

# PROTECTING COMPANY FUNDS: AN ALGERIAN LEGAL PERSPECTIVE

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## Abstract:

*Commercial companies have gained great importance, due to their distinctive role in the process of economic development, and their rules and regulations have become at the forefront of commercial law topics. Therefore, it was necessary to intervene criminally in the environment of commercial companies, which has become a reality in Algerian law, and considering that commercial companies are a legal entity, they are subject to criminal accountability, and to limit and eliminate them, so that we find that criminal law plays a major role in confronting these deviations and crimes, and the assault on the economic and financial interests of the state, as the economic and financial structure of the state is shaken by them, and public confidence in its economic policy is shaken.*

**Keywords:** Financial Statement, Criminal protection, commercial companies.

## INTRODUCTION:

Considering its unique role in the process of economical enhancement, commercial companies have had great importance, and its rules and laws become a main topic of study of the commercial laws. For that, criminal interention in the environment of said companies, which caused the Algerian law to take it into consideration. Protection against criminal activity in the commercial companies are of paramount importance in gaining the trust of commercial companies; in order to attract investors to the country, whether they were local or foreign investments, and to guarantee the rights of every person included, which will undoubtedly reflect positively on the Algerian economy.

Based on that, the majority of the legislations worldwide - including the Algerian one - have adopted the criminal liability of the legal person starting from Article 51 bis of Law No. 04-15 of 11/10/2004 amending and supplementing the Penal Code, and the Article 18 bis to 18 bis 3 of the same law. Following this, the legal person is not to be interrogated unless the crime is committed by its legal representative or any other person that the constitution of the company aids, as is known in the Commercial Law.

It is known that commercial companies have an independant financial disclosure, high constitutes of the sessions given by the share-holders in cash or in-kind, in addition to the reserve money that the company forms in its lifespan, and the revenue that it makes from its businesses. Considering the great importance of this money in the life of the company, numerous legislations have included criminal protection on it, through criminalizing the illegal activities that affect the company's money. Thus, we propose the following issue :

- To what degree did the legislator succeed in criminally protecting the money of the commercial companies ?

## Chapter Two : Criminal Protection of a Company's Money :

Commercial companies have an independent financial disclosure, and this disclosure omposes of the shares of the share-holders, whether it is in cash or in-kind, in addition to the reserve money that the company makes in its lifespan, and the revenue it makes from its businesses. Considering the importance of the aforementioned money in the life of the company, many legislattions, including the Algerian one, have included criminal protetion from it through criminalizing the illegal acts that affet the company's money.

The crimes related to the accounting formalities, followed by the criminal protection of the finanical disclosure :

### Section One : Crimes Related to Accounting Formalities :

Accounting in commercial companies is one the most important and sensitive subjects, for it controls the disclosures, and the crime of not proving the deliberations of the board in proceedings.

#### Subsection One : Drawing Up and Submitting all Accounts :

The law mandates that companies prepare and submit all relevant financial accounts and adhere strictly to all prescribed procedures. Failure to comply with these regulations may result in penal sanctions, including charges for concealing the company's financial center, neglecting to prepare annual management reports, and failing to record Board of Directors' deliberations.

#### Firstly : The Crime of Hiding the Financial Center of the Company :

Pursuant to Articles 800 and 811 of the Algerian Commercial Law, company managers are legally bound to provide accurate annual financial statements, including budgetary information, revenue, losses, and assets. Any misrepresentation or concealment of financial information may constitute the crime of concealing the company's financial center. The penalty for this offense<sup>1</sup>, as stipulated in the aforementioned articles, is imprisonment for a term of 1 to 5 years and/or a fine ranging from 20,000 to 200,000 Algerian Dinar.

#### Secondly : The Crime of Failure to Prepare Financial Statements and the Annual Management Report :

This misdemeanor is the subject of the Article 801 of the Legislative Decree 93-08 in relation to the limited liability companies, and 813 of the same Decree in relation to the joint fund companies.

Each of the two types of companies is to be punished with a fine of 20.000AD to 200.200AD, along with the managers and the directors and CEO's that have failed to prepare the financial statement and annual management reports<sup>2</sup>.

#### Thidly : The Crime of Failing to record the Deliberations of the Board of Directors in Minutes :

The Board of Directors is the principal organ of a joint-stock company, empowered to manage and execute the decisions of the General Assembly in furtherance of the company's objectives. Although the General Assembly retains ultimate legal authority, the logistical challenges associated with coordinating a large number of shareholders often impede effective supervision of the company's operations. The legislator has determined the organization of all that related to this sensitive assembly<sup>3</sup>, including the forming of the council, the length of membership, the meetings, and its obligations...etc <sup>4</sup>,The law mandates that companies must keep accurate and detailed minutes of the deliberations of the Board of Directors. These minutes must be preserved at the company's registered office and be made available for inspection by third parties, such as administrators and auditors, upon reasonable notice.

In the case of not proving the deliberations of Board of Directors in minutes, the manager of the company is to be panally sanctioned, accoring to Article 812 of the aforementioned Legislative Decree as : « .... punished with a fine of 5.000AD to 20.000AD, each of the Director or the manager of the administration that is the president of the session that fails or is late to prove the deliberations of the Board of Directors in minutes that are saved in the center of the company. »

As is noticed, the one referred to and to be penally sanctioned is the preseident of the administration or the manager of the company that is the president of the session.

This crime is one of the physical crimes that does not require a moral element ; it is a verified through the physical behaviour. The manager should be punished with the fine, as soon as it is proven<sup>5</sup>.

#### Subsection Two : Supervising the Company's Budge :

<sup>1</sup> كحطوش فدوى ، المسؤولية الجزائية لمسييري الشركات التجارية الخاصة ، منكرة لنيل شهادة الماجستير في قانون أعمال ، كلية الحقوق ، جامعة قسنطينة 01 ، 2014/2015 ص 105 .

<sup>2</sup> For details, see Articles 801 and 813 of Legislative Decree 93-08 amending and supplementing Law 75-59 containing the Algerian Commercial Code.

<sup>3</sup> محمد فريد العريني، محمد السيد الفقي، الشركات التجارية، الطبعة الأولى، منشورات الحلبي الحقوقية، لبنان، 2005، ص 150.

<sup>4</sup> See Articles 610 to 641 of the Algerian Commercial Code for everything related to the Board of Directors.

<sup>5</sup> حسام بوججر ، حماية الجنائية للشركات التجارية في التشريع الجزائري المقارن، أطروحة مقدمة لنيل شهادة الدكتوراه، كلية الحقوق و العلوم السياسية، جامعة الحاج لخضر، باتنة، 2017/2018، ص 269.

The accounts representative, a legally mandated auditor, is crucial for safeguarding the financial health of joint-stock and financial companies. By overseeing the company's budget and financial operations, the accounts representative plays a pivotal role in ensuring transparency, accountability, and sound financial management. Failure to appoint or engage with the accounts representative can have serious consequences for the company.

**Firstly: Failing to Appoint an Accounts Representative:**

The text of Article 828 of the Legislative Decree 93 - 08 Amending and Supplementing the Commercial Law is: “ The president of the joint fund company or the Board of Directors that failed to appoint an accounts representative are to be punished by imprisonment of 6 months to 2 years and/or a fine of 20.000 AD to 200.000 AD.”

Thus, Any breach in the commitment of appointing an accounts representative is enough to confirm this crime.

The legislator has also mentioned, in Article 828 of the aforementioned decree that, “Any person that intentionally to practice any of the functions of the accounts representative without a legal fitting with 2 to 6 months of imprisonment and/or a fine of 20.000 AD to 200.000 AD.”

The criminalization of interference with the accounts representative's function is intended to safeguard their independence and impartiality. This measure is designed to protect the interests of the company and its shareholders by preventing any potential conflicts of interest, whether personal or familial.

**Secondly : Failure to Call:**

Article 828 of the Legislative Decree 93 - 08 Amending and Supplementing the Commercial Law reads: “ The president of a joint fund company or the Board of Directors that failed to inform or call the accounts representatives to every meeting of the shareholders is punished by 6 months to 2 years of imprisonment and/or a fine of 20.000 AD to 200.000 AD.” <sup>1</sup>

The failure to convene the accounts representative may constitute a criminal offense for which company managers, including the president and members of the Board of Directors, may be held liable. This legal provision is designed to safeguard the interests of the company and its shareholders by preventing potential mismanagement and ensuring the company's financial health.

**Thirdly : Failing to Grant Access to the Documents:**

Article 831 reads<sup>2</sup>: “The president of the company, the Board of Directors, its CEO's, or any person in the service of the company who intentionally obstructs the review of the accounts or the supervision of any of the accounts representatives or abstains from presenting all the necessary documents to be accessed in the spot during the exercise of their duties, especially agreements, documentary books, and minutes.

The purpose of criminalizing obstruction of the accounts representative's duties is to protect the company and its shareholders. By granting the accounts representative access to Board of Directors' meetings and company management, the law empowers them to identify and rectify errors, ensuring the company's financial integrity. They can ask for clarifications from the Board of Directors<sup>3</sup> or managers as provided by Article 830<sup>4</sup> as the criminal responsibility falls on the accounts representatives: “Every accounts representative that intentionally gives false information, confirms the state of the company, or fails to reveal the criminal activity that they were aware to the Government's Prosecutor is punished by 1 to 5 years of imprisonment and/or a fine of 20.000 AD to 500.000 AD.”

<sup>1</sup> Jean-Guy Dego , *Sécurité et Fraude dans les Systèmes Comptables* , <https://fraudmeshs.hypotheses.org/89> ,Publié 03/07/2016 , Regardé 04/10/2024 ,à l'heure 16:21.

<sup>2</sup> Decree 93-08 amending and supplementing Law 75-59 containing the Algerian Commercial Code.

<sup>3</sup> These persons working in the company may not claim professional secrets against the accounting representatives as long as the law allows him the right to view them.

<sup>4</sup> From the same Legislative Decree 93-08 mentioned above.

- The laws of the Penal Code are applied related to revealing the secrets of the job on the accounts representative.<sup>1</sup>

Despite the significant authority conferred upon accounts representatives by law, they are subject to penal sanctions for any failure to discharge their duties with the utmost care and diligence. An analysis of the relevant articles indicates that accounts representatives may be prosecuted for three principal offenses:

- 1- The misdemeanor of giving false information and confirming the state of the company.
- 2- The misdemeanor of failing to reveal criminal activities that they were aware of to the Government's Prosecutor.
- 3- The misdemeanor of revealing the secrets of the job.<sup>2</sup>

## **Section Two: The Criminal Protection of the Financial Disclosure of the Company:**

As the financial disclosure of a commercial company represents a significant asset and a crucial component of its operations, the law seeks to protect it through criminalizing acts that threaten its integrity. This chapter is divided into two main sections: protecting the company's financial disclosure and safeguarding its moral rights. **Subsection One: Protecting the Material Financial Disclosure :**

The legislature has enacted laws to penalize any act that constitutes a threat to the company's financial resources, such as the misuse or mismanagement of funds. **Firstly: Abusing the Company's Money:**

was no text in the Algerian Law that identifies the crime of abusing the company's money<sup>3</sup>, however the French Law recognizes this crime the Companies Law as: " The use of the company's money in bad faith by the chairmen, the board of directors or managers in the purpose of personal interest or the assistance of another company or project that holds direct or indirect benefit to them."<sup>4</sup>

However, the Algerian Legislator have provided its rulings and the punishments of it. It has limited it to two types of companies<sup>5</sup> as provided in the fourth clause of Article 800 in the Legislative Decree

<sup>1</sup> For details on this crime, see: بوقرور سعد، جريمة إمتناع محافظ حسابات شركة المساهمة عن إبلاغ وكيل الجمهورية بالأفعال الإجرامية و دوره في حماية الشركة من الفساد: بين شرعية التجريم و واقعية الأعمال، مجلة القانون، المجتمع و السلطة، كلية الحقوق، جامعة 3، السانبة، وهران، العدد 2014.

<sup>2</sup> It is the crime that the legislator referred, in the text of Article 380 of the aforementioned Legislative Decree 93-08, to the Penal Code with regard to punishment. The text that must be applied in this case is Article 302 of Law 06-23 amending and supplementing the Penal Code, which states that: Anyone who works in any capacity in an institution and discloses or attempts to disclose to foreigners or Algerians residing in foreign countries the secrets of the institution in which he works without being authorized to do so, shall be punished with imprisonment from two to five years and a fine from 20,000 DZD to 100,000 DZD.

Or if he discloses these secrets to Algerians residing in Algeria, the penalty shall be imprisonment from three months to two years and a fine of 20,000 DZD to 100,000 DZD.

The maximum penalty stipulated in the two previous paragraphs must be imposed if the secrets relate to the manufacture of weapons or military ammunition owned by a state.

In all cases, the offender may be sentenced in addition to that to deprivation of one or more of the rights mentioned in Article 14 of this law for a period of at least one year and at most five.

<sup>3</sup> The origins of this crime go back to 1935 with the issuance of the French legislator's decree of August 8, 1935. The origin of the criminalization goes back in particular to the Satvisky scandal case, a businessman who carried out several commercial operations that were not in the company's interest, which prompted his partners to file a lawsuit against him on the basis of breach of trust. However, when the case was brought before the judiciary, the elements of the crime of breach of trust were not found, so the latter adapted the crime as another crime close to the crime of breach of trust, but called it "abuse of company funds." For more, see مودي أمينة، جريمة التعسف في إستعمال أموال الشركة، منكرة لنيل شهادة الماستر تخصص قانون أعمال، كلية الحقوق و العلوم، جامعة 8، السياسية، جامعة 2، ص 2016/2015، قالمة، 1945، ماي 8، العلوم، جامعة

<sup>4</sup> وجدي سلمان حاطوم، دور المصلحة الجماعية في حماية الشركات التجارية، الطبعة الأولى، منشورات الحلبي الحقوقية، بيروت، 2007، ص 604.

<sup>5</sup> This crime is excluded in Algerian and even French legislation in other companies, such as joint-stock companies, limited partnerships, joint-stock companies, economic interest groups, and civil companies, unless the perpetrator is the liquidator of the company in accordance with Article 1/840 of the Civil Code، أحسن بوسقيعة، الوجيز في القانون الجنائي الخاص، الجزء الثاني، الطبعة السادسة عشر، دار، هوم، الجزائر، 2017، ص 252.

93 - 08 in relation to the limited liability companies that, “The managers that use the money or the loans of a company in bad faith and use it in a way that they aware is against the interest of the company to fulfill their personal benefits, or for the betterment of another company or institution that hold direct or indirect benefit for them are punished with 1 to 5 years of imprisonment and/or a fine of 20.000 AD to 200.000 AD.”

As for the joint fund company, Article 811 of the mentioned decree in its third clause provided that, “The president of a joint fund company, its managers, or its CEO’s who use the money of the company or its reputation in bad faith in pursuit of goals they are aware to be against the interest of the company or for person interests, or the betterment of another company or institution that holds direct or indirect benefits for them are punished with 1 to 5 years of imprisonment and/or a fine of 20.000 AD or 200.000 AD.”

Also, Article 840 of the mentioned decree provides that, “The liquidator that, in bad faith:

1- Uses the money of the company that is liquidated while aware that it is against the interest of the company, pursuing personal interests, or the betterment of another company or institution that holds direct or indirect benefits for them.

2- Abandons all or part of the company’s money that is liquidated against the ruling of Article 770 and 771.

are punished with 1 to 5 years of imprisonment and/or a fine of 20.000 AD or 200.000 AD.”

We point that the purpose of criminalizing this act is to protect the financial disclosure of the company that represents the general insurance from all misconducts of the managers and to separate their personal property and the financial disclosure of the company, regardless of the size of their shares<sup>1</sup>.

### **Secondly: the Misadministration of the Company’s Money:**

To safeguard the highest standards of transparency, to promote the continued operation of the company, and to protect the interests of both the company and its stakeholders, the law imposes criminal liability on company managers for any misuse or misappropriation of company funds. Such misconduct may include:

#### **1- The Crime of Distribution of Fictitious Earnings:**

Since the manager of the company is the one assigned to distribute the earnings of the company<sup>2</sup>. This authority could be used to distribute fictitious earnings, i.e. unreal earnings. This could lead to the decrease in the capital of the company, because of that, the legislator has decreed punishments for such an act. The second clause of Article 800, speaking of the limited liability companies, and the first clause of Article 811 of the previously mentioned decree has referred to the same crime in relation to the joint fund companies.

The aforementioned articles have provided that the punishment of 1 to 5 years of imprisonment and/or a fine of 20.000 AD to 200.000 AD on the manager of the limited liability company and the chairman of the joint fund company or the board of directors.

#### **2- Modification of the Company’s Capital :**

To protect the integrity of a company’s capital, the law imposes penalties for any violations of the capital modification process, as outlined in Articles 822 to 827 of the Algerian Commercial Law for joint-stock companies. These offenses are categorized as follows<sup>3</sup> :

<sup>1</sup>Examples of the misdemeanor of misuse of company funds:

- A company director endorsing for his personal account amounts allocated to the company.
- The chairman of the board of directors waiving for the benefit of others, in order to serve personal gain, a patent certificate whose research was conducted by the affected company.
- A fictitious payment from the company’s account to the director’s wife. For more, see مرجع سابق أحسن بوسقيعة، ص 269 .

<sup>2</sup> كحطوش فدوى ، مرجع سابق ص 99.

<sup>3</sup> برني كريمة، الحماية الجزائية لرأس مال شركة المساهمة وفق القانون الجزائري، مجلة العلوم القانونية، جامعة الإخوة منتوري، قسنطينة، العدد 49، جوان 2018، ص 284.



**a- The offence related to increase in the capital :**

The law stipulates that any negligence or intentional violation in the process of increasing the capital of the company leads to criminal responsibility, which could present as :

The illegal share issue of in the period of the increase of the company's capital is a violation as provided by Article 822 of the A.C.L, which determines the punishment as a fine of 20.000 AD to 200.000 AD against the chairman of the joint fund company and the board of directors, either before modifying the basic law resulting from the increase, or through fraud at any time : before or after forming the company.

Violation in the commitments towards the shareholders, where the chairman of the company, the board of directors, and the CEO's of the company with a fine of 20.000 AD to 400.000 AD, in the case that the shareholders do not benefit from the preferential right to subscribe to monetary shares, and failure to distribute the shares on the shareholders, i.e. the managers failing to distribute the decided shares to the shareholders<sup>1</sup>.

The perpetrators of the mentioned crime in the purpose of depriving one or more of the shareholders of their share in the company's money are punished with 5 years of imprisonment and a fine of 20.000 AD to 200.000 AD<sup>2</sup>.

**b- The offence related to the decrease of the company's capital :**

Article 827 of the A .C. L that provides the penal sanctions to deter the managers of a company that are assigned to decrease the company's capital without respect to the procedures mentioned in the article<sup>3</sup>.

The chairman of the company or the board of directors that have intentionally decreased the capital of a company without informing the accounts representatives or respecting the principle of equality between the shareholders before 45 days at least from the general session of the association, and in the case of not posting the decision of the decrease in the formal paper of the legal announcements with a fine of 20.000 AD to 200.000 AD.

**c- The offence related to breach of trust :**

The Egyptian Legislations defines the crime of breach of trust as : "Seizure of a person over any object that they are legally entrusted with, through a breach of trust that is placed in them by effect of a contract through changing their status from a seizer for its owner to a claimer of its property."<sup>4</sup> The Algerian legislator has not spoke of this crime in the Commercial Law, but provided a punishment<sup>5</sup> for it in Article 376 as : "Anyone who embezzles or misappropriates in bad faith commercial papers, money, goods, securities, securities or any other editions containing or proving an obligation or acquittal to which it was handed by way of lease, deposit, agency, mortgage, bereaved or for the performance of paid or unpaid work provided that it is refunded, for use or use in a particular business, to the detriment of its owners, squatters or holders has committed the offence of breach of trust, which is punishable by three months' to three years' imprisonment and a fine of 20,000. DZD to 100,000."

In addition, it is allowed that the culprit is punished by deprivation of or more of the right mentioned in Article 14, and by deprivation of residency for at least a year and five years at most. All this, without violating the Article 158 and 159 related to theft of money, commercial papers, and documents, and seizing them by the public stores.

Through the aforementioned article, if one of the members of the commercial company, one of its organs, the chairman of the company, or the board of directors ... etc should use their positions to embezzle or misappropriates the company's money they are criminally responsible with the crime of

<sup>1</sup> See Article 823 of the Algerian Commercial Code.

<sup>2</sup> See Article 824 of the Algerian Commercial Code.

<sup>3</sup> برني كريمة، مرجع سابق، ص 385.

<sup>4</sup> سعد بن مد شايع القحطاني ، الحماية الجنائية للشركات التجارية في النظام السعودي (دراسة تأصيلية)، أطروحة لمتطلبات الحصول على درجة الدكتوراه ، الفلسفة في العلوم الأمنية ، كلية العدالة الجنائية ، قسم الشريعة و القانون ، جامعة نايف العربية للعلوم الأمنية ، الرياض ، 2015 ، ص

<sup>5</sup> Law No. 06-23 amending and supplementing the Algerian Penal Code.

breach of trust and they are to be penally sanctioned in the previous article<sup>1</sup>. In addition, through Article 376 of A.C.L, it becomes clear that the crime is not specific to monetary funds, but all kinds of movables.

For this crime to be legible, the following elements should be provided:<sup>2</sup>

1- The money should be handed to the culprit using a contract of trust, and the law that determines this kind of contracts, with the effect of which money could be handed is only five types of limited contracts and they are:

Bailment, agency, mortgage, loan, and lease contract.

2- The act of the culprit is the embezzlement, the misappropriation of the money, or using it in any way of similar judgment.

3- The object of the act should be money that is transferred to another person.

4- The victim should be harmed and the culprit should have the intention of harm.

**d- The offence of embezzlement of the company's money:**

Embezzlement in general is changing the nature of the possession of the entrusted money by the entrusted from temporary to permanent in the purpose of appropriation, for example: a bank chairman who seizes the money deposited in their bank<sup>3</sup>.

In the law related to fighting and protection from corruption, the legislator spoke of the crime of embezzlement in Article 29 of Law number 11 - 15<sup>4</sup>: "Any employee who intentionally appropriates, embezzles, destroys, or seizes without a legal right, or illegally uses, for their own benefit of another's any of the money, public and private monetary papers, or any other objects of value that they have been entrusted with based on their position are punishable by 2 years' to 10 years' imprisonment and a fine of 200.000 AD to 1.000.000 AD."

The legislature has enacted laws to protect the interests of the private sector. These laws promote transparency among private sector entities and safeguard their integrity, recognizing the significant contribution of the private sector to the nation's economic development and social progress.

In an independent article, the legislator stipulates the crime of embezzlement under the title of embezzling the properties of the private sector. In Article 41 of the fight and protection against corruption it stipulates: "Any person who administrates a body of the private sector who works for it under any status while conducting an economic or commercial activity who intentionally embezzles the properties, money, private monetary papers, or any other objects of value that they are entrusted with based on their position is punishable by 6 months' to 6 years' imprisonment and a fine of 50.000 AD to 500.000 AD."

Thus, we notice the legislator has provided a specific legislation for the embezzlement of properties in the private sector. This crime is related to the crime of embezzlement of Article 29 of the mentioned law, related to the private properties, money, or monetary papers, with emphasis on the private nature of the perpetrated money. It follows most of the legislations that befall the crime of embezzlement of public employers in terms of the prosecution, and penal sanctioning of the moral person, as well as the complementary sentences<sup>5</sup>.

**Subsection Two: Protection of the Moral Money of the Company:**

Intellectual property rights, including patents and trademarks, constitute a significant aspect of a company's financial assets. Given their crucial role in economic activity and commercial

<sup>1</sup> The Paris Court ruled that if a company director deliberately exploits its funds in operations that involve adventure and are outside the company's activity, to achieve personal interests, then he is a breach of trust. For more, see: سعد بن مجد شايع القحطاني ، مرجع سابق 181ص.

<sup>2</sup> معوض عد التواب ، الوسيط في جريمتي النصب و خيانة الأمانة و التبديد ، الطبعة التاسعة ، دار الفكر القانوني للنشر و التوزيع ، طنطا ، 2007 ، ص 122- 134.

<sup>3</sup> أحسن بوسقيعة ، مرجع سابق ، ص 34.

<sup>4</sup> Law No. 06-01 of February 20, 2006, relating to the prevention and fight against corruption, Official Inventory of the People's Democratic Republic of Algeria, No. 14, issued on March 8, 2006, amending and supplementing Law 06-01 relating to the prevention and fight against corruption, dated August 2, 2011, Official Gazette of the People's Democratic Republic of Algeria, No. 44, issued on August 10, 2011.

<sup>5</sup> أحسن بوسقيعة ، مرجع سابق ، ص 78-79.

operations, the legislature has enacted laws to protect these rights from infringement. This section will delve into the legal protections afforded to patents and trademarks.

### **First: The Protection of Patents:**

Patents are defined as the testimony that the relevant body of the country gives to the inventor based on their request.<sup>1</sup> It grants them the right of investment in using their invention for a specific duration based on the effort and funds they have spent in the sake of invention. The Algerian legislator has stipulated in the Ordinance 03 - 07 on patents the criminal protection to prevent offences that befall inventions<sup>2</sup>, considering it an intervention in the financial disclosure of the company, for example: if one of the shareholders presents it as a share in the company.

One of the most common crimes that fall on patents is “the crime of forfeiture”, it is mentioned in Article 61 of the Law of Patents that stipulates: “Any deliberate work that is committed in accordance to Article 56 is considered therefore a forfeiture punishable by 6 months’ to 2 years’ imprisonment and/or a fine of 2.500.000 AD to 10.000.000 AD.”

Article 62 of the same law also stipulates: “Any person who deliberately hides one or many forfeited objects, sells them, offers them for sale, or brings them to the national soil is punishable by the same punishment of the forefeiter.”<sup>3</sup>

Through the aforementioned, the forefeiter is considered to be any person who practices the rights of the owner of the patent, without their permission or their agreement, by exploiting it financially, thus, violating the rights of the inventor of the product<sup>4</sup>.

As for the aforementioned Article 62, it determines the crimes related to forfeiting, to which the same punishments of the forfeiting are applied. Those crimes are:

- Hiding one or many forfeited object.
- Selling or offering a forfeited product for sale.
- Bringing a forfeited product to the national soil.

The Algerian legislator has also criminalized the dealing with objects that are forfeited, considering them as crimes concerned with forfeiture.<sup>5</sup>

### **Secondly: Protection of Trademarks:**

The Algerian legislator has defined the trademarks in Article 1/2 of the Ordinance 03 - 06 concerned with trademarks<sup>6</sup> as: “ All linear representable symbols, especially words, names of persons, letters, numbers , drawings, pictures, special logos of products, single or compound colors, and any sign used to differentiate products, or the services of a physical or a moral person or another’s services.” Registered trademark have a wide criminal protection, as opposed to the unregistered ones that could be protected through unlawful competition action.<sup>7</sup>

The legislature has enacted laws to criminalize any act that constitutes a threat to trademark rights, imposing penalties such as imprisonment and fines. One of the most severe offenses is trademark counterfeiting.

<sup>1</sup> Patrick Tafforeau ,Droit de la Propriété Intellectuelle , edition N°4 ,Gualino Lextemso editions ,2015p 333.

<sup>2</sup> Among the conditions for a patent, according to the text of Article 03 of Order 03-07 dated July 19, 2003 relating to patents, the Official Gazette of the People’s Democratic Republic of Algeria, No. 44, issued on July 23, 2003, is that the invention must be new and result from an inventive activity, i.e. it must bring about progress in the technological field, be industrially applicable and not violate public order.

<sup>3</sup> أمين مصطفى مد ،الحماية الجنائية لحقوق الملكية الصناعية في ضوء الإتفاقيات الدولية و القوانين الوطنية ، بدون طبعة ، دار المنظومة ، بدون النشر ، 2007 ، ص 21

<sup>4</sup> لحمر أحمد ،النظام القانوني لحماية الابتكارات في القانون الجزائري ، رسالة لنيل شهادة الدكتوراه في القانون الخاص ،كلية الحقوق و العلوم السياسية ، جامعة أبو بكر بلقاك ،تلمسان ، 2017/2016 ، ص 204.

<sup>5</sup> The same reference, p. 206.

<sup>6</sup> Order 03-06 of July 9, 2003 relating to trademarks, Official Gazette of the People's Democratic Republic of Algeria, No. 44, issued on July 23, 2003.

<sup>7</sup> Registration means that the owner of the trademark has registered his trademark with the National Institute of Industrial Property and has been given a certificate proving the registration, which gives it criminal and even civil protection.



Article 26 of the first paragraph of the Ordinance 03- 06 related to trademarks stipulates: “... it is considered an offence punishable according to Article 27 to 33.”<sup>1</sup>

As for the penalties, they are provided in Article 32 of the Ordinance 03 - 06 that stipulated that every person that commits the offence of forfeiture is punishable by 6 months’ to 2 years’ and/or a fine of 2.500.000 AD to 10.000.000 AD, and the temporary or permanent closure of the institution.”<sup>2</sup>

- The seizure of the objects and means that were used in the offence.”

Article 33 of the aforementioned ordinance on the other offences on the trademarks, which stipulates that the persons who failed to put a trademark on their products or services who intentionally placed a trademark on an unregistered trademark are punishable by 1 months’ to 1 years’s imprisonment and/or a fine of 500.000AD to 2.000.000 AD.

### CONCLUSION:

A comprehensive analysis of the legal framework governing the criminal protection of commercial companies' financial assets in Algeria reveals a range of measures designed to safeguard these assets. Given the significant contribution of commercial companies to the nation's economic and social development, the Algerian legislature has implemented various strategies to protect their financial interests. Based on our analysis, we have identified key findings and recommendations:

- To improve the efficacy of the legal framework governing the protection of commercial companies, the legislature should strive to mitigate issues such as legislative overregulation and inconsistent judicial interpretation. The appointment of specialized judges with expertise in business law is crucial to ensure the effective enforcement of these laws.

- The protection of a company's name and address from misuse and fraud is imperative to preserving its reputation and financial integrity. To deter such harmful acts, stringent legal penalties should be imposed on those who abuse or misuse a company's name and address.

- To ensure optimal protection for commercial companies in an era of rapid industrial and technological development, the Algerian legislature should draw upon the experiences of developed countries in addressing criminal offenses that harm commercial interests.

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<sup>1</sup> The unfair competition claim is based on the rules of tort liability, Article 124 of the Code of Criminal Procedure, and is based on the element of error referred to in Article 27 of Law 04-02 relating to the rules applicable to commercial practices, Official Gazette of the People’s Democratic Republic of Algeria, No. 41, issued on 06-27-2004, amended and supplemented by Law 10-06 dated August 15, 2010, Official Gazette of the People’s Democratic Republic of Algeria, No. 46, issued on 08-18-2010.

<sup>2</sup> والي عد اللطيف ، سلامي ميلود ، *الحماية الجزائية للعلامة التجارية في القانون الجزائري* ، مجلة الدراسات القانونية و السياسية ، الأغواط، العدد 7، جانفي 2018، ص 94.

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