dated 3 August 2025, Articles 414, 438.
8. France, Code of Criminal Procedure, Preliminary Article, p. 1, (Légifrance version, updated on 2 January 2020).
9. Code de procédure pénale, Art. 388, Dernière modification le 02 janvier 2020, Legifrance, France, 2020.
10. United Nations, International Covenant on Civil and Political Rights, New York, 1966, Art. 14.
11. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950, Art. 6.
12. Dif Naas, "The Right to a Fair Trial According to International Standards and International Judicial Jurisprudence," doctoral dissertation in law, University of Algiers 1, 2017, p. 68.
13. Oussif Said, "The Right of Defense as One of the Guarantees of a Fair Criminal Trial," *Journal of Global Policy* 9, No. 1 (2025): 594, 599.
14. European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (Criminal Limb), (updated edition dated 31 August 2022), p. 79, paragraphs 395-398.
15. European Court of Human Rights, Feldman v. France, Application No. 53426/99, decision issued on 6 June 2002, p. 8.
16. Boudriat Mohamed, "The Positive Role of the Judge in Managing Civil Litigation" (doctoral dissertation in law, University of Algiers 1, Faculty of Law, 2013), 36, 56-57.
17. Messaoudi Mohamed Lamine, "The Adversarial Principle Between Litigants Before the Judiciary: A Comparative Study (Algerian Law - Islamic Sharia)," *Journal of Islamic Studies*, No. 9 (June 2017): 141-142.
18. Abdelrahman Ben Djilali, Mediha Ben Nadji, and Yaker Tahar, "Guarantees of a Fair Trial in the Algerian Constitutional Amendment of 2020," *Journal of Rights and Freedoms* 12, No. 1 (2024): 19.
19. Abdelali Hefdhallah, Ibrahim Bouamra, and Fawaz Ledjlat, "Procedural Rules of the Principle of Balancing," *Journal of Legal Studies* 7, No. 1 (January 2021): 179-181.
20. Law No. 25-14 dated 3 August 2025, Article 1.
21. Tikerdoudar Hassan, "The Power of the Criminal Court to Reclassify," *Annals of the University of Algiers 1*, Vol. 36, No. 1 (March 2022): pp. 135-136.
22. Law No. 25-14 dated 3 August 2025.
23. Law No. 25-14 dated 3 August 2025, Article 441.
24. Tikerdoudar Hassan, previously cited reference, p. 136.

25. Mohamed Tahar Rahal, "The Legal Reclassification of Facts Before the First-Instance Criminal Court," *Journal of Emir Abdelkader University of Islamic Sciences*, Vol. 33, No. 2 (September 2019): pp. 801-802.
26. Law No. 25-14 dated 3 August 2025, Article 438.
27. Ahmed Chafii, "Nullity in the Algerian Code of Criminal Procedure," *Journal of Human Sciences*, Mentouri University Constantine, No. 24 (December 2005): p. 107.
28. Ben Lagha Akila, "Review of the Intimate Conviction of the Criminal Judge," (doctoral dissertation in law, Criminal Law Branch, University of Algiers 1 - Ben Youcef Benkhedda, 2021), p. 151.
29. Christine Gavalda-Moulenat, Comment renforcer le contradictoire dans le procès pénal français ? *Archives de politique criminelle* 2007/1, n° 29, 21.
30. Hatem A. M. EL SHEHHAT, Requalification des faits en complicité et garanties de la défense : évolution de la jurisprudence pénale, Faculté de droit, université d'Elzagazig, Égypte, s.d., p. 11, 20.
31. Code de procédure pénale français, Institut Français d'Information Juridique (droit.org), dernière modification le 01 mai 2026, Lyon, 2026.
32. ECtHR, Final Decision on the Admissibility of Application No. 53426/99 lodged by Marcel Feldman against France, 06 June 2002, 8.
33. Hatem A. M. EL SHEHHAT, *op. cit.*, p. 12, 24.
34. Court of Cassation, Criminal Chamber, 13 January 2021, Appeal No. 20-85.791, 5.
35. Hatem A. M. EL SHEHHAT, *op. cit.*, p. 14.
36. Court of Cassation, Criminal Chamber, 08 September 2004, Appeal No. 03-82.670, 5.
37. ECtHR, Judgment Pélissier and Sassi v. France, 25 March 1999, Application No. 25444/94, 15-16.
38. European Court of Human Rights, Case of Mattei v. France, Application No. 34043/02, Judgment, Strasbourg, 19 December 2006, pp. 13, 15.
39. Court of Cassation, Criminal Chamber, 16 May 2001, Appeal No. 00-85.066, 1.
40. Court of Cassation, Criminal Chamber, 05 March 2003, Appeal No. 01-87.045, 1.
41. European Court of Human Rights, Case of Sipavičius v. Lithuania, Application No. 49093/99, 21 February 2002, p. 6.
42. Court of Cassation, Criminal Chamber, 01 June 2016, Appeal No. 14-87.173, 4.
43. Court of Cassation, Criminal Chamber, 27 November 2018, Appeal No. 17-87.385, 1.
44. Opinion of Advocate General Čapeta, Case C-175/22, BK, 25 May 2023, p. 1.