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solving the problematic of the application of the legal provisions to the material element of the crime of forgery of public or official documents in accordance with Law 24-02 relating to the fight against forgery and the use of forgery

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Abstract:

This study sought to clarify the provisions of Law No. 24-02 on the fight against forgery and the use of forgeries, particularly with regard to the crime of forgery of public or official documents. Numerous problems and difficulties raised, in the revoked penal code, particularly in the material aspect of the offense of forgery of public or authentic documents, due to their lack of clarity and precision. This law was a solution to these problems.

Based on that, the study concluded that Law 24-02 served to avoid the ambiguity in the definition of forgery, as well as precisely defining the concepts of an official document, and clarified the place of the damage in the legal structure of the offense .

Keywords: Forgery, damage, forgery of documents, Authentic document, material element

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INTRODUCTION

Given that the offense of forgery of public or authentic documents is considered one of the most serious offenses that undermine public trust, and given that the practical enforcement of the Penal Code articles, especially, those in Articles (214 to 229)¹ related to this offense, has revealed certain issues and difficulties, including the fact that these articles lack any comprehensive and the precise legal characterization of the core elements constituting the forgery of official or authenticated documents and do not specify its elements, but rather merely list the various methods of forgery used to alter the truth. Despite the attempts of criminal jurisprudence and judiciary to find a solution to these problems, it was noted that there is a disagreement regarding the material element of this crime between jurisprudence itself and justice criminal applications, as well as defining of the offence and the place of damage in it.

Regarding legal scholarship, concerning the definition of forgery, attempts have been made to provide a general definition and a specific definition for the forgery of documents. Among these definitions is that of the French jurist Garçon, who defined forgery as: "The law identifies certain actions that, when used to intentionally falsify a document, are considered fraudulent alteration if the truth. an alteration capable of causing harm".² The jurist Garraud defined it as: "The alteration of the truth with fraudulent intent in a document concerning something that the document was prepared to prove and that is capable of causing harm"³.

It appears from the preceding two definitions, as an example of scholarly definitions that criminal jurisprudence has largely settled on the idea that forgery is the falsification of the truth in a document, by one of the means mentioned in the law, an alteration capable of causing harm to others⁴.

As for the judiciary, represented by the Supreme Court, it has referred to forgery in many of its decisions, such as the decision issued in case file No. 369900 dated 29-11-2006, which stated: "Whereas forgery is any alteration and distortion of the truth in a document or instrument that is capable of causing

harm to others and aims to establish a right or a fact, and from which legal consequences ensue."⁵.

However, with the issuance of Law No. (24-02)dated ⁶ Sha'ban 16, 1445 AH, corresponding to February 26, 2024, concerning the fight against forgery and the use of forged documents, these issues and difficulties are no longer raised. Thus, this law is considered a legislative solution to the problems and difficulties arising from the application of legal texts related to forgery in general, and the crime of forgery of public or official documents in particular, especially concerning the physical aspects of the crime.

Accordingly, this article attempts to answer the following questions:

- What are Law No. 24-02's requirements concerning the material element when prosecuting the forgery of official documents according to the Penal Code?
- How does Law No. 24-02 define or handle the material element in cases of forged official documents that fall under the Penal Code?

The answer to this question requires following an analytical approach to examine the legal texts studied through the following the steps as follow:

Section One: under the title resolving the Issue of the Official or Public Document as a point of the Material Element of the offense. As for the Section Two:

it is solving the problematic of damage, the characteristics of the felons, and Actions Committed by them.

Section One :Resolving the Issue of the Official or Public Document as an Element of the Material Element of the Crime

Through Law No. 24-02, the Algerian legislator aimed to address the difficulties that arose during the penal code's rules against forgery are being invoked especially about the definition of forgery and the document. This is because the Algerian legislator did not provide a definition of forgery in the texts of the Penal Code, nor it did not specify the scope of the term

"document" in relation to forgery.

Accordingly, the resolution of the idea of the definition of forgery will be tackled in this section, we will see that according to Law No. 24-02 (Subsection One), and then the document as the subject of the offense of forgery according to the same law (Subsection Two).

Subsection One: Resolving the Issue of the Definition of Forgery According to Law No. 24-02

The Algerian legislator overcame the absence of a legislative text defining forgery with the issuance of Law No. 24-02. Article 03, paragraph one, of this law provides the definition of forgery as: "Any fraudulent alteration of the truth by any means in one of the documents, instruments, or supports mentioned in this law, which is likely to cause harm or whose purpose is to establish an acknowledgment, right, quality, or create an effect for a legal fact. Imitation and counterfeiting mentioned in this law are also included within forgery".

It is clear from the first paragraph of Article 03 mentioned above that the definition of forgery provided by the legislator in Law No. 24-02 is based on the following elements:

1. **Alteration of the truth through fraud,** In the documents, instruments, or supports specifically mentioned in the aforementioned law.
2. **Use of means,** Meaning that forgery is realized by using any means, whether electronic or traditional, that aims to the falsification of the truth of the documents, instruments, or supports stipulated in the provisions of Law No. 24-02.
3. **Causing harm,** Meaning that the fraudulent alteration of documents, instruments, and supports is likely to cause or be expected to cause harm.
4. **Purpose and legal effects,** The purpose of committing the acts that alter the truth in the various documents, instruments, and supports stipulated in the aforementioned law is to establish an acknowledgment, right, quality, or to create an effect for a legal fact.

Subsection Two: Resolving the Issue of the Document Element According to Law 24-02. This subsection will address the resolution of the issue of public and official documents by examining their concept (Sub-branch One) and then the types of public or official documents (Sub-branch Two).

Sub-branch One: The Concept of the Public or Official Document.

The document, in general, is understood as "any written matter containing signs through which thought is conveyed to another person upon viewing it. It is not required that the document be written in a specific language or with a specific material; the material on which the document is written is irrelevant and may be paper or other materials such as stone or wood"⁷

Law No. 24-02 concerning the fight against forgery and the use of forged documents defined the intended meaning of a document as: "Any written matter, whether paper-based or electronic, that allows for the identification of the person who issued it and includes a statement of a fact or an expression of will that is capable of creating, modifying, terminating, or proving a legal status, whether the document was primarily prepared for this purpose or this effect resulted from it by force of law."⁸

The aforementioned law limited the documents subject to forgery to paper-based documents or electronic supports, meaning anything that can be written on, whether paper or electronic, that allows for the identification of its originator and contains a statement of a fact or an expression of will. This expression or statement of fact is capable of either creating, modifying, terminating, or proving a legal status, regardless of whether the document was primarily intended for this purpose or if the force of law attributed this effect to it

As for official or public documents, they are generally defined, according to Article 03 of Law 24-02, as documents promulgated by a public official or a person entrusted with a public service., who is originally competent to draw them up in terms of their type and place of issuance according to legally established rules, and in which is recorded what they receive or

is provided to them by the concerned parties or what is done by them⁹.

Therefore, the Algerian legislator, in Article 324 of the Civil Code, used the term "formal contracts" for official documents, which are those "in which a public official, public officer, or person entrusted with a public service records what was done before them or what they received from the concerned parties, in accordance with legal forms and within the limits of their authority and jurisdiction¹⁰.

Prior to the amendment of Article 324 by Law 88-14, the Algerian legislator used the term "official paper where "contract" appears in the text of the aforementioned article post-amendment. While paragraph three defined the official document in of Article 03 of the aforementioned Law 24-02 and criminalized forgery pertaining to public or official documents in Articles 31 and 32 of the same law, legal scholars differentiate between public and official (writing) documents.

-A public document encompasses all contracts and acts specifically drawn up by a public officer, including documents of notaries, bailiffs, and auctioneers.

-An official document, by scholarly consensus, falls into three categories:

-Political documents: These are documents issued by the political authorities of the country, such as laws, decrees, treaties, and international agreements.¹¹

- Judicial documents: These are documents drawn up by judicial personnel or their assistants, such as judgments, decisions, orders, judicial records, as well as expert reports prepared by experts and records of judicial police officers.

Administrative documents: These are documents issued by administrative bodies and various administrative departments, examples of which include birth registers, birth and death certificates, marriage contracts, civil status documents, passports, driver's licenses, in addition to the wilaya (province) and municipal decisions¹².

It is noteworthy that the Algerian penal legislator in the aforementioned Law 24-02 did not distinguish between public

and official documents, treating them equally. Perhaps there is no practical benefit in differentiating between them, given that they are subject to the same provisions regarding criminalization and punishment in case of forgery.

Sub-branch Two: Types of Public and Official Documents:

It is evident from the phrase stated in the third paragraph of Article 3 of Law 24-02 that a document is "any written matter, whether paper-based or electronic." Accordingly, written documents can be either paper-based documents or electronic documents:

First/ Paper-based Documents: These are documents in a visible written form that can be perceived by sight, on paper. "Writing is understood as linear expressions, signs, or symbols suitable for narrating a fact or expressing a will and suitable for conveying meaning from one person to another"¹³.

Second/ Electronic Documents: These are any documents created through electronic means such as computers, provided that they are signed by their creator¹⁴. Or, it is electronic writing undertaken by a public official or a person entrusted with a public service establishing it on an electronic document that documents their activities or the information they obtained from relevant parties, following legal processes and within their authorized scope. Although the French legislator referred to documents as potentially being paper-based or otherwise through the phrase "any other support" in the text of(441-1¹⁵) of the French Penal Code, thereby settling the debate on the concept of a document extending to written paper and electronic documents¹⁶the Algerian legislator was precise in defining a document through the phrase "Document: any written matter, whether paper-based or electronic" stated in Article 03 of the aforementioned Law 24-02.

Section Two / solving the problematic of damage, the nature of the felons, and the Actions They Commit:

The Algerian legislator accorded special protection to public and official documents, particularly against acts of forgery committed by individuals entrusted with their protection.

Therefore, this section will examine the nature of the felons before tackling the problem of harm, , the person committing the act of forgery in public and official documents (Subsection One), followed by the actions committed by the perpetrator as ways of forgery (Subsection Two), and the solution of the problem of harm in the crime of forgery (Subsection Three).

Subsection One: the nature of the perpetrator:

Law No. 24-02 distinguishes between two categories of perpetrators of forgery in public or official documents, based on the penalty prescribed for each category.

Sub-branch One: (Category One) Those with the Authority to Draw Up Public or Official Documents: These are mentioned in Article 32 of Law No. 24-02 and include judges, public officials, or public officers. The legislator likely specified them by their nature due to the legal authority and competence granted to them to protect the legality of the document

First / Judges: This refers to anyone belonging to the judicial corps or issuing a judicial ruling. The Basic Law of Judges divides them into two branches: the first being judges belonging to the ordinary judicial system, which includes trial judges and public prosecutors of courts, judicial councils, and the Supreme Court, in addition to judges working in administration of the Ministry of Justice. The second branch consists of judges belonging to the administrative judicial system, concerning judges of the Council of State and administrative courts¹⁷.

Second/ Public Official: The term “public official” has two connotations: a narrow meaning and a broad meaning.

1-The Narrow Meaning: This refers to “any agent appointed to a permanent public position and formally integrated into the administrative hierarchy; formal integration is the procedure through which the employee is confirmed in their rank¹⁸.”

2- The Broad Meaning: Any person holding a legislative, executive, administrative, or judicial position, or in one of the elected local popular councils, whether appointed or elected, permanently or temporarily, paid or unpaid, regardless of their

rank or seniority. Any other person who, even temporarily, holds a function or mandate, with or without pay, and in this capacity contributes to the service of a public body, a public institution, or any other institution in which the State owns all or part of its capital, or any other institution providing a public service. Any other person defined as a public official or treated as such according to the legislation and regulations in force¹⁹

3- The Public Officer: Any person authorized by law to authenticate and give official form to contracts and documents, such as the civil registrar vested in the mayor and the notary.²⁰

Sub-branch Two/ Those Without the Authority to Draw Up Public or Official Documents: These are mentioned in Article 31 of Law 24-02 and include any person not mentioned among those specified in Article 32 of the same law:, persons who do not have the authority to draw up public or official documents and intervene in any way to distort these contracts or documents

Subsection Two: The Actions Committed by the Perpetrator:

As previously noted, Law No. 24-02 distinguishes between categories of perpetrators of forgery in public or official documents based on the penalty prescribed for each category. Consequently, the actions committed by perpetrators to forge official or public documents vary according to each category, as follows:

Sub-branch One/ Actions Committed by Category One - Those with the Authority to Draw Up Public or Official Documents:

Article 32 of Law 24-02 stipulates that these individuals must commit the following acts while performing their duties, meaning that the perpetrator must be acting within the scope of their authority and jurisdiction.

Authority in this context means that the judge, public official, or public officer must be legally performing their obligations when committing the forgery in the document using the methods stipulated in Article 32. Consequently, if the judge, public official, or public officer has been dismissed, transferred,

or their mandate has expired, the crime of forgery of public or official documents is not established.

Jurisdiction, on the other hand, means that the perpetrator must be competent to draw up the document in accordance with the provisions of laws and regulations. This implies that the public official or public officer derives their jurisdiction from laws, regulations, and the valid orders of their superiors within their assigned responsibilities²¹

The acts of forgery committed by individuals in this category, the persons mentioned in Article 32 of the same law – can be either material acts or moral acts.

First/ Material Acts: or methods of material forgery. This refers to forgery where the truth is altered physically, meaning in a way that leaves visible traces on the document that can be perceived by the senses and seen by the eye.²²

According to Law No. 24-02, these methods include affixing forged signatures, making alterations to documents, lines, or altering them after their completion or closure²³ or signatures, impersonating others or substituting oneself for them, writing in registers or other public documents.

Second/ Moral Acts: or methods of moral forgery, which occur during the drafting of the document by altering the truth regarding its subject matter or circumstances, without affecting its outward appearance in a way perceptible to the senses and visible to the eye²⁴

The acts by which the substance of documents is falsified are specified in the final paragraph of Article 32 of the same law and include: writing agreements contrary to what was recorded or dictated before them – i.e., judges, public officials, or public officers – by the parties, or reporting facts they know to be false as if they were true facts, or falsely testifying that facts were admitted or occurred in their presence, or deliberately omitting or altering declarations they received.

Legislation varies regarding the length of the penalty for those who commit forgery in official documents. However, despite this, there is agreement on differentiating the penalty based on the perpetrator's nature. severe criminal penalties are

imposed by most legislation when the felon of forgery of public documents holds the status of a public official²⁵

Therefore, the Algerian Penal Code did not stipulate a single penalty for forgery in public or official documents but rather differentiates it according to the perpetrator's nature²⁶

Articles 214 and 215, repealed by the provisions of Law 24-02, punished judges, public officials, or public officers who commit forgery in public or official documents using one of the aforementioned methods of material or moral forgery with life imprisonment. However, with the issuance of the aforementioned new law, the penalty prescribed for these material or moral acts has been reduced to temporary imprisonment of twenty(20) to thirty (30)years.

Sub-branch Two: Actions Committed by Category Two - Those Without the Authority to Draw Up Public or Official Documents:

This category, persons not mentioned in Article 32 of Law 24-02 – commits acts of forgery of public or official documents as defined in Article 31 of the same law, which are:

Imitating or Falsifying handwriting or signatures, creating sham contracts, documents, debts, or releases, or fraudulently adding them to existing documents subsequently, or by adding, omitting, or falsifying conditions, declarations, or facts that these documents were prepared to receive or prove, or by impersonating others or substituting oneself for them.

The prescribed penalty is imprisonment for ten(10) to twenty (20)years and a fine of(1. 000.000)million Algerian Dinars to(. 2.000.000) million Algerian Dinars.

Subsection Three: solving the problematic of damage in the Crime of Forgery of Official Documents.

There is no legislative definition of the crime of forgery of official documents which led to disagreement between legal scholars and judicial applications²⁷ regarding the necessity of harm in the crime of forgery of public or official documents, as well as the place of harm within the legal structure of the offence

However, the French legislator resolved the problematic of the importance of the element of harm in forgery through the text of Article 441-1 of the Penal Code, as amended by Law (92-1336)²⁸

which states: "Forgery is any fraudulent alteration of the truth likely to cause harm and done by any means what so ever, in a writing or any other medium of expression of thought whose purpose or effect is to establish proof of a right or a fact with legal consequences"²⁹

In Algeria, Law No. 24-02 provided a solution to the problem of harm in the crime of forgery of public or official documents through the text of the first paragraph of Article 3, in its exposition of the intended meaning of forgery in the context of the law, as any falsification of the truth through deception in one of the documents, instruments, or supports stipulated in this law, by any methods, which is likely to cause damage, and aims or is likely to lead to the establishment of a right, status, or fact that entails legal consequences."

Accordingly, the element of harm is necessary for the establishment of the crime, whether considered an independent element or an element of the result within the material element. It is very important for the existence of the offense, and its absence leads to the non-existence of the crime³⁰. It is a fundamental condition for the legal structure of the crime of forgery; there is no forgery without harm³¹. The assessment of its existence rests with the trial judge, who is obligated in their judgment to prove its presence or absence, otherwise their ruling will be flawed by insufficient reasoning, whether the harm is material or moral³².

CONCLUSION

This study has attempted to answer the questions and issues that arose during the application of legal texts, particularly those related to the material element of the crime of forgery of public or official documents, by outlining what is stated in Law No. 24-02 concerning the fight against forgery and the use of forged documents, and how this law came to address those issues and difficulties. Accordingly, we can conclude the

following:

- Law 24-02 concerning the fight against forgery and the use of forged documents addressed the issue of the definition of forgery in its Article 03.
- Through the aforementioned law, the Algerian legislator resolved the issue of conflicting scholarly opinions regarding the precise definition of a public or official document as the subject of the crime of forgery in public or official documents, after previously resorting to the Civil Code, which affected the principle of the legality of crimes and punishments.
- Law 24-02 clarified the place of harm within the legal structure of the crime of forgery of public or official documents and considered it a necessary condition and a fundamental element for its establishment, after it had been left to the interpretations of the judiciary represented by the decisions of the Supreme Court. This is considered adherence to the principle of limiting the scope of criminalization and punishment to the legislative authority only.

Accordingly, we can offer the following recommendations in this study:

- The necessity of reviewing Law 24-02 whenever issues or difficulties related to the application of its provisions arise, by establishing evaluation mechanisms that can be referred to in order to identify these issues and difficulties, given the seriousness of forging public and official documents, which undermines public trust.
- The necessity of qualifying the persons legally entrusted with investigating, inquiring into, and proving forgery crimes in general, and crimes of forgery of public or official documents in particular, and equipping all forensic science laboratories with advanced equipment and devices for the rapid detection of these crimes, especially with technological advancements that have introduced new methods used by perpetrators that are difficult to discover.

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