

Criminal Liability of the Physician for Intentional Offences

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Abstract:

The Algerian legislator has afforded the human person — and the attendant rights to life and health — an exceptionally high degree of legal protection, criminalizing every form of aggression against these rights and making the imposition of criminal sanctions a necessary consequence of any such violation. Accordingly, this study seeks to examine the criminal liability of physicians in cases where they commit intentional offences, through a systematic analysis of those offences, their constitutive elements, and the penalties prescribed to address and curtail them.

Keywords: physician; intentional offences; criminal sanction; criminal liability.

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Introduction

Medicine ranks among the most noble, humane, and — simultaneously — complex and consequential of human professions, given the bodily injuries it may occasion and the risk of death it sometimes entails. These realities impose upon practitioners an unwavering duty to respect the integrity of the human body under all circumstances and to safeguard the lives and well-being of patients. The obligations incumbent on medical professionals are, above all, ethical in character before they acquire a legal dimension. The inexorable advance of science and the broadening horizons of medical knowledge have eroded patient confidence in the treating physician; and it is precisely through the principles of medical liability that the notion of a physician's absolute professional immunity from error has been dismantled. The absolute authority of the physician is no longer commensurate with contemporary medical developments, and a physician's departure from proper technical conduct and established medical standards will inevitably expose that physician to criminal accountability, whether for intentional or unintentional misconduct.

Medical practice, understood in its broadest sense, has today attracted significant attention across many jurisdictions worldwide, owing to the novel legal questions it raises — all of which converge on the issue of the legal protection of the sanctity of the human body against hazards and violations that may arise from the misuse of modern techniques. This protection rests on upholding the inviolability of the human body and preserving it from commercial transactions, and on affirming the accountability of physicians for their errors. Such accountability cannot be achieved without physicians possessing knowledge of the legal constraints and rules governing their relationship with patients and with the human body. While human thought has long recognized the legal liability of physicians for both intentional and unintentional acts, this liability has never attracted attention comparable to that which it commands today: cases of physician criminal liability have risen markedly in Algeria in recent years. The central question animating this study is therefore: to what extent does a criminal liability regime exist to address the domain of intentional medical offences?

In addressing this question, we examine a selection of the most significant intentional offences committed by practising physicians, namely: breach of medical confidentiality; offences related to narcotics regulation; assisted suicide and euthanasia; bribery; failure to provide medical assistance and emergency care; abortion; falsification of medical reports and certificates; and trafficking in human organs.

I. Breach of Professional Confidentiality

Medical confidentiality — or professional secrecy — refers to the duty of confidence that binds the physician with respect to all information that comes to their knowledge through professional activity. This obligation extends beyond what the patient has directly disclosed; it encompasses all information obtained through modern diagnostic instruments and covers every matter that may affect the patient's honour or reputation. Accordingly, criminal liability attaches to physicians, surgeons, pharmacists, midwives, and all persons entrusted by circumstance, profession, or permanent or temporary function with secrets that have been communicated to them, provided that criminal intent is present. This is governed by Article 36 of Decree No. 12-694¹ relating to the Code of Medical Ethics, and by Article 301 of the Algerian Penal Code. It is worth noting, however, that the second paragraph of Article 301 of the Penal Code exempts all categories mentioned in the first paragraph from punishment when they are called to testify before a court in abortion cases of which they have knowledge. By contrast, reporting the trafficking of human organs and participation in their removal becomes a legal obligation, which falls outside the scope of the offence of breach of professional confidentiality — the balance thus tilting between personal interest and the public good.²

¹Decree No. 12-694 of 07/05/2012, amending the Code of Medical Ethics, Art. 36. Available at: <https://mjustice.dz>

²Shanna Zawawi, "The Obligation to Maintain Medical Confidentiality: Concept, Limits and Sanctions," *Al-Haqiqa Journal*, Ahmed Draia University – Adrar, vol. 18, no. 1 (2019): 412ff. Available at: <https://www.asjp.cerist.dz/en/article/84614>

II. Failure to Provide Medical Assistance and Emergency Care

The principle of humanity requires every person to render assistance in an emergency to save someone whose life is at risk.³ The Algerian legislator has addressed this obligation in Article 182 of Order No. 66/156 comprising the Penal Code, which provides as follows: "A term of imprisonment of three months to five years and a fine of 20,000 to 100,000 DZD, or either of these penalties, shall apply to any person who, being in a position to do so by direct personal intervention and without risk to themselves or others, fails to prevent an act classified as a felony or misdemeanour against the physical integrity of a person, without prejudice to the application of more severe penalties prescribed by special laws." The second paragraph of the same article prescribes the same penalty for any person who deliberately refrains from rendering assistance to a person in danger, where they could have done so by direct personal action or by summoning assistance, and where no risk to themselves or others was involved.

An on-call physician who is absent from their post commits the offence of failure to assist a person in danger if harm results from that absence; and still more so if the physician is present and refuses to provide assistance to the patient. Under Article 9 of the Code of Medical Ethics, an abstention constitutes a fault in particular when either of the following conditions is met: first, where the abstaining physician could have averted a threat to another person without exposing themselves or others to risk; and second, where the assistance was necessary and the harm attributable to the abstention is disproportionate to the burden that assistance would have imposed.⁴

III. Trafficking in Human Organs

The Algerian legislator has set out, in Articles 161 to 167 of the Public Health Act, that organs may not be removed from the human body — and that human tissues and organs may not be extracted or transplanted — except for therapeutic purposes, and that the removal or transplantation of human organs or tissues may not be the subject of any financial transaction. The legislator further established the conditions under which tissues and organs may be removed from deceased persons for transplantation: only after the medical and legal certification of death by a report from the legally designated committee in accordance with scientific criteria determined by the Minister of Health, and following an expression of consent by the deceased prior to death, or — failing that — upon the authorization of a family member in the order of priority prescribed by law. The removal of corneas or kidneys without the aforementioned consent is excepted where it is impossible to contact the deceased's family or legal representatives in time, or where delay in removal would render the organ unsuitable or lead to its deterioration, provided the person had not expressed in writing, prior to death, an objection to such removal. The identity of the recipient and

³Safwan Muhammad Shdifat, *Criminal Liability for Medical Acts*, 1st ed. (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011), 66.

⁴Suleiman Haj Azzam, "The Offence of Failure to Render Assistance to a Person in Danger in the Medical Field," *Al-Ijtihad Journal of Legal and Economic Studies*, Tamanrasset University, vol. 4, no. 1 (2015): 164ff. Available at: <https://asjp.cerist.dz/en/article/8344>

the donor must not be disclosed, and the physician who certified the death is prohibited from performing the removal.

The Algerian legislator has criminalized, in Articles 303 bis 16 to 303 bis 28 of Order No. 66/156 comprising the Penal Code, the removal of human organs from both living and deceased persons in disregard of the applicable legal procedures, as well as the removal of organs for financial consideration even with the consent of the person concerned. Penalties are aggravated for those whose professional position facilitates such conduct.⁵

IV. The Offence of Abortion

It bears noting, at the outset, that abortion may be lawfully performed where it is medically necessary to save the life of the mother from danger, provided it is performed by a physician or surgeon, without concealment, and after notification of the competent administrative authority — in accordance with Article 308 of the Penal Code. Abortion may, however, be performed for criminal purposes. The Algerian legislator, following its customary practice, has not provided a statutory definition of abortion. Accordingly, it is immaterial whether the perpetrator performs the abortion personally or directs another to do so; a causal link between the act of abortion and the expulsion of the foetus from the womb is required. Criminal intent is established when the perpetrator's will is directed toward the act of abortion with knowledge of the pregnancy; the law does not impose criminal liability for an abortion caused negligently.

The Algerian legislator has criminalized the act of abortion in several provisions of the Penal Code. Article 304 provides that any person who aborts a pregnant woman or a woman presumed to be pregnant, whether by administering food, drink, or medications, by employing physical methods or acts, or by any other means — with or without the woman's consent — or who attempts to do so, shall be liable to a term of imprisonment of one to five years and a fine of 20,000 to 100,000 DZD; if the abortion results in death, the penalty is temporary imprisonment of ten to twenty years. Article 306 of the Penal Code likewise criminalizes the acts of physicians, midwives, dental surgeons, and pharmacists who induce, facilitate, or perform abortions, subjecting them to the penalties prescribed by the Penal Code, with the additional possibility of disqualification from professional practice and prohibition of residence as a supplementary penalty.⁶

V. Assisted Suicide and Euthanasia

The Algerian legislator has provided, in Article 273 of Order No. 66/156 comprising the Penal Code,⁷ that: "Any person who intentionally assists another in acts that facilitate or enable suicide, or who provides weapons, poison, or instruments designed for that purpose with knowledge that they will be used for this end, shall be liable to imprisonment of one to five years

⁵Ben Abd El-Motaleb Faisal, "Criminal Liability for Human Organ Trafficking in Algerian Legislation," *Sawt Al-Qanun Journal*, University of Khemis Miliana, vol. 5, no. 1 (2018): 439ff. Available at: <https://asjp.cerist.dz/en/PresentationRevue/268>

⁶Kchida El-Taher, "Criminal Liability of the Physician" (Magister's thesis, Abu Bakr Belkaid University, Tlemcen, 2011), 65. Available at: <https://theses-algerie.com>

⁷Order No. 66/156 of 08/06/1966, comprising the Algerian Penal Code, Official Gazette No. 49, dated 11/06/1966, Art. 273. Available at: <https://mjustice.dz>

if the suicide is carried out." The Algerian legislator thus punishes any person who assists another in committing suicide or who facilitates it by any means, with knowledge thereof, and if the suicide is completed, with imprisonment of one to five years.

As regards euthanasia, if carried out, it constitutes premeditated intentional homicide. Nevertheless, it should be noted that certain criminal justice systems have authorized it, subject to the consent of the victim, as a ground of justification in cases where a terminally ill patient requests that their life be ended.⁸

VI. Medical Offences Related to Narcotics Regulation

The Algerian legislator has provided, in Article 16 of Law No. 04/18 on the Prevention of Narcotics and Psychotropic Substances and the Suppression of Their Illicit Use and Trafficking,⁹ that: "A term of imprisonment of five to fifteen years and a fine of 500,000 to 1,000,000 DZD shall apply to any person who: — intentionally issues a fictitious or preferential prescription containing psychotropic substances." A physician who intentionally issues, on preferential grounds, a prescription containing psychotropic substances therefore incurs criminal liability.

VII. The Offence of Bribery

The Algerian legislator has provided, in Article 25(2) of Law No. 06/01 of 20/02/2006 on the Prevention of and Fight against Corruption,¹⁰ that: "A term of imprisonment of two to ten years and a fine of 200,000 to 1,000,000 DZD shall apply to: any public official who directly or indirectly solicits or accepts an undue advantage — whether for themselves or on behalf of another person or entity — in exchange for performing or refraining from performing an act that falls within their duties." The Algerian legislator accordingly punishes every public official who directly or indirectly solicits or accepts an undue advantage in exchange for performing or refraining from a duty with imprisonment of two to ten years and a fine of 200,000 to 1,000,000 DZD. Physicians, surgeons, and midwives are equally punishable when they solicit, accept, or receive an undue advantage or resort to falsification in that connection, and are subject to the same penalty prescribed for bribery.

VIII. Falsification of Medical Reports and Certificates

The Algerian legislator has provided, in Article 226 of Order No. 66/156 comprising the Penal Code, that any physician, surgeon, dental surgeon, health inspector, or midwife who, in the course of their duties or for the purpose of favouring any person, falsely certifies the existence or concealment of a disease, an infirmity, or a pregnancy, or who provides false information regarding the origin of a disease or infirmity or the cause of death, shall be liable to imprisonment of one to three years — unless the acts constitute a more serious offence. Additional disqualification from

⁸Safwan Muhammad Shdifat, *Criminal Liability for Medical Acts*, 1st ed. (Amman: Dar Al-Thaqafa for Publishing and Distribution, 2011), 56.

⁹Law No. 04/18 on the Prevention of Narcotics and Psychotropic Substances and the Suppression of Their Illicit Use and Trafficking, Art. 16. Available at: [https://www.unodc.org/cld/zh/legislation/dza/...](https://www.unodc.org/cld/zh/legislation/dza/)

¹⁰Law No. 06/01 of 20/02/2006 on the Prevention of and Fight against Corruption, Art. 25(2). Available at: <https://asjp.cerist.dz/en/PresentationRevue/124>

one or more of the rights enumerated in Article 14 of the Penal Code for a period of one to five years may also be imposed.¹¹

Conclusion

The medical profession ranks among the most demanding and arduous of all vocations. It requires not only advanced academic qualifications but, above all, ethical qualities that surpass purely legal requirements, given the nobility of its purpose and the loftiness of its mission.

The following principal conclusions emerge from the foregoing analysis:

- The breach of the ethical and legal principles governing the medical profession is attributable to the scientific advances in medicine, which have widened the gulf between those principles and the pace of medical progress.
- The fragmentation of criminal provisions across both the Public Health Protection Act and the Algerian Penal Code has resulted in the absence of a coherent, self-contained framework of criminal liability for physicians under Algerian law.

In light of these findings, the Algerian legislator is urged to enact dedicated legislation defining the criminal liability of physicians for the intentional offences they may commit.

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¹¹Kchida El-Taher, "Criminal Liability of the Physician" (Magister's thesis, Abu Bakr Belkaid University, Tlemcen, 2011), 78.

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