

Criminal Acts Obstructing the Work of the National Authority for Protecting Personal Data in the Algerian legislation.

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Abstract:

To ensure the proper functioning of the National Authority for the Protection of Personal Data and to build trust within the state's apparatus, members of the Authority must adhere to rules of honesty and professional integrity. This obligation is of high importance, as penal sanctions are generated for acts that obstruct the work of the Authority. To advance this aim, Law No. 18-07 of June 10, 2018, was legislated to protect individuals about their personal data protection.

Despite the existence of the law, there are still some issues that need to be mentioned. For example, the law does not have a clear provision that penalizes the disclosure of professional confidentiality by authority members. Besides, the authority's ability to effectively protect personal data is greatly affected by the absence of an internal system that regulates its work.

Keywords: National, Authority, data, confidentiality.

Introduction:

Personal data and private lives of civilians are at risk from various technological advancements such as satellite channels, mobile phones, digital recording devices, photocopiers, and especially the internet. These technologies have made it easy for people's secrets to be exposed and spread rapidly. Therefore, it is

essential to establish safeguards to protect individuals from such possible threats. To secure the environment personal data must be protected to prevent it from being compromised by social media and technology.

The Algerian legislature has introduced Law No. 18-07 of June 10, 2018, which aims to protect people in the field of personal data. This law establishes the National Authority for the Protection of Personal Data as a preventive and deterrent apparatus against acts that violate the right to privacy and the inviolability of private life. This institutional apparatus has also been surrounded by several criminalization for acts of obstruction of its functioning and its activity.

Therefore, does the Algerian legislation effectively deter crimes that obstruct the National Authority for the Protection of Personal Data?

To answer the question, the sole focus will be on criminalizing obstruction of authority's work (**First axis**) and not reporting to them about personal data violations (**Second axis**.)

The First Axis: The Crime of Obstructing the Work of the National Authority for the Protecting the Personal Data.

Members of the National Authority for the Protection of Personal Data before their appointment As well as the Executive Secretary and the employees of the Executive Secretariat to take an oath before the Council of the Judiciary of Algeria, The Chairman and members of the Commission shall benefit from the protection of the State against threats or insults that may They are exposed to it during or on the occasion of the performance of their duties¹

The Algerian legislator has criminalized obstruction of power for the performance of its duties under the final penal provisions of Law No. 18-07, the formative elements of the crime of obstructing the work of the national authority will be presented (**first**). Then, the penalties Penal procedure prescribed for this act will be addressed later (**second**).

First: Formative Elements of the Crime of Obstructing the Work of the National Authority

¹- Article 26, third paragraph of Law No. -07 of June 10, 2018, on the protection of people in the context of protecting personal data, Official Gazette No. 34, issued on January 10, 2018, JR No. 34.

The National Authority is characterized by its independence in terms of its work, as well as the fact that its members are subject to the hierarchy of the administrative function, do not receive orders from any ministry, and no party has the right to dismiss them², but on the other hand, neither the President of the National Authority nor its members may be employees or have interests in institutions or companies operating in the field of communications and data processing, nor may they have any interests in an organization that directly or indirectly engages in these activities³.

The National Authority is responsible for ensuring that the handling of personal data is in line with regulations and that the use of information and communication technologies does not jeopardize the rights of individuals, public freedoms, and private life. The Authority's duties include:

- 1- Granting authorizations and receiving declarations related to the processing of personal data.
- 2- Informing the persons concerned and those responsible for processing of their rights and duties.
- 3- Providing consultations to persons and entities that resort to the processing of personal data or that carry out experiments or experiences of a nature that may lead to such processing; 3- Receiving protests, appeals, and complaints regarding the implementation of the processing of personal data
4. Receive protests, appeals, and complaints regarding the implementation of the processing of personal data and inform them of their outcome.
5. Authorize the transfer of personal data abroad by the legal requirements.
- 6-ordering the necessary changes to protect the processed personal data‘
- 7-ordering the closure, withdrawal or destruction of data‘
8. submit any proposal that would simplify and improve the legislative and regulatory framework for processing of a personal nature‘

² Khalidi Fatiha, "The National Authority for the Protection of Personal Data as a mechanism to protect the right to privacy under Law 18-07", *Journal of Law and Humanities*, Vol. 13, No. 04, Ziane Achour University, Djelfa, Algeria, 2020, pp. 46-57.

³ - Article 26 paragraph 4 of the same law

9-publication of licenses granted and opinions expressed in the National Register⁴

10-development of cooperation relations with similar foreign authorities taking into account reciprocity⁴

11. issuance of administrative penalties.

12-setting standards in the field of protection of personal data⁴

13-establishing the rules of conduct and ethics that govern the processing of personal data

Obstructing the national authority from performing one of these acts is a criminalized and punishable act under Article 61 of Law No. 18-07, provided that one of these methods is used either:

1-by objecting to the on-site verification process⁴

2-by refusing to provide its members or the agents placed at its disposal with the information and documents necessary to carry out the task assigned to them by the National Authority or by concealing or removing the documents or information mentioned⁴

3-by sending information that does not match the content of the recordings at the time of application, not to provide it directly and clearly⁴.

Therefore, the crime is material and criminal intent is not required for its formation and establishment.

Second: A deterrent system for the offense of obstructing the work of the national authority

The crime of obstructing the work of the national authority takes the form of a misdemeanor, and this act is punishable by a custodial penalty of imprisonment from six (6) months to two (2) years, and a financial penalty consisting of a fine from 60,000 DA to 200,000 DA or one of these two penalties, which are a proportionate and serious penalty for the act committed.

Second Axis

⁴- Article 61 of the aforementioned Law No. 18-07

The offence of failing to inform the national authority of the violation of personal data

Article 66 of Law No. 18-07 criminalizes the act of failing to inform the National Authority for the Protection of Personal Data of violations of the personal data of third parties.

First: Elements of the offence of failing to inform the national authority of the violation of personal data

The offence of omission is based on duty, which is divided into two parts: A duty to perform the act that the abstainer refrains from. And a duty without the occurrence of the criminal result, and the two duties are distinct from each other⁵.

The first - the duty to perform the act - is an element of the abstention itself, and therefore an element of the material element of the abstention offence with a consequence. The second - the duty to prevent a consequence - is the element of illegality, i.e. the legal element of the offence, since, with respect to the consequence, the abstention can only be described as lawful if it involves a breach of this duty.⁶

With reference to the offence of failing to inform the national authority of the violation of personal data, the act must be committed by the service provider, as the principle is required by the rules of morality to remove injustice or evil if it occurs, but the reality prevents people in many cases from doing so, and given the shrewdness of the Algerian legislator in suppressing such cowardly attitudes, he criminalized the act of failing to inform the national authority in the event of violations and attacks on the personal data of others, and this offence is one indication of the moral character of the Penal Code.

Second: Deterrent regime for the offence of failing to inform the national authority of the violation of personal data

The crime of failing to inform the national authority of the violation of personal data is a misdemeanor, and this criminal act is punishable by a custodial

⁵ Khatir Messaoud, The General Theory of Offences of Abstention, PhD thesis in Private Law, Faculty of Law and Political Science, Department of Law, Aboubaker Belkaid University, Tlemcen, Algeria, 2019-2020, p. 88.

⁶ - same article, p. 88-89.

sentence of one to three years' imprisonment and a financial penalty of a fine of 100,000 dirhams to 300,000 dirhams or one of these two penalties, both of which are in fact proportionate to the gravity of the act committed.

Conclusion

List of references:

A- Legal texts

- Law No. 18-07 of 10 June 2018 on the protection of natural persons with regard to the protection of personal data, Official Gazette No. 34, issued on 10 January 2018, JR No. 34.

B- Literature

- Toumi Yahia, "The legal protection of personal data in the light of Law No. 18-07, an analytical study," Journal of the Research Professor for Legal and Political Studies, Vol. 4, No. 2, 2019.

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- Mishti Nesrine, Ben Eid Ikhlas, "Legal Protection of Personal Data under Law 18-07," Algerian Journal of Law and Political Science, Vol. 6, No. 1, 2021.

- Theses and dissertations

1- Results obtained:

2- Main recommendations:

After addressing the shortcomings in the Algerian legislation, we present a set of recommendations to complement these shortcomings:

The legislator should intervene in order to properly regulate the legal provisions related to the right to object, especially since the latter is a very important

guarantee for the person concerned, so that the manner of its submission and the cases in which it is submitted must be regulated, so that a separate criterion must be set for what is considered an objection and what is not

Offence of disclosure of professional secrets by members of the national authority

The Algerian legislator has introduced Law No. 18-07 of 25 Ramadan 1439, corresponding to 10 June 2018, on the protection of natural persons in the field of processing personal data. This law is a wall of protection for personal data and the private life of individuals, which imposed itself as an urgent necessity required by the requirements of building a favorable and secure environment from the negative consequences of the scientific and technological development of modern media communication means, in line with the provisions of articles 22 to 31 of the law.

In parallel, the legislature created a protective body for personal data, the National Authority for the Protection of Personal Data, in accordance with the provisions of Articles 22 to 31 of the aforementioned Law No. 18-07. This body is responsible for ensuring that the processing of personal data complies with the provisions of Law No. 18-07 and that the use of information and communication technologies does not pose any risks to the rights of persons, public freedoms and private life⁷. This body is obliged to respect the rules of confidentiality and impartiality during the performance of its duties, and the legislator has prescribed criminal penalties for violating the confidentiality of information by members of the authority and disclosing it to the public.

Accordingly, this paper will explain the constituent elements of the offence of professional secrecy: The constitutive elements of the offence of disclosure of professional secrecy by a national authority (first axis), followed by the criminal penalties prescribed for the commission of this criminal offence (second axis).

I: The constituent elements of the offence of disclosure of professional secrecy by the acts of the national authority

According to Article 26 of Law No. 18-07, the President and members of the National Authority are required to maintain the confidentiality of personal data

⁷ - Article 25 of Law No. 18-07 of 10 June 2018 on the protection of natural persons with regard to the protection of data of a personal nature, Official Gazette No. 34, issued on 10 January 2018.

and information that they have access to in this capacity, even after the termination of their duties, unless otherwise provided by law, in accordance with the provisions of Article 26 of Law No. 18-07.

Hence, the criminalization of the act of disclosure of professional secrecy by members of the national authority (i) and the legitimate framework for this act before the authority (ii).

Criminal framework for the disclosure of professional secrets by members of the authority

The obligation to keep professional secrets is one of the negative obligations of a public servant and has been repeatedly emphasized in Algerian public service legislation since the first public service law in 1966. In essence, this obligation is a measure of the extent of the employee's attachment and loyalty to the administration to which he belongs, in other words, a measure of the employee's loyalty to the state and its public institutions.⁸

In general, a professional secret requires the employee to fulfil the duty of confidentiality imposed on him by the law, and to abide by the other duties that derive from this duty, without which he would be in breach of his duty to keep the professional secret, namely:

-The duty of silence: The employee must refrain from delving into the affairs of the job and talking about its subtleties and secrets, even with his private and family members, as well as others, especially the media in all its forms, as the secrecy, preservation and maintenance of job secrets can only be achieved through absolute silence.

- Duty of Preservation: The employee must preserve the secrets of his job by keeping them in a safe place that does not allow others to know them and protects them from loss and theft.

Duty of prevention: The duty to prevent others from gaining access to these secrets, even by force, if necessary, is categorically prohibited.⁹

⁸ -Jabri Mohamed, "The obligation to keep a professional secret in the Algerian public service law", Journal of Legal and Political Research and Studies, Issue 1, Faculty of Law and Political Science, Ali Lounissi University Blida 2, Algeria, January 2017, pp. 74-89.

⁹

As for data of a personal nature, a professional secret refers to the transmission or giving of any information to which a member of the national authority has access in this capacity, even after the termination of his/her duties, unless otherwise provided by law.

The Algerian legislature has criminalized the disclosure of professional secrecy by members of the national authority under the provisions of Article 62 of Law No. 18-07, which provides: **"Without prejudice to the penal provisions whose application is necessitated by the nature of the information concerned, any person referred to in articles 23 and 27 of this law who discloses information protected by this law shall be liable to the penalties provided for in article 301 of the Penal Code"**.

Hence, the legislator criminalizes the disclosure of professional secrets relating to data of a personal nature by members of the National Authority, including the Head of the Authority and the Executive Secretariat, whether during or in connection with the performance of their duties, in order to protect the trust and confidence that is presumed in these members.

The National Authority is provided with an Executive Secretariat headed by an Executive Secretary and assisted in his duties by employees. The Executive Secretary and the employees of the Executive Secretariat shall take an oath before the Algiers Court of Justice in the following form:

"I swear by Almighty God that I will perform my duties with integrity and maintain the confidentiality of the information to which I am aware of."¹⁰

Thus, the legislator added a moral character to the element of integrity and honesty that each member of the National Authority is supposed to possess.

Members of the National Authority are also required to take an oath before the Algerian Judicial Council, as follows:

"I swear by Almighty God to perform my duty as a member of the National Authority for the Protection of Personal Data with independence, impartiality, honor and integrity, and to maintain the confidentiality of the deliberations."

¹⁰- Article 27 of the aforementioned Law No. 18-07.

Second: Legitimate framework for the disclosure of professional secrecy to the national authority

On the other hand, the legislator permits - in certain cases only - the person in charge of processing and others to provide the national authority with the information necessary for it to carry out the required inspections and investigations of the premises and places where the processing takes place, with the exception of residential premises due to their inviolability. The authority is also allowed access to inspect the processed data and all information and documents, regardless of their basis, and professional secrecy shall not be invoked before the national authority.

Article 49 states that:

"The National Authority may carry out the required investigations and inspect the premises and places where the processing takes place, except for residential premises, and in order to fulfil its duties, it shall have access to the processed data and all information and documents, regardless of their basis. Professional secrecy shall not be recognized before the National Authority."

II: Criminal penalties for the offence of disclosing professional secrets

The protection of personal data is the essence of protecting a person's right to privacy, so the domestic legislations of countries have been quick to issue a law to protect people in the field of processing private data, including the Algerian legislator who issued Law No. 18-07 dated 10 June 2018 on the protection of natural persons in the field of protection of personal data, which established the so-called "National Authority for the Protection of Personal Data", which constitutes an important mechanism to protect the processing of personal data within the framework of respecting the private life of persons.¹¹

The establishment of this committee comes to put an end to the chaos that prevailed for a long time in the field of exploiting the personal data of natural persons, as the law assigns it monitoring and deterrent functions to prevent infringement of the right to privacy(12). Therefore, the legislator criminalized the act of this violation by members of the national authority by criminalizing the act

¹¹Khalidi Fatiha, "The National Authority for the Protection of Personal Data as a mechanism to protect the right to privacy under Law 18-07", *Journal of Law and Humanities*, Vol. 13, No. 04, Ziane Achour University, Djelfa, Algeria, 2020, pp. 46-57.

of disclosure of professional secrets by these persons about information that they have been informed of because of their job or in connection with it, and imposed penal sanctions for them.

In punishing the offence of disclosure of professional secrets by members of the National Authority for the Protection of Personal Data, the Algerian legislator has referred to the general criminalization of the act of disclosure of professional secrets, which is criminalized and punishable under the provisions of Article 301 of the Penal Code, which states:

"Doctors, surgeons, pharmacists, midwives and all persons entrusted by fact, profession or permanent or temporary employment with secrets entrusted to them and who disclose them in circumstances other than those in which they are required by law and authorized to do so, shall be punished by imprisonment of one to six months and a fine of 20,000 to 100,000 DA."

Therefore, the criminal penalty prescribed for committing the act of disclosure of a professional secret by a member of the National Authority for the Protection of Personal Data is imprisonment from one to six months and a fine from 20,000 to 100,000 DA, thus taking this act as a misdemeanor according to Article 5 of the Algerian Penal Code, as stipulated by the Algerian Penal Code.

Conclusion:

The legislature has established deterrent penal protection against criminal offences that obstruct the work of the National Authority for the Protection of Personal Data by adopting the mechanisms of deterrence and restraint through penal provisions that criminalize acts that obstruct the National Authority from performing its duties. However, the law regulating this authority still has a number of shortcomings, which are highlighted in the following findings:

1-Results obtained:

In order to strengthen the moral responsibility of members of the national authority for the protection of personal data, the Algerian legislator has criminalized the disclosure of professional secrets by members of the national authority under the provisions of Article 62 of Law No. 07 of 10 June 2018 on the protection of natural persons in the field of the protection of personal data.

The Algerian legislator did not give the act of disclosure of professional secrets by a member of the national authority the necessary specific legislative attention by referring the punishment for this shameful act to the general criminalization

of the act of disclosure of professional secrets through the provisions of the Penal Code.

2.Main Recommendations:

After addressing the shortcomings of the Algerian legislation, we offer a number of recommendations to complement these shortcomings:

- The legislator should intervene to increase the penalties for the disclosure of professional secrecy by members of the National Authority for the Protection of Personal Data, given the seriousness of such an act on the right to privacy of individuals.
- We request the Authority to establish as soon as possible the internal rules of procedure for its operation and organization in order to clarify the behaviors that undermine the element of honesty that must be present in each of its members.

List of references:

A. Legal texts -

Law No. 18-07 of 10 June 2018 on the protection of natural persons in the field of protection of personal data, Official Gazette No. 34, issued on 10 January 2018, JR No. 34.

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- **Jabri Mohamed, "The obligation to keep a professional secret in the Algerian public service law", Journal of Legal and Political Research and Studies, Issue 1, Faculty of Law and Political Sciences, Ali Lounissi University Blida 2, Algeria, January 2017.**
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