

Frameworks of Criminal Liability of the Manager in Algerian Legislation

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Abstract. The criminal liability of the manager varies depending on the nature of the committed offense. The manager may bear criminal responsibility for acts committed personally, whether acting alone or in participation with others. Liability in such cases differs based on the degree of contribution, as either a principal perpetrator or an accomplice. The Algerian legislator has sought to amend certain traditional rules in this domain by abandoning the requirement of fault as an essential condition in some management-related offenses. This implies that criminal liability may be attributed to the manager even in the absence of criminal intent, provided the material elements of the offense are established.

1. INTRODUCTION

The criminal liability of the manager varies according to the type of offense committed. The manager may incur criminal responsibility for acts performed personally, whether by committing the offense alone or in collaboration with others. Liability here differs based on the extent of the manager's contribution, whether as a principal perpetrator or as an accomplice. In this context, the Algerian legislator has endeavored to modify certain traditional rules by dispensing with the principle of fault as a fundamental requirement in specific management offenses. Consequently, criminal liability may be imposed on the manager even without criminal intent, as long as the material elements of the offense are fulfilled.

The scope of criminal liability also extends to acts committed by third parties, meaning the manager may be held criminally accountable for actions perpetrated by company employees or individuals under his supervision, if such acts result from deficiencies in oversight or control. Under this framework, dual criminal liability may arise, whereby the manager can be held responsible for the material offense committed by another, even if he did not directly perpetrate it. Although the physical act may have been carried out by someone else, the manager's liability persists based on the legal obligation to supervise and control company activities. Thus, criminal liability may be distributed between the superior (the manager) and the subordinate (the employee), remaining independent in certain instances. This allows the manager to be held criminally accountable for acts he did not personally commit, yet for which he was responsible in ensuring they did not occur under his supervision.

The criminal liability of the manager is grounded in the principle of holding him accountable for unlawful acts that may occur within the framework of company management. The manager bears responsibility for supervising and controlling activities that affect the company's interests. If it is proven that the manager failed in his duties related to oversight or neglected to take necessary measures to prevent offenses within the company, he may be subject to criminal prosecution. The legislator's objective in establishing this liability is to ensure that the manager fulfills his responsibilities toward protecting the company's interests and ensuring its stability, without unduly restricting his freedom to engage in economic activities.

In this context, determining the manager's criminal liability requires a precise examination of the legal provisions governing it, including an analysis of the theoretical principles underpinning it and their effective application in practice to achieve justice and safeguard the interests of concerned parties.

The significance of this topic lies in its focus exclusively on the criminal liability of managers, bypassing civil liability. The study aims to analyze the legal frameworks defining offenses that managers may commit in the course of managing companies. In recent years, Algeria has witnessed a notable proliferation of economic crimes perpetrated by managers, underscoring the urgent need to establish stringent legal rules to protect the national economy and public interests.

1.1. The Nature of the Manager's Criminal Liability

Given the negative impact of economic crimes on the stability of the national economy and social security, it was imperative for the Algerian legislator to adopt a stringent legal system aimed at mitigating these risks, particularly with respect to managers of economic enterprises who bear significant responsibility for the financial and administrative affairs of these entities.

The position of the manager in a public economic enterprise is of paramount importance, as he is responsible for its administration and management. However, this role is among the most vulnerable to criminal liability risks. Accordingly, the legislator did not limit himself to applying the general provisions stipulated in the Penal Code to prevent harm and preserve public funds (Hadjout, 2015, p. 58), but introduced specific provisions concerning the liability of managers in particular, imposing harsher penalties in cases of violations or errors adversely affecting the national economy. The scope of liability has been expanded to encompass acts committed by third parties within the enterprise (Harkati, 2013, p. 89).

This means that managers may be held accountable for erroneous conduct or negligence by employees or business partners if they could have monitored or prevented it. These measures aim to ensure transparency and accountability, preventing managers from benefiting from unlawful practices that harm the public interest or lead to the illegitimate bankruptcy of the enterprise. Through these legal policies, the Algerian legislator seeks to foster a more stable economic environment while safeguarding the interests of partners and society as a whole.

1.1.1. The Manager's Criminal Liability for His Personal Act

In performing his administrative duties of management and supervision within the enterprise, the manager may engage in acts or conduct constituting an offense, entailing penalties and rendering him criminally liable (Abu Talib, 1999, pp. 102-103). This occurs through fault committed by the manager individually, whether as a principal perpetrator or an accomplice.

The criminal liability of the manager in enterprises pertains to acts committed during the management of the enterprise, exposing him to prosecution if such acts constitute offenses punishable by law. The manager's criminal role is determined by his personal conduct, where he may be a principal perpetrator if directly responsible for the offense, or an accomplice if contributing secondarily (Abd al-Latif, n.d., p. 39). If the manager does not contribute to the offense as a perpetrator or accomplice, he remains exempt from penalties arising therefrom (Al-Sun, 2011, p. 93).

The fault committed by the manager individually, without participation of others, arises from his free will, independently and without provocation or incitement, rendering him a perpetrator who has fulfilled all elements of the offense alone, thus qualifying as a criminal.

"Any person who directly contributes to the commission of an offense or incites its execution through gifts, promises, threats, abuse of authority or guardianship, or through fraud or criminal deception shall be deemed a perpetrator" (Algerian Penal Code, Article 41).

1.1.1.1. The Manager's Criminal Liability for Intentional and Unintentional Management Offenses

The criminal liability of the manager constitutes a vital legal topic related to the commercial and administrative management of companies and enterprises. This liability arises when the manager commits offenses, whether intentional or unintentional, with the mental element playing a fundamental role in determining whether the criminal act was perpetrated with intent or due to unintentional fault.

In intentional offenses, the manager commits the prohibited act with deliberate will, directing his mind toward the forbidden conduct while aware of its consequences. Here, criminal intent is established when the manager decides to undertake an act harmful to the company or concerned parties, fully cognizant that such act constitutes an offense under the law. The law requires proof that the manager possessed the intent to commit the offense with knowledge of the probable outcome. Thus, criminal intent represents the essential mental element in intentional offenses, necessitating the presence of active volition to achieve the result ensuing from the criminalized act.

Conversely, in unintentional offenses, the manager may face criminal liability due to unintentional fault stemming from negligence or recklessness in decision-making or general handling of work requirements. In these offenses, criminal intent is absent, yet it suffices to prove that the manager's act resulted from negligence or insufficient care toward public or private interests, leading to harm. The Algerian legislator emphasizes this in various provisions of the Penal Code, allowing for offenses committed through negligence or recklessness in managing company affairs. In such cases, it is not presumed that the manager specifically anticipated the harmful outcome; rather, the fault arises from failure to exercise due care in performing his duties, distinguishing these offenses from intentional ones.

Criminal liability for unintentional offenses is more complex in terms of proof, as it does not require establishing criminal intent but merely demonstrating that the manager acted imprecisely or irresponsibly, and could have avoided the harmful result had he properly fulfilled his duties. In these instances, the manager may face penalties associated with negligence or failure to adopt necessary measures to preserve the company's or concerned parties' interests.

In conclusion, the manager's criminal liability varies according to the nature of the committed offense: intentional acts require proof of criminal intent, while unintentional acts require proof of unintentional fault resulting from recklessness. In both cases, criminal liability for the manager in unintentional offenses relies on the principle of "fault" or "negligence" without necessitating proof of criminal intent. Ultimately, criminal liability aims to protect public order and ensure accountability for individuals' conduct, whether resulting from intent or negligence.

1.1.1.2. Intentional Offenses

Criminal liability for intentional management offenses represents the primary form of the mental element, which constitutes criminal intent. This requires that the perpetrator's will be directed toward committing the criminal act with clear intent, such that the perpetrator is fully aware of the criminal consequences resulting from that act (Sorour, 2015, p. 342). Criminal intent is the perpetrator's intention to commit a criminal offense, encompassing both the volition to perform acts criminalized by law. It includes the elements of knowledge and will, which constitute a violation of legal rules (Bousqiaa, 2018, p. 143). The mental element of an intentional offense is fulfilled if the offender intends to cause harm and achieves a result punishable under criminal law (Al-Kandari, 2005, p. 82).

Criminal intent takes various forms that differ according to the perpetrator's orientation toward committing the criminal act and its resulting consequences; it may be general or specific (Al-Majali, 2005, p. 345).

General criminal intent consists of directing the intention toward committing or perpetrating the offense while being aware of its legal elements. It encompasses both knowledge and will, and the law requires this in all intentional management offenses. Mere awareness by the perpetrator of the criminal act's elements is insufficient for criminal intent to exist; it is also necessary that the perpetrator's will be directed toward achieving the act (Hussein, 1988, p. 248). Therefore, when the accused commits an offense with knowledge of its elements, the offender possesses general criminal intent aimed at achieving a specific purpose, and the offense may be completed upon attaining that purpose (Suleiman, 2005, p. 47).

Consequently, in all intentional offenses, the importance of general intent lies in encompassing the elements of criminal intent—namely, that the offender is aware that his conduct violates the law, infringes rights protected by legal safeguards, and freely chooses the criminal outcome he pursues. This reflects the offender's volition toward achieving the prohibited act.

The criminal liability of the manager for intentional management offenses arises, for example, when the manager presents a false image of the company to attract new subscribers or deliberately distributes fictitious profits to partners. The Algerian legislator has addressed this in Article 811, paragraph 1, of the Commercial Code, requiring the element of intent—i.e., the commission of the offense by the manager with both knowledge and will.

In the Algerian legal system, the principle of general criminal intent applies to most offenses, but exceptions exist where specific criminal intent is required in addition to general intent. These exceptions include economic offenses aimed at achieving

personal gain or benefit, occurring when the manager abuses his authority and takes decisions or actions contrary to the enterprise's interests.

Specific criminal intent is based on the same elements as general criminal intent but is distinguished by the addition of a further element: the purpose, referred to as specific intent. This lies in the offender's intention to achieve a particular goal through the offense, making the general intent specific (Yaqoub, 2008, p. 53).

Among the offenses that render the manager criminally liable and require specific criminal intent is the offense of abusive use of the enterprise's funds, as stipulated by the Algerian legislator in Article 800, paragraphs 4/5, for limited liability companies, and Article 800, paragraphs 3/4, for joint-stock companies in the Commercial Code. This offense is premeditated and requires general intent expressed through malice, along with specific intent to achieve personal gain (Bousqiaa, n.d., p. 222). In other words, it falls within the category of offenses requiring dual criminal intent: general intent consisting of the offender's bad faith, and specific intent to achieve a personal objective.

In light of the foregoing, it can be stated that the legislator has clearly indicated in legal texts the intentional form of offenses committed by company managers, requiring the presence of criminal intent for their commission. Moreover, it requires specific criminal intent based on the managers' particular intention.

The legislator has conditioned the imposition of criminal liability in cases of management errors on the existence of both general and specific criminal intent. Therefore, one cannot speak of the risk of criminal liability exposure for the responsible party unless the elements of knowledge and will are present, in addition to specific intent in committing the criminal act. Consequently, the manager is not inherently at risk of criminal liability; rather, he exposes himself to it through his deliberate actions.

1.1.1.3. Unintentional Offenses

The Algerian legislator has clearly defined in the Penal Code and the Commercial Code all forms of management involving negligence when the offense description relates to management realized through negligence, lack of attention, or insufficient care. This dereliction exhibited by the manager in the administration and management of the enterprise forms the basis of unintentional offenses and thus constitutes a criminal risk exposing the responsible party to criminal prosecution while performing administrative duties within the enterprise. An offense is established when non-intentional fault manifests as negligence in administration and management of the enterprise's affairs, arising from breach, violation, or failure in duties toward the enterprise founded on fault.

It has therefore become necessary to clarify the nature of this type of criminal risk associated with individuals occupying administrative positions, by first addressing the meaning of non-intentional fault, followed by an explanation of its forms and the essential elements constituting it.

Given that the legislator has recognized criminal liability for managers in management offenses, the act committed by the offender leads to two aspects: criminal intent and non-intentional fault. In cases of criminal intent, the perpetrator's will be directed toward achieving the criminal act he committed and its criminal consequences, with full awareness of all material elements required by law for the offense, thus constituting an intentional offense. However, if it takes the form of non-intentional fault, the perpetrator's will may be directed toward committing the criminal act without intending the consequences—either because he did not anticipate them or anticipated their possibility but failed to take sufficient precautions to avoid them—thereby constituting an unintentional offense based on the existence of fault (Tourth, 2003, pp. 166-167).

Thus, non-intentional fault assumes the form of the mental element of the offense and serves as the basis for criminal accountability. If present, criminal liability arises for unintentional management offenses.

The Algerian legislator has not provided a clear definition of non-intentional fault, limiting himself to mentioning its forms. The same applies to the French and Egyptian legislators, who left the matter to jurisprudential interpretations for defining non-intentional fault.

The Algerian legislator has specified the forms of non-intentional fault in Articles 288 and 289 of the Penal Code, which address:

- **Recklessness:** This refers to conduct indicating lack of maturity, rashness, or frivolity in action, where the offender must be aware of it (Suleiman, 2005, p. 261). The offender's behavior can be summarized in two ways: failure to comply with technical expertise rules required for practicing his profession, or committing an act that should have been refrained from in the manner or at the time it was performed (Abd al-Mun'im, 2003, p. 566). Recklessness is thus a combination of rashness, impulsiveness, and incompetence. For example, a physician or building owner who neglects duties and causes death or permanent disability is liable for his act (Abd al-Mun'im, 2003, p. 566). The same applies to a manager who adopts a decision without realizing its danger and consequences, demonstrating a lack of necessary expertise and competence (Abdi, 2017-2018, p. 241).
- **Lack of Precaution:** This occurs when the offender performs a specific act or conduct despite the general rule requiring abstention in the form and at the time undertaken. In other words, the offender is aware that his conduct violates the general rule, proceeds nonetheless, knows the situation's danger, yet remains indifferent and fails to take precautions to prevent consequences (Abu Amer & Abd al-Mun'im, n.d., p. 238; Tabash, 2014, p. 202).
- **Negligence and Lack of Attention:** This manifests in failure to perform a required act, meaning the offender commits an error by not adhering to rules of prevention and caution, disregarding imposed duties regarding the act causing the consequences due to lack of awareness and attention (Miziani, 2012/2013, p. 33). For instance, employing unqualified workers for hazardous tasks may result in their injury (Awja, 1985, p. 565).

The legislator has recognized negligence in the Penal Code, subjecting any individual causing an offense through negligence to varying penalties according to the offense's gravity, as provided in Article 119 bis.

- **Failure to Observe Regulations:** This form of negligence or fault is established when the offender's conduct—whether positive or negative—violates rules stipulated by law or regulations. Criminal liability arises without committing other types or causing harm to any person, encompassing laws, rules, circulars, and decisions issued by legislative or executive authorities to maintain public order and public institutions (Bashir, 2015/2016, p. 112). What distinguishes this form from other negligence forms is that proving fault is not difficult, as violation of a legal provision provides evidence of the breach (Jaafar, 2006, p. 193).

Establishing criminal liability for the manager in unintentional offenses constitutes a criminal risk linked to the manager's functions and duties, due to the potential for facing liability and sanctions when forms and elements of negligence and non-intentional fault causing criminal liability are present—liability predicated on negligence in management, as specified in Article 119

bis of the Penal Code.

Thus, forms of non-intentional fault require the existence of breach of the duty of care (Al-Husni, 1988, p. 207) imposed on the manager in performing administrative duties within the public economic enterprise.

Accordingly, the manager's liability arises from criminal consequences despite the absence of intent, as the inquiry into the meaning of criminal risk—in other words, mere commission by the manager of an administrative error in management constituting a form of negligence—triggers the manager's liability even if he acted in good faith and did not intend it.

1.2. The Criminal Liability of the Manager in Material Management Offenses

The criminal risks associated with the responsibilities of managers in public economic enterprises lead to the criminalization of such conduct and the imposition of criminal liability on the manager, falling within the category of material offenses. Criminal liability arises for the manager upon committing an error or negligence (Bousqiaa, 2014, p. 16). This departs from the general principle that all offenses require legal, material, and mental elements alike. It may also represent an expansion of the scope of liability and punishment, which can deter managers from performing their administrative duties by stifling initiative through the imposition of criminal responsibility.

The category of material offenses traces its origins to a series of decisions issued by the French Court of Cassation in the early 19th century. These decisions held that certain offenses, particularly contraventions, are material in nature, and liability is established merely by the commission of a physical act contrary to the law (Mahdi, 1976, p. 175).

1.2.1. Definition of the Material Offense

The law identifies offenses committed either intentionally or through fault. However, in some offenses, the necessary mental element for the manager or responsible party to commit the offense is not required—this is what is known as a material offense.

Material offenses are those in which the law does not require a mental element, meaning that criminal guilt or fault is not necessary to hold the perpetrator liable. It suffices that a causal material relationship exists between the committed act and the consequences achieved for an offense to be established. Criminal liability for the perpetrator is thus objective liability, based solely on the commission of the physical act, irrespective of whether the conduct was tainted by negligence or criminal intent. Consequently, the penalty does not depend on the intent behind the act or on foreseeing the harmful results arising from the offender's conduct (Slimani, 2019-2020, p. 83; Bilal, 1993, p. 10).

A material offense is one that can be committed without criminal intent or unintentional fault. The mere commission of the physical act completes the offense, despite the absence of a mental element (Al-Jundi, 1989, p. 19). Punishment applies even in the presence of the perpetrator's good faith, and defenses based on the absence of liability arising from the act cannot succeed, even if it is proven that the act was not committed intentionally or negligently, or that it was impossible for the perpetrator to anticipate the violation of the fundamental rule rendering the act criminal (Bilal, n.d., p. 76).

Accordingly, the material offense is founded on the mere commission of a physical act, without regard to the perpetrator's psychological state. It is based on the notion of risk, revealing a situation that threatens harm. It therefore differs from offenses of actual harm, which require the criminal act to cause real damage that must be expressly provided for in the offense, unlike material offenses (Slimani, 2019-2020, p. 84).

1.2.2. The Mental Element in Material Offenses

Jurisprudential opinions differ regarding the scope of material offenses. One group argues that the material offense is completed by the occurrence of the physical conduct alone, without requiring fault or negligence. Liability is established if a causal link exists between the physical act and conduct contrary to the law, thereby excluding the mental element (Slimani, 2019-2020, p. 84). The second group insists on focusing punishment on the offender's psyche, asserting that punishment must be based on the offender's act and that the mental element is necessary for all offenses, achieved merely by breaching laws and rules (Wafaa, n.d., p. 68).

1.2.3. Position of the Judiciary on Material Offenses

Many legislations, including those of Egypt, France, and Algeria, have adopted the concept of material offenses. While the criminalization policies in these systems recognize material offenses—thus criminalizing a number of acts that do not directly or indirectly cause harm to individuals or property—they criminalize the risk of harm arising from the dangers posed by such acts.

1.2.3.1. Position of French Case Law

French judiciary was the first to recognize objective criminal liability, or what is termed criminal liability without fault (Rashid, 1970, p. 250). Since the mid-19th century, French case law has introduced the notion of material offenses into the category of contraventions and misdemeanors in terms of penalties. These are classified as offenses due to their material nature, without requiring a mental element; their existence depends solely on material evidence of the criminal fact.

The French Court of Cassation has employed the concept of the material offense to indicate that the sole condition for these offenses is proof of the material fact on the part of the offender (Merle & Vitu, 1963, pp. 580-581). Since liability for property-related offenses is based merely on the material examination of the criminal reality, without examining the psychological circumstances of the person causing the harm, and since a link between the act and its criminal consequences must be proven to impose punishment, it suffices to attribute the committed act to the offender (Wafaa, n.d., p. 133).

As for Egyptian case law, it does not appear to recognize material offenses explicitly, as all offenses—ordinary or material—require intent. As long as the law does not expressly provide that the offense is punishable as unintentional fault, the general rule applies, requiring intent. Thus, if the law does not specify the mental element, intent is required under the general principle (Abd al-Al, 1997, p. 201).

1.2.3.2. Position of Algerian Case Law

Algerian legislation has adopted the concept of material offenses by imposing criminal liability on managers who commit

management-related offenses, most notably under the Commercial Code. The legislator has relied on the idea of the material offense in management, such that if the manager of a public economic enterprise commits a physical act, he is criminally liable for that act, in addition to any personal fault-based liability (Abd al-Mun'im, n.d., p. 575).

The Algerian legislator has adopted, in establishing material management offenses, the notion of organizational fault or regulatory violation as the mental element of the material offense. Given that organizational fault manifests in the form of a material management offense without any other characterization, and considering that the French legislator did not adopt organizational fault as a mental element in material management offenses, but classified various material management offenses as misdemeanors, it can be said that the Algerian legislator has adopted presumed fault or organizational fault as the mental element in material management offenses.

This means that once the material element is fulfilled, the mental element is satisfied regardless of its form—whether intentional or unintentional. Criminal liability follows irrespective of whether the offense is intentional, reckless, or even unintentional, and even if no specific negligence is proven.

1.3. The Criminal Liability of the Manager for Acts of Third Parties

Under criminal law, criminal liability is personal in nature. No person may be convicted of committing an offense unless they are the actual perpetrator or a participant in the offense. Furthermore, an individual cannot be charged as a principal perpetrator or accomplice unless their joint activities contributed to the commission of the offense.

Accordingly, criminal liability may only be imposed on those whose conduct and intent fulfill the elements of the criminal offense. Individuals cannot be held liable except for their own personal conduct that constitutes an offense. In other words, there must be a material link between the offense and the personal conduct of the individual responsible for it. The accused must personally contribute to the commission of the offense, and there must be a causal relationship between their contribution and the criminal result.

It is axiomatic that the principle of personal liability is grounded in the principle of personal punishment. The latter is a firmly established rule recognized by most modern legislations and enshrined in the constitutions of democratic countries as an essential and necessary element for establishing a legal system. This means that penalties apply only to those individuals who have been prosecuted for the offenses they committed.

Given the evolution of the modern world in the economic and industrial spheres, the emergence of numerous economic projects, and the proliferation of corruption-related acts and offenses in the business domain, there is a need to adapt the criminal liability system based on the principle of personal responsibility to the current reality. This adaptation involves expanding the scope of attribution of criminal liability to include directors and managers of enterprises, holding them criminally liable for acts committed by their subordinates (Sadiqi Al-Musa'ada, 2006, p. 314). This is what is referred to as criminal liability for acts of third parties.

The Algerian legislator faced difficulties similar to those encountered by other legislations in accepting this concept, primarily due to adherence to the principle of personal punishment, which stipulates that penalties are directed only at those who committed the offense or participated in it—i.e., those who perpetrated a personal offense. Personal liability precludes holding a person responsible for acts committed by others. Nevertheless, the legislator has made exceptions to the principle of personal punishment, such as imposing liability on economic enterprises for offenses committed by their managers (Jabali & Omar, 2006, pp. 66-67).

1.4. Conditions for Criminal Liability for Acts of Third Parties

It can be inferred from legal texts and judicial decisions that criminal liability for acts of third parties falls upon the head of the enterprise or the direct supervisor in relation to offenses committed by subordinates. Given the gravity associated with applying criminal liability to leaders for acts of others—which conflicts with the principle of personality in liability and punishment a set of conditions must be observed when applying this liability. These include:

- The commission of an offense by a subordinate or employee.
- The director or head of the organization committed a personal fault that enabled, facilitated, or encouraged the commission of a serious offense by a subordinate or employee.
- The director of the enterprise did not delegate their supervisory or administrative powers to a duly authorized person.

When a subordinate or employee commits an offense, liability is not attributed to the responsible person unless the latter has committed a material act constituting an offense. In most cases, such offenses are unintentional, as liability generally applies to unintentional economic offenses. Broadly speaking, liability for the acts of others is not recognized except in organized economic or industrial activities where the responsible party—such as a company or enterprise director—is required to comply with and monitor adherence to relevant laws (Barwal, n.d., p. 274).

When a criminal act is committed, the director bears personal liability for the offense, irrespective of who perpetrated the material act, provided they are responsible for enforcing the rules governing their enterprise—whether the director committed a specific fault or not, as in the case of material offenses. Liability persists in such circumstances, including cases where the enterprise is subject to independent professional regulations or general regimes (Jabali & Omar, 2006, p. 70).

Whether the offense is intentional or unintentional, the director's liability does not exempt the employee who committed the act from criminal prosecution. Both parties may be held accountable jointly, particularly if they committed distinct faults. However, if the employee was merely an unwitting instrument in the hands of the enterprise manager, criminal liability is limited to the manager alone.

The director's or superior's personal fault is required to establish criminal liability for the acts of third parties. The director must have committed a fault—typically negligence—that led to a violation of the law or regulations by a subordinate or employee. This is considered an essential act, and the prosecution is not required to prove the subordinate's or superior's deviation. This is because, even if the violation committed by the subordinate or employee was intentional, negligence is presumed unless proven otherwise.

1.5. Applications of the Criminal Liability of the Manager for Acts of Third Parties in Algerian Legislation

The criminal liability of managers for acts of third parties constitutes one of the significant topics in economic legislation.

Numerous comparative legislations aim to strengthen discipline and protect the economic system from violations that may impact it. In this context, managers bear criminal liability for unlawful acts committed by their employees or workers within their enterprises, particularly when such acts involve economic violations such as tax evasion or market manipulation. This liability is grounded in legal foundations, including the existence of a link between the criminal act and the manager's actions, in addition to the manager's failure in supervisory and oversight duties. Potential sanctions include financial fines and custodial penalties, which may extend to disqualification from exercising administrative or economic activities. The manager is required to adopt all necessary measures to prevent violations or corruption within the enterprise. If failure in this regard is established, criminal liability is imposed. This form of liability reflects substantial concern for preserving the integrity of the economic system and encourages managers to enhance control and guidance mechanisms to ensure compliance with laws and regulations.

Accordingly, many comparative legislations have reinforced the protection of national economic policy by imposing criminal liability—alongside civil liability—on managers and directors of economic enterprises and companies for economic violations that may be committed by their employees or subordinates (Sadiqi Al-Musa'ada, 2006, p. 370). This legislative approach demonstrates increasing attention to safeguarding the economic order and ensuring adherence to systems designed to protect competition and prevent practices harmful to markets or consumers.

Liability for the acts of another means holding an individual accountable for a fault committed by someone else without having played a direct role in the act itself. According to the traditional principle of the "personality of criminal liability," a person cannot be held accountable unless they directly committed the offense or participated in it as a principal perpetrator or accomplice. Nevertheless, in fields such as the management of public and economic enterprises, the responsible manager may bear the consequences of acts committed by employees or subordinates, even if they did not personally commit the fault. This constitutes a departure from the traditional principle, whereby the manager is regarded as a supervisor who assumes responsibility for failures in monitoring the performance of subordinates.

Criminal liability for acts of third parties in economic enterprises is an important topic, with clear negligence representing one of the acts falling under this category of liability. Clear negligence refers to the manager's or employee's dereliction in performing duties toward safeguarding the public interest, resulting in disruption of administrative and economic operations. Failure to take necessary measures may lead to the loss of public funds, facilitation of their theft, or embezzlement, negatively affecting the performance of the economic enterprise. Legal legislations have therefore precisely regulated this liability to ensure accountability of responsible parties for dereliction in protecting public funds and preventing associated economic crimes (Al-Haj, n.d., p. 145).

Pursuant to Article 119 bis of the Penal Code, any public official—as defined in Article 2 of the Law on the Prevention and Combating of Corruption—who, through clear negligence, causes the theft, damage, embezzlement, or loss of public or private funds or equivalent property, documents, contracts, or movables within the scope of or as a result of their duties, shall be punished by imprisonment for a term ranging from six months to three years, in addition to a fine ranging from 50,000 DZD to 200,000 DZD.

The Algerian legislator did not rely, in defining the criminal liability of the manager for the offense of clear negligence, on traditional jurisprudential theories such as the theory of risk or the theory of the moral perpetrator (Srikat, 2018/2019, p. 293). Instead, it adopted an approach centered on the concept of personal dereliction.

The criminal liability of the manager is thus based on their laxity in fulfilling the duty of supervision and control over public or private funds entrusted to them. The manager is held accountable for damages inflicted upon these funds as a result of clear negligence in adopting necessary measures to prevent any act leading to their loss or damage. This demonstrates that liability is not limited to acts personally committed by the manager but also encompasses failure to perform preventive duties (Srikat, 2018/2019, p. 294).

Under Article 119, the legislator requires, for the establishment of the manager's criminal liability for acts of a subordinate, the existence of a subordinate relationship between the manager—as the direct responsible party—and the person who committed the harmful act, who is considered a subordinate to the manager. In this context, for criminal liability to arise for the supervising manager, the harmful act must have emanated from a person subject to that supervision (Boulanouar & Boutas, 2018, p. 288). Consequently, the manager must prove their laxity or dereliction in performing the duty of oversight, which led to the damage resulting from the subordinate's conduct (Al-Darraj, 2013, p. 122).

2. CONCLUSION

Based on the study and analysis conducted, several conclusions have been reached that may contribute to achieving noticeable improvements in this field, including the following:

- The Algerian legislator has established a specific legal framework for the criminal liability of managers of public economic enterprises. This began with defining such liability within the Penal Code, subsequently supplemented by additional regulation through Ordinance No. 01-06, as amended by Ordinance No. 05-10 of 26 August 2010. The latter specifically addresses the prevention and combating of corruption and includes provisions ensuring the accountability of managers for corrupt acts that may occur during the performance of their duties in public economic enterprises. In this way, the legislator strengthens the framework of legal accountability and guarantees the application of principles of transparency and integrity in public administration and the national economy.
- Analysis of this topic reveals that managers are subject to multiple types of legal liabilities, including criminal liability as determined by general laws—due to the linkage of part of the enterprise's funds to public money—and commercial liability imposed by commercial laws to ensure market competitiveness. This plurality of legal regimes may create difficulties in precisely characterizing the committed act, leading to ambiguity in the application of appropriate penalties.
- The criminal liability of legal persons depends on the commission of the criminal act by their representatives or members entrusted with specific tasks within their organizational structure. Legal entities bear criminal liability only if the violating act is committed by a natural person acting on their behalf or under their supervision, rendering criminal liability conditional upon the conduct of individuals exercising authority in their name.
- The criminal liability of the manager is determined for any act contrary to the law that warrants punishment. In certain cases, this liability extends to third parties—i.e., individuals or entities indirectly responsible for the committed act. Thus, the manager may bear legal consequences for acts occurring within the scope of their work or under their supervision, and liability may, under certain circumstances, extend to other parties.

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