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Stages of public prosecution within the framework of enshrining the principle of a fair trial

Article History:

Name of Author:

HOGGAS Asma¹, BENDJEDDOU Fatima²

Affiliation:

¹University of Eloued, Algeria

²University of Eloued, Algeria.

Corresponding Author:

HOGGAS Asma

Email- Hoggas-Asma@univ-eloued.dz

How to cite this article:

Asma H and Fatima B, Stages of public prosecution within the framework of enshrining the principle of a fair trial. *J Int Commer Law Technol.* 2025;6(1):200–210.

Received: 17-01-2025

Revised: 16-02-2025

Accepted: 06-03-2025

Published: 20-04-2025

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Abstract: The public lawsuit is considered the essential mechanism through which the state exercises its right to punish. It goes through several procedural stages, starting with investigation and inquiry and ending with trial and adjudication. Fair trial guarantees constitute an essential framework for these stages, as they ensure a balance between protecting society from crime and protecting the rights and freedoms of individuals. The most prominent of these guarantees are the presumption of innocence, the right to defense, the privacy of hearings, the principles of adversarial and oral proceedings, and respect for legality in both its substantive and procedural aspects. Thus, a fair trial is embodied as a fundamental guarantee for achieving criminal justice and enhancing confidence in the judiciary.

Keywords: public prosecution - fair trial - presumption of innocence - criminal justice - protection of rights and freedoms.

INTRODUCTION

When a crime occurs, the state has a fundamental right to punish its perpetrators. However, this right is only exercised within the framework of the judiciary and according to a legally defined process, which is known as the criminal lawsuit. The Algerian legislator, through the Code of Criminal Procedure, has been keen to regulate this lawsuit from the investigation and inquiry stage all the way to trial, to ensure the integrity of the procedures and their freedom from defects, and to achieve a balance between the right of society to protect its security and public order, and the right of the individual to his freedoms and dignity.

Because infringement of individual rights may only occur within the limits required by the public interest, the legislator has established substantive and procedural guarantees for every judicial procedure, whether related to the competent authority, the legal conditions for taking action, or the

persons against whom the proceedings are brought. These guarantees constitute an essential foundation for establishing the principle of a fair trial as the framework for protecting rights and freedoms. Given the multiplicity and complexity of guarantees across the various stages of the lawsuit, we have decided to focus this research on the general and basic guarantees of a fair trial, without expanding into the study of the guarantees specific to each stage individually. This is done in order to highlight the most important pillars upon which this principle is based.

The practical importance of the subject of a fair trial stems from the fact that it addresses procedural and substantive guarantees closely related to human rights, as these are rights recognized in national constitutions and international conventions. From a practical standpoint, examining the reality of the application of these guarantees reveals the existence of some shortcomings that may affect the procedures taken during the course of the case. This raises the

problem of reconciling the legal texts enshrining a fair trial with practical practices that may sometimes tend to restrict these guarantees in the name of protecting the public interest.

From this perspective, the following fundamental question arises: Are the guarantees established by the Algerian legislator at the various stages of public proceedings sufficient to achieve a fair trial that meets the requirements of a rule of law? To answer this question, we adopt the inductive approach based on analyzing the relevant legal texts and extracting shortcomings and ambiguities, which allows for the formation of objective conclusions about the effectiveness of these guarantees.

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Based on the above, this study is divided into two main sections: the first deals with the general guarantees of a fair trial, by addressing the principle of the presumption of innocence, the principle of legality, and the right to defense; while the second section is devoted to studying the guarantees specific to each stage of the criminal case, starting with the investigation and inquiry and reaching the trial stage.

The first topic: The basic guarantees of a fair trial at all stages of the criminal case.

Before addressing the guarantees of a fair trial, it is necessary to define the concept of a fair trial. The term "fair trial" refers to a set of rules and guarantees upon which a judicial case must be based, from the time of the indictment, even before it is brought, until the judgment is issued and executed. The right to a fair trial is linked to the individual's right to have recourse to his natural judge to litigation before him, and also to the right to have access to the standards of a fair trial, during which he is not subjected to any pressure or inhumane treatment.

This principle has been enshrined in all international and regional agreements, as well as in constitutions and domestic legislation. It was included in the Universal Declaration of Human Rights in Article 11, which defined the controls for ensuring a fair trial by stating that the accused is innocent until proven guilty according to law in a public trial in which all necessary guarantees for his defense are guaranteed. As for the International Covenant on Civil and Political Rights, it stipulated this principle, as Article 14 stipulated the guarantees of a fair trial, which came in great detail through the emphasis on equality before the law and the presumption of innocence. It also stressed the necessity of prompt notification and giving the person the right to defend himself, and the right to appeal the sentence issued against him.

It was also emphasized by the European Convention on Human Rights in Articles 6 and 7, which enshrines in this Convention the principle of legality, the presumption of the accused's innocence, the right to a fair, independent and impartial trial, and the right to defense.

The same applies to the American Convention on Human Rights in Articles 8, 9 and 10, which stipulate the basic principles of a fair trial, such as the right to defense, the non-retroactivity of laws and the right to compensation.

As for the African Charter on Human Rights, it also emphasized the importance of a fair trial, as it included in Article 7 its guarantees, such as the principle of legality, the principle of presumption of innocence, the right to litigation, the right to defense, and the acceleration of trial procedures.

As for the Algerian legislator, he also enshrined the principle of a fair trial explicitly in Article 41 of the Constitution, which affirms that every person is presumed innocent until proven otherwise by a judicial authority within the framework of a fair trial in which all guarantees are provided. The Constitution also includes numerous articles that stipulate various guarantees of a fair trial.

The legislator also emphasized this principle in the Code of Criminal Procedure, which is based on the principles of legality, fair trial, and respect for human dignity and rights, and takes into account the presumption of innocence and the right to defense.

Section One: Definition of the principle of presumption of innocence

Criminal jurisprudence agrees that the principle of presumption of innocence places the burden of proof on the public prosecution, and treats the accused as innocent until a final judgment is issued. However, they differ in When a crime occurs, the state has a fundamental right to punish its perpetrators. However, this right is only exercised within the framework of the judiciary and according to a legally defined process, which is known as the criminal lawsuit. The Algerian legislator, through the Code of Criminal Procedure, has been keen to regulate this

lawsuit from the investigation and inquiry stage all the way to trial, to ensure the integrity of the procedures and their freedom from defects, and to achieve a balance between the right of society to protect its security and public order, and the right of the individual to his freedoms and dignity.

Because infringement of individual rights may only occur within the limits required by the public interest, the legislator has established substantive and procedural guarantees for every judicial procedure, whether related to the competent authority, the legal conditions for taking action, or the persons against whom the proceedings are brought. These guarantees constitute an essential foundation for establishing the principle of a fair trial as the framework for protecting rights and freedoms. Given the multiplicity and complexity of guarantees across the various stages of the lawsuit, we have decided to focus this research on the general and basic guarantees of a fair trial, without expanding into the study of the guarantees specific to each stage individually. This is done in order to highlight the most important pillars upon which this principle is based.

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This principle has been enshrined in all international and regional agreements, as well as in constitutions and domestic legislation. It was included in the Universal Declaration of Human Rights in Article 11, which defined the controls for ensuring a fair trial by stating that the accused is innocent until proven guilty according to law in a public trial in which all necessary guarantees for his defense are guaranteed. As for the International Covenant on Civil and Political Rights, it stipulated this principle, as Article 14 stipulated the guarantees of a fair trial, which came in great detail through the emphasis on equality before the law and the presumption of innocence. It also stressed the necessity of prompt notification and giving the person the right to defend himself, and the right to appeal the sentence issued against him.

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Section One: Definition of the principle of presumption of innocence

Criminal jurisprudence agrees that the principle of presumption of innocence places the burden of proof on the public prosecution, and treats the accused as innocent until a final judgment is issued. However, they differ in establishing a unified definition of this principle. We can distinguish between a group of definitions: Professor Muhammad Muhi Awad defined this principle, believing that innocence, in the eyes of the law, has two connotations: one objective and the other personal. The objective connotation means that innocence, as a legal presumption, places the burden of proof on the prosecuting authority. The accused is innocent until proven guilty by law. The personal connotation means that this principle is not only directed at the burden of proof, but also at those in charge of the criminal case, requiring them to treat the accused as innocent, as long as his guilt has not yet been proven by a final judicial ruling. Consequently, this principle limits the accusatory position taken by these bodies by making them favor the idea of error in pardoning error in punishment. This is because the two connotations constitute the legal connotation. For the origin of innocence.

Professor Muhammad Zaki Abu Amer defined the principle of the original innocence by saying: The presumption of innocence means the presumption of the innocence of every individual, regardless of the weight of the evidence or the strength of the doubts surrounding him or surrounding him. He is innocent and thus he should be treated and thus he should be described as long as his responsibility has not been proven by a valid and final ruling issued by the competent judiciary.

Second: The Legal Nature of the Presumption of Innocence.

The presumption of innocence has attained a degree of importance. Jurisprudence has differed regarding the legal nature of the presumption of innocence, although its name primarily indicates this. It is a legal technique based on mere analysis and probabilities. However, there is a difference in jurisprudential opinions regarding whether the presumption of innocence is a simple legal presumption subject to proof of the opposite, or whether it is inherent in the individual, or a legal device.

Most opinions agree that the presumption of innocence has a dual nature. On the one hand, it is a simple presumption, resulting in a set of legal consequences. On the other hand, it is a general principle stipulated in most legislation. It also touches upon the essence of criminal law, which explains its role in protecting individual freedoms from any arbitrariness..

Section two: Results of the presumption of innocence principle.

- Guaranteeing the personal freedom of the accused. The accused is presumed innocent until proven guilty and must be treated as such at all stages of the criminal case, regardless of the seriousness or nature of the crime committed. This guarantees the right to the protection of the accused's personal freedom. The basis of innocence is to confirm the freedom of the accused and thus not to take measures that do not respect his rights and freedoms. Therefore, he is not to be treated except as innocent people are treated, and he enjoys all his rights guaranteed by the constitution and the law within the limits that do not represent an attack on the public interest.

Explaining doubt in favor of the accused.

If we say that the default for a person is innocence, this prompts us to say that the authority, whether the investigative, investigative, or trial authority, must treat the suspect or accused accordingly. They cannot be declared guilty until evidence is presented and the charge against them is proven by a final judicial ruling, leaving no room for doubt.

The presumption of innocence means that the default of the accused is his innocence of the charge against him, and this default remains until his guilt is conclusively and definitively proven. This is because conviction is based only on certainty and conviction, while innocence may be based on doubt. The legal basis for the presumption of innocence is that the accusation is based on a claim contrary to the default, which is innocence. If the accusation is not proven conclusively, the default must be maintained..

The burden of proof lies with the prosecuting authority.

Our saying that the prosecution is the one demanding and charged with proving freedom and assigning it to the accused does not mean that it is a party confronting the accused by hunting down evidence

against him, but rather a neutral party searching for the truth and investigating the means of proving it, whether in favor of the accused or against him.

From what has been said above, we conclude that the presumption of innocence is a fundamental principle inherent in a person that accompanies him throughout the procedures taken against him, and the accusation does not diminish it, regardless of the evidence against him. Through it, the individual freedoms of the accused are protected from any breach or violation. However, this does not mean allowing the perpetrator to escape punishment. Therefore, in order to achieve a fair trial, a balance must be achieved between the legal presumption, which stipulates the innocence of the accused, and the objective presumption represented in protecting the right of society against the crime committed by the accused.

The second landfill : The principle of criminal legality.

Criminal legality, whether substantive or procedural, is the foundation of a fair trial. A fair trial cannot take place without the guarantees and restrictions enshrined in both the constitution and the laws. This principle constitutes the foundation of the criminal justice system.

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Objective legitimacy.

Objective legitimacy requires the existence of legal texts issued by a competent authority to regulate criminalization and punishment policies. This principle makes legislation the sole source of criminalization and punishment. No act or omission is considered a crime unless the law clearly provides for it. A person is not subject to criminal accountability unless they commit a crime and are subject to punishment, as the default principle for acts is permissibility unless there is a text criminalizing and punishing that act. This principle also stipulates that no one may be punished for an act or omission except by a text that specifically states this. No person may be subject to punishment except in accordance with what is stipulated by law. This principle was enshrined by the Algerian legislature in Article 43 of the 2020 Constitution.

Mohamed Mahmassani defined this principle, stating, "It is not permissible to criminalize or punish anyone without a prior legal text." This definition was derived from the legal definition limited to crimes and punishments. Ali Rashid defined this principle in a concise and concise manner, fulfilling the purpose required by legitimacy in all its forms and types. He said, "The meaning of legitimacy, in brief, is to base crimes on considerations of the public interest and respect for individual freedoms." Accordingly, the principle of legitimacy in criminal law means that no act, no matter how serious, is considered a crime unless the law stipulates that such act is a crime and

specifies penalties for it. In other words, the law is the sole source of criminalization and punishment.

Procedural legitimacy.

Procedural legitimacy complements substantive legitimacy. Indeed, without it, a fair trial cannot be achieved, as substantive legitimacy is insufficient to protect individual rights and freedoms.

Although the principle of "no crime, no punishment, and no security measures without a text" aims to limit the control and arbitrariness of the authorities over individuals, this principle alone is not sufficient to mitigate the severity of the pressure on the freedoms contained in substantive texts. Therefore, procedural legitimacy seeks to strike a fair balance between the interests of society, which has the right to punish the offender, and the offender's interest in ensuring their freedom from the arbitrariness of the authorities.

Consequently, procedural legitimacy "is a set of rules that define the procedures necessary to uncover the truth, whether regarding the accused or the crime, and it determines the judicial authorities competent to apply these rules."

Since procedural rules involve infringement on personal freedoms and the rights of individuals, the law alone is what determines these procedures, and it is the only source for them and they are only issued by the legislative authority. In this way, they differ from substantive rules, which, despite their only source being the text, may be issued by the executive authority.

The Right to Defense.

There is no doubt that the right to a defense of the accused is one of the pillars of a fair trial, without which justice is denied. It is a natural human right, and therefore every accused person has the right to defend his freedom against any accusation using all legal means and weapons available to him.

No one disputes that the right to defense is a fundamental pillar of the fairness of criminal proceedings. It undisputedly occupies the pinnacle of guarantees, as it is enshrined in human rights declarations and agreements and enshrined in various constitutions.

Despite the importance of the right to defense as one of the common lists of modern procedural legislation, jurists have differed in defining its concept. Some of them gave it a functional definition: that it is a function that the accused performs once the accusation is directed at him and he uses it himself or through a lawyer. Some of them gave it the character of an obligation, that is, "the accused enjoying a certain legal status in the face of the elements of the accusation places upon him some obligations with regard to the procedures that the investigating authorities undertake towards him."

The second branch: Consequences of the right to defense.

These consequences constitute procedural guarantees for a fair trial and include the following:

- The right to be informed of the charges against him.

This result has been enshrined in various international and regional agreements, including the International Covenant on Civil and Political Rights (Article 14, Paragraph 3), the European Convention on Human Rights (Article 5, Paragraph 2), and the American Convention (Article 8, Paragraph 2). As for the Algerian legislature, it requires the investigating judge to inform the accused of the charge against him when questioning him in his first appearance (Article 100 of the Code of Criminal Procedure 17-06). The same law also stipulates that the judge, during the trial phase, must ensure that the referral order has been delivered to the accused so that he is informed of the charges against him (Article 270). Therefore, the accused's knowledge of the charge against him is a requirement for a fair trial, as it is linked to the validity and enforceability of the proceedings.

The accused has the right to freely present his testimony.

The accused may present any defense he wishes, whether oral or written, and may submit supporting documents. The accused is not restricted in the quantity or type of documents he may submit, as he deems necessary for his defense. This is without prejudice to the accused's right to remain silent and to refuse to speak or answer questions directed at him. As long as the right to remain silent is a right of defense, the court may not infer from this silence any presumption against him. The Code of Criminal Procedure enshrines this right in Article 100.

The right to legal counsel.

The accused's right to legal counsel is a pillar of the right to defense, upon which a fair trial is based. While the right to defense is guaranteed to the accused, he or she may find themselves unable to defend themselves based on legal provisions, the provisions of which may be ignorant of the rights and guarantees they provide. Therefore, one of the most important requirements of the right to defense is for the accused to seek the assistance of a lawyer to undertake the task of defending him or her. This prevents him or her from being convicted and ultimately being held accountable for a crime they may not have committed.

Therefore, it can be said that the right to defense is one of the natural rights enshrined in the individual and one of the most important guarantees of a fair trial. It is an inherent right that occupies a prominent position among general individual rights. It is a right established not only for the benefit of the accused, but also for the benefit of society as whole in achieving a fair equation.

The Second topic: Fair trial guarantees specific to each stage of the criminal case.

In this section, we will address the stages of the criminal case, whether it be the investigation, the investigation, or the trial, and the guarantees surrounding them to ensure a fair trial for the individual. However, in this section, we will discuss the guarantees in general terms without delving into the guarantees for each action taken during these stages, given that a fair trial is a characteristic that accompanies the individual in all actions taken against them and at all stages.

The existence of an investigation phase and its evidentiary value.

The existence of an investigation phase in itself provides a safeguard for the suspect, as the law obliges judicial police officers to immediately move to the crime scene upon receiving information, to inspect and preserve physical evidence, and to document the condition of the premises and persons. To ensure a fair trial, the legislature has designated this phase as merely evidentiary. It is not binding on the judge, as these investigations may be conducted by police officers who lack experience or impartiality and independence.

Recording.

The legislature requires judicial police officers to prepare a report of their actions, including the signatures of the suspect, the victim, witnesses, and experts, if any. These reports are sent to the Public Prosecution along with the seized documents and items to provide the necessary information.

Unlike a judicial investigation, which is attended by a clerk who records everything that occurs, investigative reports are prepared by the police officer himself.

This guarantee aims to preserve evidence and ensure that facts, testimonies, and statements are not forgotten.

Confidentiality.

Confidentiality is a guarantee for the suspect, as publicizing the proceedings could tarnish the individual's reputation and prejudice their criminality. This is because society and public opinion have not yet reached the level of awareness to differentiate between suspects, accused persons, and convicted persons.

The first restaurant: Procedural Fair Trial Guarantees in the Investigation Phase

The legislature has entrusted this stage to judicial police officers, granting them numerous powers, both ordinary and exceptional. They may take a variety of measures against suspects. However, in this section, we have decided to address the most serious and

those most infringing upon individual freedoms, and to outline the trial guarantees established by the legislature.

First: Conducting a pretrial detention.

It is a legal procedure involving deprivation of liberty carried out by a judicial police officer for the purpose of preliminary investigations, or in cases specified by law. Whereby, the suspect is placed at the disposal of judicial police authorities pending the completion of the investigation and collection of evidence. This is done in a specific location and according to specific formalities and for a specific period of time specified by law.

Cases of detention for investigation:

First case: In cases of misdemeanors and felonies in flagrante delicto (Article 51 of the Code of Criminal Procedure).

Second case: In cases of regular investigations (Article 65 of the same law).

Second case: In cases of judicial delegation (Article 141 of the same law).

The dedication to a fair trial for the suspect is evident in the guarantees established by the legislator when taking this measure. This indicates the legislator's keenness to provide the accused with guarantees of a fair trial in all stages of the public lawsuit, including investigations.

1 - Determining the duration of pretrial detention:

The law sets the period at 48 hours, as stipulated in Article 51, paragraph 5 of the Code of Criminal Procedure. Pretrial detention periods may be extended for certain crimes listed in Article 51, paragraph 5.

However, persons for whom there is no strong evidence that they have committed or attempted to commit a crime may only be detained for the period necessary to obtain their statements.

2 - The detention period may not be extended as a rule except upon judicial authorization.

The period of detention for investigation may not exceed 48 hours, except in exceptional cases stipulated in Article 51, which introduces new periods. The period of detention for investigation may be extended with written permission from the competent public prosecutor.

- Once when it concerns crimes involving the use of data processing systems.
- Twice when it concerns attacks on state security.
- Three times when it concerns crimes related to drug trafficking, transnational organized crime, money laundering, and crimes related to foreign exchange legislation.
- Five times when it concerns crimes described as terrorist or subversive acts.

3 - The suspect's right to contact his family or his lawyer.

The legislator has permitted the suspect to contact the outside world, but has given the suspect the choice between contacting his family or his lawyer. The suspect must be provided with all means at his disposal to enable such contact, while ensuring the confidentiality and proper conduct of investigations. If he is a foreigner, the police officer must have at his disposal every means that will enable him to immediately contact his employer or the diplomatic or consular representative.

4 - Respecting the suspect's physical integrity.

This means that the officer shall not use illegal means to obtain a confession from the suspect, as follows:

A - Regulating the periods for hearing the detainee's statements.

The judicial police officer must hear the detainee's statements and prepare a detention report specifying the reasons and duration of the arrest, the day and time of its commencement, and the date on which the detainee is to be released for investigation or presented to the competent authority, such as the public prosecutor or the investigating judge, as they are the ones authorized to present the detainee. The detainee must then sign the report, and if the detainee refuses, the officer must indicate this in the report.

B - Medical supervision of the detainee under investigation.

Upon the expiration of the detention period, the legislator, in Article 51 bis, requires the suspect to undergo a medical examination. This should be done at the request of the suspect, his family, or his lawyer. This procedure is a basic guarantee for the protection of individual freedom, represented by physical safety. However, in order to further activate this guarantee, the legislator had to order this procedure before detention for investigation as well, just as he ordered for juveniles.

Second: Search.

A judicial police officer may, in the event of a felony or misdemeanor being committed in flagrante delicto, search homes in accordance with Article 44 of the Code of Criminal Procedure. This applies to the homes of persons who have participated in a felony or misdemeanor or who possess papers or items related to the crime.

Since conducting a search is one of the most serious powers of a judicial police officer, as it violates the privacy of individuals, the legislature has regulated it in a very precise manner. Accordingly, a police officer may only conduct a search with written permission from the public prosecutor, which must be presented

before entering a home, in accordance with Article 44, as stipulated by law. Officers must adhere to the time of the search, as it may not begin before five o'clock in the morning or continue after eight o'clock in the evening, except as provided for in Article 47 of the Criminal Procedure Code, which specifies crimes of a serious nature, where the legal time may be ignored. Judicial police officers must not conduct the search except in the presence of the owner of the residence or someone he appoints to represent him. If this is not possible, he shall call upon two witnesses who are not subject to his authority, with the exception of the case provided for in Article 47 bis. .

Third: Adopting special investigation methods.

The Algerian legislator has strengthened the powers of judicial police by establishing new methods and mechanisms for investigating certain crimes, specifically those under the supervision and oversight of the judicial authority, to gather evidence and identify perpetrators, without the knowledge or consent of the persons concerned. These procedures include:

1. Intercepting correspondence, recording voices, and taking photographs:

If the facts presented relate to one of the specific crimes, such as drug crimes, crimes against data processing systems, money laundering and terrorism crimes, crimes related to exchange legislation, and corruption crimes, as stipulated and punishable by Law No. 06/01 of February 20, 2006, on the prevention and fight against corruption, then, pursuant to Articles 65 bis 5 to 10 bis of the Criminal Procedure Code, the Public Prosecutor may entrust a judicial police officer, with written authorization and under his direct supervision, to intercept correspondence conducted via wired and wireless communication means, primarily by telephone tapping, and to establish arrangements. Without the consent of the concerned parties, in order to broadcast and record the speech spoken privately or secretly by any person in any public or private place, and to take pictures of each person or several persons present in a public or private place, and in order to make technical arrangements, the authorized judicial police office.

The second requirement: guarantees of a fair trial during the judicial investigation stage.

The judicial investigation stage is one of the most important stages of the criminal case, and its importance is evident in its being a preparatory stage for the trial. The investigating judge has the authority to take all the measures he deems appropriate to uncover the truth. However, this goal should not be used as an excuse to infringe upon the rights and freedoms of the individual. Rather, it must be within limits to ensure a fair trial. In this element, we will discuss the guarantees in general without delving

into the guarantees of each measure taken at this stage, given that a fair trial is a characteristic that accompanies the individual in all the measures taken against him.

Section One: General Guarantees for the Judicial Investigation Stage.

First: Separating the investigative function from the accusation and trial.

This is considered one of the guarantees of a fair trial, as the separation of functions in criminal proceedings is based on the same philosophy underlying the principle of separation of powers, namely the fragmentation of authority and its distribution among more than one independent body to prevent abuse of power. Therefore, it is no less important than the independence of the judiciary, which is also one of the greatest guarantees of a fair trial. This principle is enshrined in the Constitution, as stated in Article 163 of the Constitutional Amendment.

1- Separation of the functions of accusation and investigation.

This means not combining these two functions in a single body, but rather granting each an independent authority. Consequently, any role for the prosecution authority within the investigation authority, as well as any role for the latter within the prosecution authority, is rejected. Based on this, the Public Prosecution, as the prosecution authority, may not undertake the tasks of accusation and investigation simultaneously, even in a single criminal case.

2- Separation of the powers of investigation and adjudication.

The investigation is separate from the trial in terms of time and substance. The investigation precedes the trial stage and includes the search for evidence, not its assessment. This principle requires the separation of the powers of investigation and adjudication, as the judge may not exercise the functions of investigation and adjudication in the case.

The separation of investigation and adjudication is a necessary guarantee of the impartiality of the judge, whether the trial judge or the investigating judge. The latter forms his understanding of the case through his deliberations, while the judge adjudicating the case must derive his information from the investigations he conducted during the trial, in accordance with its legal rules and guarantees, without preconceived notions.

Second: Confidentiality of the investigation.

The judicial investigation phase aims to ascertain the truth, whether the accused is acquitted or convicted. Since this phase requires searching for and examining evidence, confidentiality is a necessary measure to achieve the goals of the investigation.

Confidentiality means not allowing the public to attend the proceedings, and prohibiting the dissemination of the minutes, their results, and related orders. The purpose of this is to enable the judge to conduct proceedings without the influence of the public or those with an interest or influence. This is to ensure they proceed within a sound legal framework that guarantees a fair trial for the accused. However, to prevent the spread of incomplete or inaccurate information, the public may be informed of objective elements derived from the proceedings.

1- Public Prosecution.

With reference to the Code of Criminal Procedure, we find that the legislator did not stipulate that the Public Prosecutor must be present at all investigation procedures (with the exception of searching the residence of a person accused of a felony), but he did allow him to review the investigation file, and he also allowed him to attend the interrogation of the accused, confront them, and hear the statements of the civil plaintiff (Articles 69, 82, and 106 of the Code of Criminal Procedure).

2- The opponents in the case.

Referring to the Code of Criminal Procedure, we find that the legislator has stipulated that opponents be informed of the investigation procedures. Accordingly, the confidentiality of the investigation constitutes an exception for them. The principle of publicity appears in the interrogation procedure (Articles 100, 102, 105), the seizure procedure when opening evidence (Article 84), the expertise and the obligation to inform opponents of its results (Article 154), and the notification of judicial orders (Article 168).

Section Two: Fair Trial Guarantees Specific to Judicial Investigation Procedures.

First: Dismissal of the Investigating Judge

This right is one of the greatest guarantees of a fair trial for the accused. By granting the legislature the possibility of dismissing the investigating judge, it is evidence of the establishment of a fair trial. Since the latter aims to achieve justice within a legal framework, this can only be achieved if impartiality and independence are essential qualities of the investigating judge.

Accordingly, the investigation file may be withdrawn from the investigating judge in two cases:

1. Dismissal at the request of the Public Prosecutor, the accused, or the civil party.

Article 71 of the Code of Criminal Procedure stipulates this case, as the legislature authorizes the Public Prosecutor, the accused, and the civil party, with the aim of preserving the integrity of justice, to submit a request.

to remove the file from the investigating judge in favor of another investigating judge. The request for disqualification is submitted in a reasoned petition to the Indictment Chamber and communicated to the relevant judge, who may submit written comments. The President of the Indictment Chamber issues a decision within 30 days from the filing date, after consulting the Public Prosecutor. This decision is non-appealable (Article 71 of the Code of Criminal Procedure).

2- Disqualification by decision of the Indictment Chamber.

In this case, the Indictment Chamber rules that some judicial investigation procedures are invalid. After invalidating the procedure, the Chamber may address the matter and refer the case to another judge, if it does not refer it to the same judge (Article 191 of the Code of Criminal Procedure).

Second: Expeditious procedures.

One of the guarantees of a fair trial is the speedy completion of the investigation and the lack of delays. The investigative judge's promptness is reflected in concluding the procedures before him in the shortest possible time. This appears to be a greater guarantee for the accused when he is remanded in custody. The faster the judge completes the investigation, the shorter his detention period will be if the investigations reveal his innocence.

In addition, speedy completion leads to the preservation of evidence from disappearance and thus helps uncover the truth.

The legislature has emphasized the need for expedited procedures. Article 112 stipulates that the accused must be interrogated promptly before arrest. This speed is also evident in the requirement that police officers provide the accused with the report of the commission within eight days (Article 141). The legislature also requires the investigating judge, upon completion of the investigation, to send the file to the public prosecutor within ten days (Article 162).

Despite the legislature's emphasis on speedy procedures, this does not mean that they should be at the expense of the accused's rights and defense. Rather, they must be conducted in a manner that ensures the accused receives a fair trial.

Third: Recording the Investigation. Judicial investigations are characterized by being a judicial act characterized by the characteristic of documentation. Although the Algerian legislator did not explicitly stipulate the principle of documentation of investigations, this principle is evident from the provisions of Articles 68, 79, 80, 94, 95, and 108 of the Code of Criminal Procedure.

Investigation procedures and the orders issued in this regard must be documented in writing, as they constitute a valid basis for the conclusions upon which they are based. Documentation is a means of proving the occurrence of the procedure, the

circumstances under which it was undertaken, and its resulting effect.

Procedures may be recorded in a single report or in multiple reports. All reports in which the investigator records the procedures he has taken are considered part of the criminal case and are deemed valid if they meet the conditions required by law. Among these conditions is that the investigation procedures be recorded by a public employee called the "conductor."

Third Requirement: Guarantees of a Fair Trial During the Trial Phase.

Referral to court is one of the most important stages in public litigation, as the case moves from one phase to another, i.e., from the accusation and investigation phase to the trial phase. During this phase, the accused's position regarding the charge or charges against him is determined. The judge decides the case, either acquitting or convicting him based on independent conviction. Therefore, given the importance of this phase, the legislature has allocated a set of guarantees to it to ensure the rule of a fair trial.

First Section: Public Trial.

Publicity means that trial proceedings are conducted in the presence of the public, in addition to the presence of the parties. Therefore, unlike investigations, its scope extends beyond the parties to all those who wish to attend its proceedings, with the exception of deliberations and judgment.

While the principle of public trial is that trials are held in public, the legislature has deviated from this principle and granted the court the authority to hold its sessions in camera in two cases: to maintain public order and to preserve public morals. The decision to hold trial sessions in camera must be reasoned, as it tends to deviate from the principle.

Section Two: The Principle of Orality.

This principle means that trial proceedings are conducted orally, i.e., within the sight and hearing of the court, the attendees, and the parties.

The court must hear the defendant's statements, the testimonies of witnesses or experts, and the claims, defenses, and pleadings.

The principle of orality achieves more than one benefit. It allows for the benefit of the principle of publicity, and through it, the principle of adversarial standing is achieved. It is on this basis that the court's doctrine is formed. Therefore, the court must follow all oral trial procedures to gain a general understanding of all parties to the case, their circumstances, and their evidence. Its doctrine is based on sound factual foundations, which leads to a fair trial.

Section Three: The Principle of Intimacy.

By the principle of intimacy, we mean the necessity of the parties and adversaries being present before the judge at all stages of the final investigation.

This principle stems from the core of the accusatory system, which is fundamentally based on the exchange of arguments and evidence between the parties and their discussion during the session. This is the basis upon which the judge bases his ruling, in accordance with Article 212 of the Criminal Procedure Code.

Accordingly, the rule of the accused's presence during trial is an inevitable consequence of the adversarial nature of criminal trials.

The Code of Criminal Procedure emphasizes the mandatory presence of the accused in criminal, misdemeanor, or contravention court proceedings, as set forth in Articles 212, 292, 294, 345, and 350 of the Code of Criminal Procedure.

CONCLUSION

From the above, it can be said that a fair trial is a principle that works to achieve a balance between individual rights and freedoms and the public interest, by subjecting criminal proceedings, at all stages, to rules that preserve this balance. However, for this principle to be established, guarantees surrounding the individual are required at all stages of the criminal case. Through this study, we have concluded that:

- Legitimacy, both substantive and procedural, and the presumption of innocence are the fundamental pillars of a fair trial.
- The right to defense is considered one of the fundamental guarantees of a fair trial, as it results in a positive effect that reinforces and supports this principle.
- The principle of a fair trial accompanies both the investigation and judicial inquiry stages and the measures taken therein to achieve a balance between the interests of the individual and society.
- The public nature of the trial is one of the essential guarantees for establishing a fair trial, as it serves as a means of monitoring the fairness and integrity of judicial proceedings.

The principle of orality is an important guarantee of a fair trial, as it allows the accused to familiarize themselves with the evidence presented against them and effectively present their defense.

The principle of adversarial standing establishes a fair trial because it emphasizes legitimacy and equality among citizens before the judiciary.

Therefore, it can be said that despite some shortcomings and loopholes in the legislative texts, the legislature has established a fair trial by encompassing each stage of the criminal case with a set of safeguards that ensure the protection of freedoms by obligating those involved in each stage

to operate within a legal framework that achieves a balance between the various interests of the parties and the public interest. However, this is not without some violations, especially in practice.

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