

## Commitment to Maintain Professional Secrecy in the Algerian Functional Legislation

التزام التحفظ بالسري المني في التشريع الوظيفي الجزائري

Laouadi Rahma PhD student \*

University of Abbés Laghrour - Khenchela

Egal, Political and sharia research laborator

laouadi.rahma@univ-khenchela.dz

Pr. Sofiane Archouche

University of Abbés Laghrour – Khenchela

Egal, Political and sharia research laborator

sof.archo@yahoo.fr

The date of Submission: 2024-05-31

The date of acceptance: 2024-06-04

### Abstract:

Professional secrecy is a moral and legal obligation that applies to all public employees who, due to their profession, have access to confidential information that is not public knowledge. Employees are not allowed to share any personal or work-related information or writings with others, regardless of the nature of that information or the employee's knowledge of it. If it is not necessary for the service and does not comply with the Basic Law of the Public Service 06-03.

This duty is encompassed by unique safeguards and regulations. Considering that confidential information is regarded as an integral component of the public framework, any revelation of such information by an employee will lead to their prosecution by the administration. This will entail disciplinary consequences, necessitating their accountability before the judicial authorities for consultation with the disciplinary committee, and the imposition of criminal sanctions by the competent judicial authorities.

**Key words:** Functional secrecy, public officials, confidentiality, disciplinary liability, criminal punishment...

### الملخص:

يعد السر المني واجبا أخلاقي وقانوني يقع على عاتق كل موظف عام يحيط بحكم مهنته على أسرار وبواطن لا يمكن معرفتها لولا وظيفته ومنصبه. لا يجوز إفشاء أي كتابات أو معلومات يعرفها الموظف شخصياً أو حصل عليها أثناء أداء واجباته للآخرين، مهما كانت طبيعة تلك الأسرار. ما لم يكن ذلك ضروريا للخدمة ووفقا للقانون الأساسي للتوظيف العامة 03-06، فإن هذا الالتزام محاط بحماية خاصة وقواعد خاصة، ومع مراعاة أن الأسرار المهنية تعتبر جزءا من النظام العام، فإن إفشاء الموظف لهذه الأسرار يترتب عليه في ملاحقته من قبل إدارته، وفرض المسؤولية التأديبية عليه، وإلزامه بمحاسبته أمام الجهات القضائية للتشاور مع اللجنة التأديبية، وتوقيع العقوبات الجنائية عليه من قبل الجهات القضائية المختصة.

الكلمات المفتاحية: السرية المهنية، الموظفون العموميون، السر، المسؤولية التأديبية، العقوبة الجنائية...

\* Laouadi Rahma, laouadi.rahma@univ-khenchela.dz

## Introduction:

Professional confidentiality is a crucial subject that has garnered significant focus from legal experts, lawmakers, and courts, primarily because of its implications on the political, social, and economic welfare of the nation, as well as on the rights of individuals. It represents a key responsibility placed on employees, reflecting a growing emphasis on ethics and knowledge. This is especially pertinent in legal contexts concerning individuals overall and employees in particular.

Employees are bound by professional secrecy due to the nature of their role or profession, granting them access to sensitive information or documents concerning the confidentiality of the organization and the privacy of individuals. It is their responsibility to safeguard this information and prevent its disclosure, as doing so could disrupt public order and jeopardize the interests of individuals. This obligation is both a moral and legal duty, demonstrating the employee's loyalty to their employer and commitment to serving their country.

It is mandated in all functional laws, including the Basic Law for the Public Service No.06-03. Due to the gravity of this requirement, specific guarantees and regulations were put in place by the legislator. Any breach of this duty can result in disciplinary actions by the relevant administrative body against the public servant. Furthermore, the individual may face criminal consequences as per the Penal Code. This is what we will try to explore in this research rising the following problematic:

How did the Algerian legislator regulate the crime of disclosing professional secrets?

### The importance of the study:

The significance of the subject matter is exemplified by emphasizing the societal concerns associated with governance, as well as the personal concerns linked to individuals, necessitating the preservation of confidentiality. Furthermore, it underscores the need to enhance legal consciousness regarding the risks involved in divulging such obligations.

### Methodology:

To effectively address the topic and achieve the desired research goals, the most productive approach employed was the descriptive analytical approach. This approach was chosen due to its alignment with the nature of the topic and its ability to tackle the problem at hand.

### Aims of the study:

The study aims to achieve the following objectives:

1. To define the concept of professional secret.
2. To highlight the legal basis for the employee's obligation to maintain confidentiality of professional secrets under Law 06-03.
3. To identify the mechanisms established by the legislator to combat the crime of disclosing professional secrets, which is now considered an independent punishable offense.

In order to address the problematic at hand and accomplish these objectives, we have structured our research plan as follows:

**Section 1:** The legal framework surrounding professional secrecy.

**Section 2:** The disciplinary and criminal penalties resulting from an employee's breach of professional secrets.

## Section One: The legal provisions governing professional secrecy

The intimate relationship between ethical principles and professional secrets, coupled with their legal implications, underscores their direct impact on an individual's private life.<sup>(1)</sup> Hence, it becomes crucial for individuals entrusted with professional secrets to recognize their general obligation to preserve confidentiality. This obligation serves to protect public interests and necessitates a comprehensive understanding of what constitutes a professional secret that should not be divulged. In light of this, I explore the definition of professional secrets and subsequently delve into the legal framework that mandates employees' adherence to non-disclosure, as stipulated in Law No.06-03.

### 1. Definition of professional secret:

The secret, linguistically, refers to the information that an individual keeps hidden and does not share with others. It encompasses the personal thoughts, feelings, and actions that are intentionally kept private from the public eye. A secret is essentially something that is deliberately concealed and not disclosed to anyone else.<sup>(2)</sup>

In Cambridge Dictionary, it's defined as a piece of information that is only known by one person or a few people and should not be told to others.<sup>(3)</sup>

In terms of terminology, it is evident that the legislation which mandated the adherence to professional secrecy failed to provide a clear definition of its essence. This lack of clarity can be attributed to either variations in legal standards or the inherent complexity of the offense itself. Consequently, numerous interpretations have emerged within the field of jurisprudence, leading to a multitude of divergent definitions.

Notably, French jurisprudence has made significant efforts to establish a comprehensive understanding of professional secrecy, defining it as the preservation of confidentiality for any information entrusted to a professional.<sup>(4)</sup> This definition emphasizes the importance of maintaining the privacy and confidentiality of sensitive matters that are disclosed to professionals in their respective fields, so confidentiality is particularly important when the revelation of intimate and sensitive information has the potential to harm the individual.<sup>(5)</sup>

The definition presented appears to be flawed due to its narrow scope, restricting the concept of professional secrecy to information specifically requested by a client and entrusted to a professional. This definition emphasizes the importance of confidentiality and the professional's responsibility to safeguard such information. However, it fails to encompass the broader scope of professional secrecy, which includes any type of content, document, or news that a professional may come across or have access to while performing their duties.

In Egyptian jurisprudence, the determination of professional secrecy relies on an objective criterion of its reach and the number of individuals affected. The extent to which the public

(1)- Samuel Nzakomeza, Lawyers' Professional Secrecy and Justice, *East African Journal of Science and Technology*, vol.8, issue 1, 2018.

(2)- Khalfa Samir, The Criminal Liability of the Lawyer for Disclosing Professional Secrets, *Algerian Journal of Legal and Political Sciences*, volume 60, issue 2, University of Algiers 1, 2023, p.102.

(3)- Secret Definition, on: <https://dictionary.cambridge.org/dictionary/english/secret>, last access 2024.

(4)- Hala Sayel Ahd Ghanem, *Civil Liability Resulting from Disclosing Professional Secrets: A Comparative Study*, Master's Thesis, Faculty of Graduate Studies, En-Nadjah National University, 2018, p.13.

(5)- Laurie A. Badzek et al., Administrative Ethics and Confidentiality/Privacy Issues, *Online Journal of Issues in Nursing*, vol 3, no.3, 1998.

interest is confined is directly linked to the scope of professional secrecy as defined by Egyptian law.<sup>(1)</sup>

The definition highlights the importance of knowledge of an incident as a key factor in assessing its confidentiality. Along with this, the presence of an interest in maintaining the confidentiality of the incident and refraining from sharing it with others is also crucial. Therefore, any information that is known to others, regardless of the owner's lack of interest in keeping it confidential, may still be subject to confidentiality considerations. In such cases, the professional may not be held accountable if the information is disclosed.

Conversely, an alternative perspective from Egyptian jurisprudence characterizes secrecy as the entitlement of an individual to uphold their privacy in all aspects, be it material or moral, or in connection to their liberties, as long as it aligns with the norms and traditions of society, as well as the evolving legal framework within the community. This definition also draws upon the principles of Islamic law<sup>(2)</sup> to further elucidate the concept of secrecy and its significance in safeguarding an individual's rights and freedoms.

The definition provided highlights the association between private life and secrecy, emphasizing that certain information or events possess a secretive quality that necessitates accountability if revealed. However, it is crucial to recognize that this secrecy does not necessarily pertain to an individual's private life. Secretiveness encompasses a wider scope and is more all-encompassing than the concept of private life, despite their proximity. Furthermore, the essence of secrecy lies in its confidentiality, contrasting with the notion of personal privacy, which can persist even in the absence of secrecy.

In a similar vein, a secret can be defined as something that pertains to an individual's personal life and has a profound impact on their sensitive emotional sphere, to the extent that its revelation would result in significant harm.<sup>(3)</sup>

This definition highlights the fact that secrets primarily pertain to natural persons rather than legal entities,<sup>(4)</sup> although the latter can also be subject to secrets, such as governmental bodies and administrative organizations. Furthermore, it is important to note that secrets are not solely limited to information or facts that cause harm or affect one's emotions, as they can encompass any matter that is of concern to its owner and is deemed as something that should not be disclosed.

The term can also be described as: "A characteristic ascribed to a role, position, information, or activity, which establishes a link between this role, position, or information, in relation to the individual who has the entitlement to be informed about it, and in relation to the individual who is obligated to act upon its dissemination."<sup>(5)</sup>

It is important to highlight that the definition places emphasis on two key characteristics. The initial characteristic encompasses all confidential information related to a profession, whereas the second characteristic is centered on the legal and technical aspects of confidential

(1)- Hala Sayel Ahd Ghanem, *ibid.*, p.12.

(2)- Muhammad Amin & Muhammad Saeed Shafiq, Importance of Secrecy (Keeping Things Secret) in Islam: A Research Review, *Fahm-i-Islam*, vol. 1, issue 2, 2018.

(3)- Abdelli Hamza, *Criminal Liability for Disclosing Public Service Secrets*, PhD thesis, University of Algiers, 2019-2020, p.73.

(4)- Johann Claudius Knobel, *The Right to the Trade Secret*, PhD thesis, University of South Africa, 1996, p.7.

(5)- Adel Habri Mohammed Habib, *The Extent of Civil Liability for Breach of Commitment to Professional or Employment Secrecy*, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2023, p.17.

data or information. Nevertheless, the primary focus is on the legal aspects, particularly in terms of defining what constitutes a confidential fact.

A functional secret can also be described as a concept that instills fear if disclosed to others, resulting in potential harm or loss of a lawful interest.<sup>(1)</sup>

This definition primarily revolves around safeguarding administrative interests and attaining optimal performance through the public institution's effective execution of its duties. The administration possesses the power to withhold any event that it perceives as detrimental to these interests, as information pertaining to the job is regarded as internal affairs that necessitate preservation and non-disclosure by the employee, regardless of personal interest.

Conversely, an alternative perspective from French jurisprudence characterizes a secret as information that necessitates concealment, regardless of whether its exposure would cause harm to one's reputation or dignity. This definition suggests that the content being kept hidden is not inherently shameful or offensive, but rather may even be considered commendable by the individual seeking to keep it confidential.<sup>(2)</sup>

I concur with this viewpoint, as it encompasses the notion that professional secrecy encompasses all professional information, regardless of whether its disclosure may harm the reputation and dignity of the owner or highlight their commendable qualities. From this perspective, it becomes evident, based on the aforementioned definitions, that certain conditions must be fulfilled for information to be regarded as a professional secret:

The employee must acquire the information through their profession or the position they hold.

The disclosure of both material and moral professional secrets by the employee to the owner is essential.

The information should not be made public to everyone, while also acknowledging the underlying significance of this secrecy for the owner of the secret.<sup>(3)</sup>

## **2. The legal foundation of the employee's commitment to not disclose professional secrets under Law 06-03:**

Engaging in a public service provides the employee with the opportunity to gain insights and confidential information while carrying out their duties. It is crucial for the employee to exercise caution in safeguarding this information, whether within the workplace or outside of it, and to refrain from mishandling any job-related documents. Consequently, the employee should refrain from disclosing any information acquired through their professional role and should avoid engaging in any activities such as documenting, destroying, or stealing files unless absolutely necessary.

In line with the aforementioned, it will also inform about the situation of reporting in a sincere manner under the condition that it portrays the employee in a positive light, regardless of prior knowledge.<sup>(1)</sup>

(1)- Ahmed Ali Kacem Charhan Soudani, The Employee's Duty to Conceal Functional Secrets: A Comparative Study, *journal of the College of Law for Legal and Political Sciences*, volume 10, issue 38, University of Kirkuk, Iraq, 2021, p.134.

(2)- Hala Sayel Ahd Ghanem, Op.Cit., p.14.

(3)- Wissem Belkhir, Chastisement of an Employee for the Error of Disclosing Professional Secrets in the Algerian Public Service Law, *El-Wahat Journal for Research and Studies*, volume 14, issue 1, Ghardaia University, 2021, pp.984,985.

Conversely, it is forbidden to conceal, obliterate, misappropriate, or transfer service records for the advantage of others. This responsibility was instituted in Article 48 of Order 06-03, mandating public servants to uphold professional confidentiality by refraining from disclosing any data, paperwork, or updates they come across while executing their designated tasks. The lawmaker has exempted urgent situations or the possession of a permit issued by a competent authority<sup>(2)</sup> allowing the disclosure of work-related secrets from the obligation of professional secrecy.

The obligation to safeguard professional confidentiality also encompasses an additional responsibility concerning the prevention of hiding administrative records. Any individual found guilty of such actions is subject to stringent disciplinary measures, akin to criminal prosecution, as outlined in Article 49/2.<sup>(3)</sup>

According to the aforementioned, it is impossible to avoid the obligation of maintaining professional confidentiality, which is regarded as the fundamental principle, unless specified otherwise by law or regulation and with written authorization from the relevant authority. It should be noted that this obligation does not terminate upon leaving the position, as the employee remains bound to non-disclosure indefinitely, particularly in matters concerning the security and welfare of the state.<sup>(4)</sup>

At a practical level, it is evident that Order No.06-03 is consistent with previous legislation regarding professional secrets. Unlike Law No.78-12, which explicitly outlined its provisions, Order No.06-03 does not deviate from the principles established in Order No.66-133<sup>(5)</sup> and Decree No.85-59.<sup>(6)</sup> Article 37<sup>(7)</sup> of the law emphasizes the importance of maintaining confidentiality in departmental documents and professional information, as well as defining the scope of third parties who should not be privy to such sensitive information (natural and legal persons not expressly concerned under the law, regulations or peaceful system).

In my perspective, I advocate for the idea that the lawmaker should reassess the content of Article 48 in Order No.06-03 to precisely identify the details, occurrences, and data that are covered by professional secrecy.<sup>(8)</sup>

Additionally, Article 8 in Order No.21-09 addresses the safeguarding of information and official papers, prohibiting the transmission or dissemination of correspondence from the competent authorities to third parties without their consent, unless specified otherwise in a regulation.

As previously stated, it is mandatory for public employees to refrain from revealing or sharing the details and documents of inquiries and legal investigations, or passing them on to

(1)- Said Mokaddem, *The Public Service between Adaptation and Transformation from the Perspective of Human Resources Management and Professional Ethics*, Office of University Press, Ben Aknoun, Algeria, 2010, p.310.

(2)- Article 48 of Order 06-03 issued on July 15<sup>th</sup>, 2006 related to *the General Basic Law for Public Service*.

(3)- Article 48 of Order 06-03.

(4)- Guerrouf Djamel, *Public Service in Algerian Legislation*, Dar El-Houda for Printing, Publishing and Distribution, Ain Melila, Algeria, 2022, p.131.

(5)- Order No.66-133 of June 2<sup>nd</sup>, 1966, related to *the general basic law for public service*.

(6)- Decree No.85-59 related to *the model basic law for workers in public institutions and administrations*.

(7)- Article 37 of Law No.78-14 issued on August 5<sup>th</sup>, 1978, which includes *the general basic law for the worker*.

(8)- Boutabba Mourad, *The Employee System in Algerian Law - an analytical study in light of Order No.06-03 and the special laws supported by the provisions of the administrative judiciary* -, Dar Houma, Algeria, 2018, p.397.

individuals in positions of authority unless mandated by law, as outlined in Article 10 of the aforementioned regulation.

Additionally, Article 11 of the same regulation emphasizes the importance of prohibiting employees from disseminating any reproductions or visuals or sharing them with others, irrespective of the means employed, as part of their professional duties.<sup>(1)</sup>

It is important to emphasize that in the event a public employee comes into possession of a classified document that they are not authorized to have, they are required to surrender it to the appropriate authorities while maintaining professional secrecy by not revealing its contents.

The Algerian legislator has also acknowledged, as stated in Article 15 of Order 21-09, that public employees are forbidden from engaging in or reproducing any actions involving the copying or removal of classified documents pertaining to their professional activities, unless it is necessary for the interest or nature of their work.

Additionally, Article 16 of the same order prohibits employees from sharing or revealing information or the contents of any document they have come across during their professional duties, including ongoing issues within their employing institution, unless it falls within the permitted circumstances.<sup>(2)</sup>

The duty of a public employee to keep confidential information obtained through their role or while acting on behalf of the state extends to other administrative departments that do not have access to such information. Failure to uphold this duty may result in disciplinary action by the employee's organization, as outlined in Article 180 of Order 06-03. This includes instances where disclosure is attempted, regardless of whether it is successful.<sup>(3)</sup>

In addition to highlighting the potential criminal charges he may face, it is important to acknowledge the legal consequences outlined in Article 160 of the same regulation. This article states that any neglect of professional responsibilities, breach of discipline, or mistakes committed by an employee while carrying out their duties will be considered a professional error. As a result, the individual responsible will be subject to disciplinary action, without disregarding the possibility of facing criminal prosecution if deemed necessary.<sup>(4)</sup>

In light of the information provided in the aforementioned articles, it is clear that the potential threat of an employee divulging confidential information is linked to the fulfillment of two primary objectives:

The initial objective: is to foster a culture of trust among subordinates and offer them psychological reassurance.

The secondary objective: is to shield the organization from the negative impact of nepotism, which can impede the effective execution of its duties with honesty and openness.<sup>(5)</sup>

(1)- Article 8,10,11 of Order No.21-09 of June 8<sup>th</sup>, 2021 concerns *the protection of administrative information and documents*.

(2)- Article 15, 16 of Order No.21-09 of June 8<sup>th</sup>, 2021 concerns *the protection of administrative information and documents*.

(3)- Article 180 of Order 06-03 of July 15<sup>th</sup>, 2006, Op. Cit.

(4)- Article 160 of Order 06-03 of July 15<sup>th</sup>, 2006, Op. Cit.

(5)- Hachmi Kherfi, *The Public Service in Light of Algerian Legislation and Some Foreign Experiences*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2010, p.289.

## Section Two: Disciplinary and criminal penalties resulting from an employee's disclosure of professional secrets

Enforcing disciplinary action against an employee who reveals confidential information is seen as a demonstration of the authority vested in the employer, who has the power to mete out penalties to staff members for violating their obligation to keep professional secrets. This action must be carried out in compliance with legal requirements, especially if the employee's position was obtained in accordance with the law. The disciplinary measures should serve as a deterrent, unless there are specific circumstances outlined by the legislator that permit disclosure of the information. Subsequently, we will delve into the disciplinary measures that can be taken against an employee who discloses confidential information, followed by the punitive actions that can be imposed on the employee for breaching professional secrecy.

### 1. Disciplinary penalties for an employee for disclosing professional secrets:

Disciplinary penalties for the act of disclosing secrets are confined to the workplace (service) and do not extend to freedoms such as criminal sanctions, financial fines, or compensation. The Algerian legislator categorizes these penalties based on the gravity of the offense and the corresponding level of punishment.

#### Definition of disciplinary penalties:

The Algerian legislator has chosen to focus on specifying the disciplinary penalty for employees and trainees without providing a clear definition of what constitutes such penalties. This lack of definition leaves room for interpretation, which can lead to confusion and inconsistencies in the application of disciplinary measures. The relevant articles in Order 06-03, specifically Articles 27 and 163,<sup>(1)</sup> outline the disciplinary penalty as the fourth degree without further elaboration.

Referring to jurisprudential definitions, according to Dr. Saïd Boulchair, disciplinary punishment is characterized by its negative impact on the employee's job status. This can manifest through temporary or permanent suspension, as well as the complete removal of the individual from their position. Additionally, disciplinary measures may involve reducing the privileges and benefits that the employee typically enjoys while performing their job duties.<sup>(2)</sup>

In jurisprudence, disciplinary punishment is often described as a professional consequence imposed on individuals who fail to fulfill their job duties or violate the standards and dignity associated with their position. This definition underscores the importance of maintaining professionalism and upholding the integrity of the workplace environment through appropriate disciplinary actions when necessary. By understanding the various perspectives on disciplinary penalties, organizations can ensure fair and consistent application of such measures in response to misconduct or violations of workplace standards.<sup>(3)</sup>

Disciplinary action is commonly understood as: "a job penalty imposed by the competent disciplinary authority on the public employee for the disciplinary error he committed in

(1)- Guerrouf Djamel, Op.Cit., p.217.

(2)- Baali Cherif Fouzia, *Proportionality between Disciplinary Error and Disciplinary Punishment in Public Office in Algerian Legislation*, Master's thesis, Hadj Lakhdar University, Batna, 2013/2014, p.48.

- Matthew T Rheinhard et al., *Legal Privilege & Professional Secrecy*, 3rd edition, Law Business Research Ltd, London, 2018.

(3)- Khaled Salim Amine, *The Public Employee's Disciplinary Liability for His Job Errors*, Master's Thesis, Near East University, 2011, p.47.

accordance with the rules, laws, and regulations related to the public job. Therefore, disciplinary punishment is strictly defined, and must adhere to the principle: "Nullum crimen sine lege, nulla poena sine lege".<sup>(1)</sup>

The authority competent to discipline an employee for disclosing professional secrets:

The disciplinary system in Algeria is a unique blend of administrative and judicial characteristics, making it quasi-judicial in nature. Operating under a presidential system, it grants the administrative presidential authority the power to both impose punishments and make appointments.<sup>(2)</sup>

Articles 162 and 165 of Order 06-03 outline that the authority to issue disciplinary decisions for third-degree errors, such as the disclosure of professional secrets, lies with the head of the administrative authority. This authority, responsible for appointments, must make a well-founded decision after considering the binding opinion of the Administrative Committee.

The Administrative Committee, acting as a disciplinary board, reviews the work error within 45 days of notification. The employee's liability for the error ceases after this period, in accordance with the provisions. Additionally, the legislator has specified penalties for the disclosure of professional secrets, which are considered a third-level disciplinary offense subject to collective decision-making.<sup>(3)</sup>

In compliance with this, the lawmaker established, as per Executive Decree No.90-99, Article 1, the appointing authority as follows:

For the central administration, the minister holds the appointing authority.

At the state (wilaya) level, the governor has the primary jurisdiction for appointments.

For regional groups, the President of the Municipal People's Council holds the appointing authority.

It is important to highlight that the Disciplinary Council, also known as the joint committee, has been given the responsibility by the legislator to serve as an advisory body in cases involving errors of the third and fourth degree. As a result, the authority responsible for imposing penalties is required to collaborate with the Disciplinary Council when making disciplinary decisions.<sup>(4)</sup>

The legislator's objective in implementing the quasi-judicial system is to establish a clear distinction between the disciplinary authority and the presidential authority. Additionally, it aims to safeguard the rights of employees and ensure a separation between the power to accuse and the power to make decisions. This effectively limits the exclusive control of the presidential authority over disciplinary matters and grants the disciplinary council the ability

(1)- Ziad Adel, *Appealing the Disciplinary Punishment of a Public Employee - a comparative study between Algerian and Egyptian law* -, Master's thesis, University of Tizi Ouzou, 2009/2010, p.11.

(2)- Mohammed Lakhdar Ben Omran, *The Impact of the Criminal Judgment and amnesty Procedures on Disciplinary Accountability in Algerian Legislation (Employment, Labor, and Professional)*, First Edition, Dar Jusoor for Publishing and Distribution, Algeria, 2018, p. 46.

(3)- Ammar Boudiaf, *Public Service in Algerian Legislation - A Study in Light of Order 06-03 and the Special Basic Laws Supported by the Jurisprudence of the State Council*, First Edition, Dar Jousour for Publishing and Distribution, Algeria, 2015, pp.159-160.

(4)- Article 1 of Executive Decree No.90-99 issued on March 28<sup>th</sup>, 1990 relating to *the authority of appointment and administrative management for employees and agents affiliated with the central administrations, states, municipalities and public institutions of an administrative nature affiliated with them.*

to impose penalties. Ultimately, this measure is intended to promote the efficient operation of public institutions while considering their best interests.

The disciplinary penalties prescribed for the crime of disclosing professional secrets:

Based on the content of Article 180 in Order 06-03, it is evident that the Algerian lawmaker views the disclosure of a professional secret, or any attempt to do so, as a specific type of third-degree offense. Additionally, Article 163 of the same order outlines the corresponding punishment for this offense, which is also categorized as a third-degree error. The penalties for such an offense include either a suspension from practicing the profession for a duration of either (04) days or (08) days, demotion by two ranks, or mandatory transfer.

It should be emphasized that the administrative body responsible for enforcing a third-degree penalty for the offense of revealing confidential professional information is the same administrative body with the power to make appointments, following the mandatory consultation of the Administrative Committee acting as a disciplinary board.<sup>(1)</sup>

## 2. Criminal penalties for the employee for disclosing functional secrets:

The preservation of professional secrets is mandated by the Penal Code, which also outlines the consequences for violating this obligation. The legal concept of criminal liability for public employees arises when the essential elements of the crime are established. Consequently, we will examine the definition of criminal liability for a public employee who divulges confidential information, while also addressing the general elements of the offense. Lastly, we will elucidate the prescribed punishment for this crime.

### Definition of criminal responsibility:

Criminal responsibility, in the context of the penal law, refers to the accountability an individual holds for their criminal actions. This accountability is only applicable when the individual possesses the necessary mental capacity and awareness to understand the consequences of their actions. In essence, criminal responsibility entails that if a person commits a crime, they will face legal consequences and be subject to punishment.

These definitions highlight that an individual can be held criminally accountable when engaging in actions that contravene the law, with the employee's position being identified as a contributing factor that lawmakers have outlined as a basis for the offense.<sup>(2)</sup>

The elements of the crime of disclosing functional secrets by the employee:

The physical element of the offense of revealing a confidential professional information is the action that showcases the crime to the public, thereby giving substance to the offense, changing it from a mere intention to an actual act. This is in addition to the ethical aspect, where the disclosure stems from either a good or bad intention on the part of the perpetrator, as well as the legal provision that prohibits such disclosure, as outlined in the legal aspect.

In order for criminal liability to be established, three elements must be met:

- **The legal element:** This refers to the act specified in the Penal Code or special laws, for which a penal punishment has been established<sup>(3)</sup> by the legislator. The purpose of this

(1)- Mohammed Djabri, The obligation to conceal professional secrets in the penal public service law, *Journal of Legal and Political Research and Studies*, issue 10, University of Blida 2, p.12.

(2)- Othman Taloti, The relationship between disciplinary responsibility and criminal responsibility and their role in combating corruption, *Journal of Comparative Legal Studies*, Bachar University, volume 7, issue 2, 2021, pp.11-36.

(3)- Omar Sadi, The Criminal Liability of the Doctor for Disclosing Medical Secrets, *El-Ijtihad Journal for Legal and Economic Studies*, volume 9, issue 2, University Center of Tamanrasset, 2020, p.110.

element is to uphold the principle of legality as outlined in Article 01 and Article 301 of the Penal Code.<sup>(1)</sup>

Therefore, the legal element of the crime of disclosing professional secrets is satisfied when an employee reveals confidential information despite the existence of a law prohibiting such actions.

- **The moral element:** The offense of disclosing professional secrets is categorized as an intentional crime, requiring a general criminal intent.

It is defined as the intention to commit a crime, encompassing all necessary elements for its commission. Consequently, the material element must be reflected in the offender's psychology.

Based on these definitions, criminal intent consists of two components: will and knowledge.

**Knowledge:** This is because the criminal intent necessitates that the offender possesses knowledge of all the elements encompassing the crime, whether it be the physical or moral aspect, along with the requirement that they are aware of the action they are committing, which leads to criminal liability. It is important to note that knowledge precedes intention, therefore, the whistleblower is aware of the confidential nature of the incident they are exposing.<sup>(2)</sup>

**Will:** The intention of the perpetrator is focused on the act of revealing the secret and the outcome of others becoming aware of it. If the person responsible for keeping the secret does not have the intention to disclose or inform others about it, then the intent is lost, similar to divulging the secret while under the influence of drugs.

- **The material element:** The act of disclosure is crucial in establishing the materiality of a crime, as it brings the criminal activity to light in the external world.

This disclosure can take on either a positive or negative form, with the positive form involving interference. This interference is typically carried out through verbal communication by the offender.<sup>(3)</sup>

From a linguistic perspective, disclosure involves revealing and disseminating information.

In terms of jurisprudence, it entails informing others about a secret and **identifying the individual to whom it pertains, with the intention of sharing this** confidential information with others or notifying the individual, regardless of the method employed, except in cases where the law permits disclosure.<sup>(4)</sup>

#### Forms of disclosure:

The legislator has not specified the specific methods of disclosing secrets. However, we have identified two main ways in which disclosure occurs:

**A. Direct and indirect disclosure:** Direct disclosure involves informing someone who is responsible for safeguarding the secret, allowing them to access or view it, regardless of the

(1)- Article 01 of Order 66-156 dated June 8<sup>th</sup>, 1966 containing *the amended and supplemented Penal Code* stipulates that: "There is no crime, punishment or security measures without law".

(2)- Malika Hadjadj, *The Crime of Disclosing Professional Secrets - An Analytical Reading of Article 301 of the Algerian Penal Code*, *Journal of Law and Political Science*, volume 14, issue 3, Zian Achour University, Djelfa, 2021, p.520.

(3)- Hettaf Djemaa Rached, *Disclosing Job Secrets and Their Implications*, *The Legal Journal*, volume 7, number 1, University of Cairo, 2020, p.95.

(4)- El-Amri Salha, *The Penalty Resulting from a Pharmacist's Disclosure of Professional Secrets in Algerian Legislation*, *Al-Mufikr Magazine*, issue 12, Mohamed Kheidar University, Biskra, 2018, p.321.

purpose.<sup>(1)</sup> Indirect disclosure, on the other hand, occurs when the custodian of the secret engages in behavior that indirectly leads to the secret being revealed, such as providing access to files, that contain sensitive information, by others in the same office.<sup>(2)</sup>

**B.** Furthermore, disclosure can be categorized as **either positive or negative**. Positive disclosure refers to situations where the act of disclosing the secret does not cause harm to the owner or anyone else. Negative disclosure, on the other hand, involves intentionally causing harm to the owner of the secret or others, and in some cases, it may even extend to the person entrusted with the secret.<sup>(3)</sup>

**C.** Lastly, there are two types of disclosure: **automatic and non-automatic**. Automatic disclosure happens when an employee voluntarily reveals a professional secret without being prompted by another person or party. On the contrary, non-automatic disclosure occurs when the disclosure is requested by another party who is restricted from accessing the information, even if their intention is not to harm the owner of the secret.<sup>(4)</sup>

Overall, understanding the various forms and categories of disclosure is crucial in determining the legal implications and consequences associated with the act of revealing secrets.

**D- Explicit disclosure and implicit disclosure:** we find that the Algerian legislator, through what was stated in the provisions of the Penal Code and other legal texts, intended explicit disclosure, through what the trustee discloses by virtue of the position he holds. As for implicit disclosure, when the trustee allows another party to see on documents or files in which the professional secret is recorded, this is considered an unauthorized disclosure of the professional secrecy.<sup>(5)</sup>

#### **Methods for revealing professional secrecy:**

**Verbal disclosure** refers to the act of conveying information through spoken words or written letters to individuals, regardless of their physical proximity to the employee. This could include addressing the media or communicating via phone.<sup>6</sup>

**Disclosure by publication** involves revealing a secret by making it public through scientific books or articles. Additionally, this type of disclosure can occur when a secretary privately shares the confidential information with others, even if they are careful not to openly disclose it. In this case, the act of disclosure does not require widespread publicity; it is sufficient for just one person to be aware of the secret.<sup>(7)</sup>

**Disclosure of images** encompasses various forms such as photographs, motion pictures, videotapes, cinema, television images, digital images, and maps.<sup>(8)</sup>

(1)- Ahmed Mosbih Koutbi, The Commitment to Confidentiality of Professional Secrets in the Criminal Public Service Law, *Journal of Legal Sciences*, volume 16, issue 2, University of Sharjah, 2019, p.314.

(2)- Abdelli Hamza, Op.Cit., p.308.

(3)- Ahmed Mosbih Koutbi, Op.Cit., p.314.

(4)- Hettaf Djemaa Rached, Op.Cit., p.98.

(5)- Ahmed Farouk Zaher, Criminal Protection of Professional Secrets - A Comparative Study between Emirati and Egyptian Laws, *Charia and Law Journal*, issue 58, United Arab Emirates University, 2014, p.16.

(6)- kachi Allal, Disclosing the secrets of public service and the implications of legal responsibility, *Afak Scientific Magazine*, volume 12, issue 4, 2020, p.509.

(7)- Ilhem Mohammed Kamel Abdelnaim, The punishment for disclosing professional secrets between Charia and law - a comparative jurisprudential study -, *Al-Azhar Journal*, issue 31, Al-Azhar University, Cairo, 2021, p.1540.

(8)- kachi Allal, Op.Cit., p.510.

**The e-disclosure** of professional secrets through electronic means of communication is facilitated by modern communication tools like email and social media platforms such as Twitter, Instagram, Facebook, and others. These channels have gained immense popularity among individuals, enabling the rapid spread of information.<sup>(1)</sup>

### 3. Criminal penalties prescribed for the crime of disclosing professional secrets:

Article 301 of the Penal Code serves as the main guideline for managing and addressing professional secrets. It outlines the individuals who are required to maintain professional secrets, such as employees, stating: "... and all individuals entrusted by de facto, profession, or position." Whether permanent or temporary, secrets hold great importance.

The divulgence of confidential information pertaining to one's profession has been deemed illegal and is regarded as an offense that is subject to legal penalties. Consequently, it is obligatory for public officials to maintain strict confidentiality regarding any incidents or associated details, as this obligation is universally applicable to all employees.<sup>(2)</sup>

Article 302 of the Penal Code also states that individuals working in any institution who reveal or attempt to reveal the institution's secrets to foreigners or Algerians living abroad without authorization may face imprisonment for two to five years. Additionally, they may be subject to a fine ranging from 500 to 10,000 Algerian dinars.

If these secrets are revealed to Algerians residing in Algeria, the penalty shall be imprisonment from (3) months to (2) two years and a fine from 500 to 1,500 DZD.<sup>(3)</sup>

The article clearly indicates that the legislator broadened its scope to include both the perpetrator and the party involved in breaching professional secrecy. Committing the crime of breaching professional secrecy necessitates proving the specific element and criminal intent, as divulging secrets undermines public interests and can lead to legal consequences and criminal sanctions for the employee involved.

### Conclusion:

Professional confidentiality is widely recognized as a crucial legal duty for employees, requiring strict adherence during the execution of their duties. Consequently, we have obtained a series of outcomes accompanied by a collection of suggestions, which we outline below:

#### First, results:

- ✓ Professional secrecy is a fundamental obligation that both legally and morally binds employees under the Basic Law of the Public Service 06/03.
- ✓ It signifies the employee's loyalty towards the organization they work for and plays a crucial role in ensuring the smooth functioning of public services. This duty is aimed at promoting the greater good of society.
- ✓ Any breach of professional secrecy can have detrimental effects on the reputation of the job. Therefore, it is essential for employees to uphold this moral value and recognize its significance.
- ✓ The principles of professional secrecy apply to maintaining public order and encompass all employees who have access to confidential information or documents as part of their job responsibilities.

(1)- Ilhem Mohammed Kamel Abdelnaim, Op.Cit., p.1541.

(2)- Malika Hadjadj, Op.Cit., pp.512-517.

(3)- Article 302 of Order 66/156 of 18 Safar 1386 corresponding to June 8<sup>th</sup>, 1966, op. cit.

✓ Failure to uphold professional secrecy can result in disciplinary actions imposed by the relevant authority, and in some cases, even criminal penalties if the disclosure constitutes a crime.

### **Second, recommendations:**

✓ Organizing specialized workshops for employees to promote professional ethics and safeguarding confidential information.

✓ Advocating for the revision of penalties associated with the disclosure of professional secrets, considering the detrimental impact it has on both organizations and individuals.

✓ Emphasizing the need to extend the responsibility of maintaining professional secrecy to all employees, regardless of their employment status.

✓ Recognizing that mere legal regulations are insufficient to ensure professional secrecy, and emphasizing the importance of raising awareness and educating employees about their obligations in this regard, as many may be unaware of this responsibility.

### **References:**

#### **Official texts:**

(1)- Order 66-156 dated June 8<sup>th</sup>, 1966 containing *the amended and supplemented Penal Code*.

(2)- Order 06-03 issued on July 15<sup>th</sup>, 2006 related to *the General Basic Law for Public Service*.

(3)- Order No.66-133 of June 2<sup>nd</sup>, 1966, related to *the general basic law for public service*.

(4)- Decree No.85-59 related to *the model basic law for workers in public institutions and administrations*.

(5)- Law No.78-14 issued on August 5<sup>th</sup>, 1978, which includes *the general basic law for the worker*.

(6)- Order No.21-09 of June 8<sup>th</sup>, 2021 concerns *the protection of administrative information and documents*.

(7)- Order No.21-09 of June 8<sup>th</sup>, 2021 concerns *the protection of administrative information and documents*.

(8)- Executive Decree No.90-99 issued on March 28<sup>th</sup>, 1990 relating to *the authority of appointment and administrative management for employees and agents affiliated with the central administrations, states, municipalities and public institutions of an administrative nature affiliated with them*.

#### **Books:**

(1)- Adel Habri Mohammed Habib, *The Extent of Civil Liability for Breach of Commitment to Professional or Employment Secrecy*, first edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2023, p.17.

(2)- Ammar Boudiaf, *Public Service in Algerian Legislation - A Study in Light of Order 06-03 and the Special Basic Laws Supported by the Jurisprudence of the State Council*, First Edition, Dar Joussour for Publishing and Distribution, Algeria, 2015, pp.159-160.

(3)- Boutabba Mourad, *The Employee System in Algerian Law - an analytical study in light of Order No.06-03 and the special laws supported by the provisions of the administrative judiciary -*, Dar Houma, Algeria, 2018, p.397.

(4)- Guerrouf Djamel, *Public Service in Algerian Legislation*, Dar El-Houda for Printing, Publishing and Distribution, Ain Melila, Algeria, 2022, p.131.

(5)- Hachmi Kherfi, *The Public Service in Light of Algerian Legislation and Some Foreign Experiences*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2010, p.289.

(6)- Matthew T Rheinhard etval., *Legal Privilege & Professional Secrecy*, 3rd edition, Law Business Research Ltd, London, 2018.

(7)- Mohammed Lakhdar Ben Omran, *The Impact of the Criminal Judgment and amnesty Procedures on Disciplinary Accountability in Algerian Legislation (Employment, Labor, and Professional)*, First Edition, Dar Jusoor for Publishing and Distribution, Algeria, 2018, p. 46.

(8)- Said Mokaddem, *The Public Service between Adaptation and Transformation from the Perspective of Human Resources Management and Professional Ethics*, Office of University Press, Ben Aknoun, Algeria, 2010, p.310.

### **Theses & dissertations:**

(1)- Abdelli Hamza, *Criminal Liability for Disclosing Public Service Secrets*, PhD thesis, University of Algiers, 2019-2020, p.73.

(2)- Baali Cherif Fouzia, *Proportionality between Disciplinary Error and Disciplinary Punishment in Public Office in Algerian Legislation*, Master's thesis, Hadj Lakhdar University, Batna, 2013/2014, p.48.

(3)- Hala Sayel Ahd Ghanem, *Civil Liability Resulting from Disclosing Professional Secrets: A Comparative Study*, Master's Thesis, Faculty of Graduate Studies, En-Nadja National University, 2018, p.13.

(4)- Johann Claudius Knobel, *The Right to the Trade Secret*, PhD thesis, University of South Africa, 1996, p.7.

(5)- Khaled Salim Amine, *The Public Employee's Disciplinary Liability for His Job Errors*, Master's Thesis, Near East University, 2011, p.47.

(6)- Ziad Adel, *Appealing the Disciplinary Punishment of a Public Employee - a comparative study between Algerian and Egyptian law -*, Master's thesis, University of Tizi Ouzou, 2009/2010, p.11.

### **Articles:**

(1)- Ahmed Ali Kacem Charhan Soudani, *The Employee's Duty to Conceal Functional Secrets: A Comparative Study*, *journal of the College of Law for Legal and Political Sciences*, volume 10, issue 38, University of Kirkuk, Iraq, 2021, p.134.

(2)- Ahmed Farouk Zaher, *Criminal Protection of Professional Secrets - A Comparative Study between Emirati and Egyptian Laws*, *Charia and Law Journal*, issue 58, United Arab Emirates University, 2014, p.16.

(3)- Ahmed Mosbih Koutbi, *The Commitment to Confidentiality of Professional Secrets in the Criminal Public Service Law*, *Journal of Legal Sciences*, volume 16, issue 2, University of Sharjah, 2019, p.314.

(4)- El-Amri Salha, *The Penalty Resulting from a Pharmacist's Disclosure of Professional Secrets in Algerian Legislation*, *Al-Mufikr Magazine*, issue 12, Mohamed Kheidar University, Biskra, 2018, p.321.

(5)- Hettaf Djemaa Rached, *Disclosing Job Secrets and Their Implications*, *The Legal Journal*, volume 7, number 1, University of Cairo, 2020, p.95.

(6)- Ilhem Mohammed Kamel Abdelnaim, *The punishment for disclosing professional secrets between Charia and law - a comparative jurisprudential study -*, *Al-Azhar Journal*, issue 31, Al-Azhar University, Cairo, 2021, p.1540.

(7)- kachi Allal, Disclosing the secrets of public service and the implications of legal responsibility, *Afak Scientific Magazine*, volume 12, issue 4, 2020, p.509.

(1)- Khalfa Samir, The Criminal Liability of the Lawyer for Disclosing Professional Secrets, *Algerian Journal of Legal and Political Sciences*, volume 60, issue 2, University of Algiers 1, 2023, p.102.

(8)- Laurie A. Badzek et al., Administrative Ethics and Confidentiality/Privacy Issues, *Online Journal of Issues in Nursing*, vol 3, no.3, 1998.

(9)- Malika Hadjadj, The Crime of Disclosing Professional Secrets - An Analytical Reading of Article 301 of the Algerian Penal Code, *Journal of Law and Political Science*, volume 14, issue 3, Zian Achour University, Djelfa, 2021, p.520.

(10)- Mohammed Djabri, The obligation to conceal professional secrets in the penal public service law, *Journal of Legal and Political Research and Studies*, issue 10, University of Blida 2, p.12.

(11)- Muhammad Amin & Muhammad Saeed Shafiq, Importance of Secrecy (Keeping Things Secret) in Islam: A Research Review, *Fahm-i-Islam*, vol. 1, issue 2, 2018.

(12)- Omar Sadi, The Criminal Liability of the Doctor for Disclosing Medical Secrets, *El-Ijtihad Journal for Legal and Economic Studies*, volume 9, issue 2, University Center of Tamanrasset, 2020, p.110.

(13)- Othman Taloti, The relationship between disciplinary responsibility and criminal responsibility and their role in combating corruption, *Journal of Comparative Legal Studies*, Bachar University, volume 7, issue 2, 2021, pp.11-36.

(14)- Samuel Nzakomeza, Lawyers' Professional Secrecy and Justice, *East African Journal of Science and Technology*, vol.8, issue 1, 2018.

(15)- Wissem Belkhir, Chastisement of an Employee for the Error of Disclosing Professional Secrets in the Algerian Public Service Law, *El-Wahat Journal for Research and Studies*, volume 14, issue 1, Ghardaia University, 2021, pp.984,985.

### Websites:

(1)- Secret Definition, on: <https://dictionary.cambridge.org/dictionary/english/secret>, last access 2024.