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## The Archivist's Profession in Algeria between Legal and Moral Responsibility

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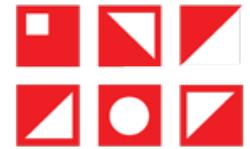
### **Abstract:**

This study aims to highlight on the archivist's profession in Algeria and display the laws that adjust the practise of profession as well the results that are got from violating these laws through the Penal Code. As the study purposes to review the archivist's profession ethics. The study reached out to the three principles results, which are; the archivist's profession is subjecting to the Public Employment Law and the law relating to archive. Furthermore, the archivist is each administration assistant responsible for managing and preserving documents, and the archivist is always subjecting completely in the Charter of Professional Ethics as defined by the International Council on archive in the absence of an Algerian charter.

**Keywords:** archivist's profession; law; ethics; Algeria;

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## 1. INTRODUCTION

The profession in the public or private sector, heritable or after long or short training, its practice must require a set of skills and techniques, as well as the possession of a number of competencies. Beside this or before it, the practitioners of the profession must inevitably be familiar with the laws and legislation that regulate this profession. They must also familiarize themselves with professional ethics codes, if any, and adhere to them. Especially if it is a profession with a certain specificity.

The archivist's profession among the professions that is characterized by privacy, it is sensitive profession because its practitioners while processing documents, look into some confidential data and information that exposes those who disclose them to criminal liability. Reporting of these documents is subject to legal deadlines and conditions. As well as, the archivist's profession is governed by a group of limited ethics in international charters, which makes the archivist face a dual legal and moral responsibility.

## 2. The problematization of the study and its goals:

### 2.1 Study's problematization and its question:

The archivist's profession is considered from the professions has permeated the Algerian public administration since the mid-nineties of the last century. There is hardly any Algerian administration, whatever its type (civilian or military) or the field of specialization of its interests (pedagogical, cultural, hospital, judicial, energy...etc.) independent from this profession. The Algerian archivist has become an accompaniment to other professions of all kinds. He keeps their documents for others, classifies them, arranges them, retrieves them, and makes them available to them at the time they need them.

But, it is known that treating documents requires reading it leads the archivists is qualified to view the data and information contained in these documents, even if they are confidential. However, the archivist's knowledge of the content of the documents makes him bear two types of responsibility, which he must be well aware of: legal responsibility and moral responsibility.

Thus, we ask the main following question: what is the tenor of these two responsibilities in the archivist's profession? Which Algerian archivist is?

Whereas, the sub- questions are:

- What us the concept of the two responsibilities moral and legal according to the archivist?
- What are the laws that are subjected by the archivist's profession in Algeria?
- Is there charter for ethical archivist's profession followed by Algerian archivists? What are its terms?



## **2.2 The goals of study:**

- Presenting the theoretical framework about the two responsibilities moral and legal the archivist's profession.
- Highlighting on the importance of the two responsibilities moral and legal and the need to take it into consideration in parallel and in balance during practice by the two archivists.
  - Introducing the laws that define the archivist's duties and legal responsibilities, as well as the laws that include penalties in the case that he violates these duties.
  - Emphasizing about the importance of ethics for the archivist. Introducing the provisions of the international charter for the ethics of the archival profession.

## **2.3 Study approach:**

To achieve the desired goals from this study, it has been focused on the analytical approach because it is proportioned with what we need achieve it through describing and narrating the laws as well as the ethical charters organized to the archivist's profession and its analysis.

## **3. The responsibility**

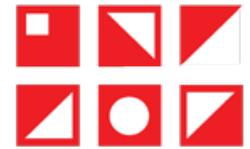
### **3.1. Definition of The responsibility:**

It is not easy to give a clear, a unified and an easy definition of responsibility. because it is among the concepts which many have worked hard to provide a definition for, especially in terms of terminology, which has made finally numerous and varied, as it is the duty of making decisions and taking responsibility of their consequences (Qasimi, 2011, p. 115). It is an individual's commitment to carry out the responsibilities entrusted to him to the best of his ability (Al-Sakarna, 2008, p. 149). It means the individual afford the results of his commitments, decisions, and practical choices, both sides positive and negative. Therefore, it is within this concept, a characteristic accompanies its owner over an extended period with two parties: at the beginning and at the end. The responsibility begins when you require performing the duty and it ends after you present an account of what you did for that purpose.

Between them, there is a strait, which is work. Based on the above, as it can be said that responsibility before work looks to the future and it is a responsibility to assign and demand, while responsibility after work looks to the past, in which it is a responsibility to question and hold accountable for what has passed. (Rajab, 2015).

### **3.2. . Legal responsibility and Moral responsibility :**

There is a difference between legal responsibility and moral responsibility; this came from the diffrence bewteen the law and the ethics. So, the law is precise and agreed-upon rules that are obligatory in writing to regulate relationships, and it is easy to identify those who violate them and apply punishment to them, whereas, the ethics is an expected behavior and rules that govern the conscience, and it is not easy to infer those who violate them. Law and ethics are not necessarily



intertwined, meaning that an action may be legal but immoral, and vice versa, i.e. an action may be ethical but illegal. Moral responsibility and legal responsibility can be defined as follows:

### **3.2.1. The Moral Responsibility :**

It is a personal responsibility in front of God and conscience, and the reward is God Almighty. It is a fixed and unchanged responsibility, exercised by the strength of the soul, and conscience (Al-Housh, 2002, p. 247). Moral responsibility is based on an organizational philosophy that gives work real value, because it is not just regulations and organizational controls, but also, it is a tool that reflects the behaviors of individuals, even outside the organization. The employee is considered a mirror that reflects the profession that he practices and thus his professional value and social status (Al-Hadi, 2017, p. 30). The ethical responsibility aims to do what is right and just, and avoid harm to others, and it includes non violating the agreed-upon principles that determine right and wrong when directing its work (Jaradat, Abu Al-Hamam, 2012, p. 33)

As well as, the responsibility in the framework of professional ethics can be objective responsibility or subjective responsibility and psychological. The objective responsibility means the responsibility of the worker or the employee towards his superiors, and towards his commitment to the administrative and technical work requirements and the performance of his duties, in a way that achieves the objectives of the work and the institution. However, the subjective and psychological responsibility are characterized loyalty, sincerity, and commitment to the ethical rules of his work, that is, it relates to the individual's responsibility towards his conscience, values, and moral standards related to work. The standards of objective responsibility are external standards, while the standards of psychological or personal responsibility are internal, subjective standards. (Muhammad Al-Bishri, p. 55)

### **3.2.2. The Legal Responsibility :**

It is person's responsibility in front of another person or in front of law. It is responsibility that changes depending on the law practiced in a given society, and it is applied from the external authority including judges, security personal, proxy, prisons, and correctional facilities. The source of compulsory legal responsibility is the law, its rules, and theories. It includes all responsibilities derived from the constitutions and laws that society follows which leads to material penalties, represented in a fine and moral and physical penalties as imprisonment and execution (Jaraadat, Abu Al-Hamam, 2012, p. 32)

### **3.3. The relationship between legal responsibility and moral responsibility :**

Whatever the laws and the legislations are strict, they do not protect societies and rights and they do not provide security and trust. Yet, when they work in ethical environment, they achieve highest efficiency in the development and the reform. For the ethics often have factual and intellectual



authorities exceed the material authority (Al-Sakarna, 2008, p. 169). The moral responsibility area is considered vast than the legal responsibility, because the circle of ethics is vast than the circle of law. It involved the relationship between the human with his god, with himself and with others from people. Whereas, the circle of law is limited on the behavior of human towards others. (Al-Housh, 2002, p. 247). Moral responsibility is higher than legal responsibility, the moral law is superior to positive law, and one of its conditions is the ability to distinguish between good and evil through a full sense of what must be done. Learning the truth about things and their consequences. A sense of moral legitimacy through a moral law to which the human soul is subjected. And the volition means that a person does what he does freely and by choice (Al-Hadi, 2017, p. 31)

#### **4. Defining the archivist's profession and his ethics :**

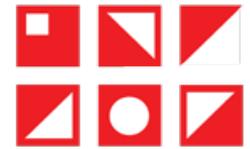
##### ***4.1. Definition of archivist:***

The archivist is a specialist, responsible to collect and preserve and report the documents and the archive and he is the person who is based on managing the documents throughout the set of technical operations fall under what is called the archive series. Generally, it aims to reach out easily to the documents and preserve it to the future generations. As well as, the goal of the archivist's work is to ease the use of information that is in the document became a container that holds information of scientific value and it is used to make decisions or to support historical studies or even in political and other analyses (Bizan, 2020, p. 403).

In the twenty first century, the archivist became to face a group of new challenges. He must acquire many skills and much information and knowledge. Nowadays, the archivist became information specialist. He is working within integrated team and he is proficient in information technologies. The archivist must know the latest developments and their specificities with the ability to manage, secure, share, preserve, evaluate, and control information in order to improve the effectiveness of the organization or institution, while taking care to preserve any document that can bear witness to history. Today's archivist must meet all desired performance objectives, as well as comply with the legal and regulatory context of the organization. Today also, he must be proficient the archival science knowledge, such as those related to project management, budget management, and human resources management He must be able to manage the changes; he must also be creative, innovative and motivated. The archivist in the present day must speak to computer specialists as much as he talks with historians and historians, he should use social media to interact with peers and the public, beginners or experts. (Richard, 2014, p. 2)

##### ***4.2. Definition of archivist's profession:***

The profession is presented as the craft through which the possibility of applying proven knowledge and experience in some fields of knowledge or science to other fields can be used in practicing an art based on that experience. It is also defined as the advantage of possessing a specific intellectual style acquired through special training that can be applied in every field. An aspect of life that is known as a craft that includes a set of mental knowledge. This forms the mental or intellectual



content of the profession (Al-Housh, 2002, p. 241). Nevertheless, the archivist's profession exist since the past. However, although it had previously been associated with individual work, it mainly dealt with the preservation of old papers. Today, this profession requires completely different skills than it was in 25 years ago, for example (Richard, 2014, p. 2). It is an archival practice that refers to the application of archival theory and scientific methodology in actual reality, and its trends can be summarized in the treatment of documentary stocks in a scientific manner, that in turn leads to providing information to beneficiaries, throughout, using various scientific methods that rely on advanced technological means such as documentation systems and electronic archiving and the communication networks and information exchange, in light of ethics determined by the profession's charter and conditions determined by laws (Bizan, 2019, p. 402)

### ***4.3. The archivist's profession and ethics:***

As it is known, each profession has a set of general moral rules that govern it, but the references differ in naming these rules that are agreed upon by the owners of one profession, such that they are called a charter, a code, or even a constitution. It was stated in the International Arab Encyclopedia (2000, p. 352) that the code of ethics of a profession is what determines the actions of its members and assigns them the required level of the profession. The professional code seeks to achieve high levels of competence in a specific field, strengthen relations between its members, and promote people to a better life. It sometimes makes necessary arrangements regarding group members who violate professional ethics. In addition to professional ethics, public laws may regulate professional affairs when the public interest is threatened. Some professional codes have a long history, where doctors, jurists, and religious scholars have always been careful to take into account the required standard. One of the most famous codes is the Hippocratic section, who devoted medical profession to preserve life and serving humanity. The Code of Ethics aims to raise the professional level and instill a spirit of responsibility among those in the same profession.

The archivists around the world paid attention, especially at the end of the twentieth century, to establish a charter of ethics for the profession, and in this context many initiatives were known by national associations such as the American Society of Archivists or the Society of Archivists of Quebec, but the Charter of Ethics for the Archivist Profession issued by the International Council on Archives remains the most important of these initiatives because it International charter.

## **5. The Algerian archivist between law and ethics:**

### **5.1. The Algerian archivist and the law:**

The Algerian archivist has specific rights and duties in the law. The archivist, as a public sector employee, is subjected to the general basic law of the civil service on the one hand, and to the law relating to archive on the other hand. He is also subjected to the laws to which the aforementioned



laws refer, such as the Penal Code. However, since we are trying in this study to determine the legal responsibility of the archivist, we will focus on duties only, not rights.

### **5.2. The archivist's duties as it determined in the General Basic Law of the public employment:**

The duties of the Algerian archivist, like other public sector employees, were determined in Chapter Two of Part Two of Order No. 06-03 dated July 15, 2006, which includes the general basic law for the public employment, and were set out in Articles 40 to 54, whereby his responsibilities were determined as follows:

-The archivist must depends on applicable the laws and regulations in the framework of performing his duties, respect the authority of the state and enforce its respect.

-He must perform his duties with complete honesty and without bias.

-He must avoid each act against his duty, even if it is outside the service, and he must, in all cases, behave with appropriate and respectful behavior.

-He must to specify all his professional performance, which was assigned to him, and he is not allowed to perform profitable activity in private setting, whatever its type. However, employees are authorized to practice training, education or research tasks as a secondary activity under conditions.

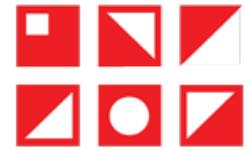
- Each employee, regardless of his position in the administrative hierarchy, is prohibited from owning, within or outside the national territory, directly or through another person in any capacity, interests of a nature that would affect his independence or constitute an obstacle to the normal performance of his duties in an institution subject to the supervision of the administration to which he belongs or has a connection with this administration.

-Each employee regardless to his position in administration hierarchy,, responsible to submit his for carrying out the tasks assigned to him.

-The employees must keep professional secret and it is forbidden to him to disclose the contents of any document in his possession or any event or news that he learned about or became aware of in the course of performing his duties, except as required by the interest. The employee is not released from the duty of professional secrecy except with written permission from the competent authority.

-The employee must secure to protect the administrative documents and their security, and any concealment, transfer or destruction of files, documents or administrative records is prohibited, and the perpetrator is subject to disciplinary penalties without prejudice to criminal prosecutions.

- The employee shall maintain the administration properties in the framework performance of his duties.



- The employee must not use in anyway the administrative stores, materials, and means for personal purposes or for purposes outside the interest.
- The employee must deal politely and respectfully in his relationships with his superiors, colleagues and subordinates.
- The employee must deal with the users of the public facility politely and without procrastination.
- The employee is prohibited, under penalty of criminal prosecution, from requesting, requiring or receiving gifts, donations or any privileges of any kind, directly or through another person, in exchange for performing a service within the framework of his duties.

### **5.3. - The archivist in Law No. 88-09 of January 26<sup>th</sup> 1988 on the National Archives**

In law no. 88-09 of 07 Joumada II 1408 corresponding to January 26<sup>th</sup> 1988, relating to the national archives. the legislator did not specify the rights and duties of the archivist, nor did it define them, but it did devote chapter 5 directly to the penal provisions, which are articles listing a series of sanctions in the event of the archivist failing to fulfil his duties, which are based on the penal code. The aforementioned articles are 24/25/26/27/28. Their content is as follows:

Article 24: ‘Administrative agents responsible for the collection or preservation of archive documents or archives who report information contrary to the provisions of this law or its implementing texts shall be punished by the penalties laid down in Article 302 of the Penal Code’. As can be seen from the above-mentioned article, the term ‘archivist’ is not explicitly mentioned, but is reserved for administrative agents responsible for collecting or conserving archive documents or archives, so that the law is general and may apply to anyone who manages archives, as it is known that administrations may entrust the management of archives to people who are not archivists.

Article 302 of the Penal Code, referred to in article 24 of law no. 88-09 of 07 Joumada II 1408 corresponding to 26 January 1988, relating to national archives, stipulates as follows: ‘Anyone working in any capacity whatsoever in an institution who divulges or attempts to divulge to foreigners or Algerians residing in a foreign country the secrets of the institution in which they work without being authorised to do so shall be punished by imprisonment of between two and five years and a fine of between 500 and 10,000 dinars. If he divulges these secrets to Algerians residing in Algeria, the penalty is three months to two years’ imprisonment and a fine of 500 to 1,500 dinars. The maximum penalty provided for in the two preceding paragraphs must be imposed if the secrets relate to the manufacture of weapons or munitions of war belonging to the State. In all cases, the guilty party may also be sentenced to deprivation of one or more of the rights listed in article 14 of this law for a period of at least one year and at most five years’.



Article 25 of law no. 88-09 of 07 Jomada II 1408 corresponding to January 26<sup>th</sup> 1988, relating to national archives, reads as follows: ‘Anyone who destroys, vandalises or misappropriates public or private documents held in public archives or repositories handed over to the public depositary in this capacity shall be liable to the penalty laid down in article 158 of the Criminal Code. Under articles 215 and 216 of the Criminal Code, anyone who forges or falsifies archive documents is liable to punishment.

Articles 158, 215 and 216 of the Criminal Code, referred to in Article 25 above, stipulate the following:

Article 158: ‘Anyone who wilfully destroys, defaces, dissipates or removes papers, registers, contracts or deeds kept in archives, registries or public repositories or handed over to a public depositary in this capacity, will be punished by five to ten years’ imprisonment. If the destruction, degradation, deterioration, dissipation or removal has been carried out by the public depositary or by violence against persons, the penalty will be ten to twenty years’ imprisonment.

Article 215: Any judge, public officer or civil servant who, in drawing up documents in his or her official capacity, fraudulently falsifies the substance or circumstances thereof, either by writing agreements other than those recorded or dictated by the parties, or by reporting facts that he or she knows to be false in the guise of true facts, or by falsely attesting that facts have been admitted or occurred in his or her presence, or by deliberately omitting or modifying statements that he or she has received, shall be punished by life imprisonment.

Art: 216 ‘Any person, other than those designated by Article 215, who commits forgery of official or public documents shall be punished by temporary imprisonment of between ten (10) and twenty (20) years and a fine of between DZD 100,000,000 and DZD 2,000,000.

1- By imitating or forging the handwriting or signature.

2- By forging agreements, texts, undertakings, obligations or disclaimers or by subsequently inserting them in such documents.

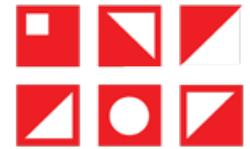
3- By adding, omitting or falsifying the conditions, statements or facts that these documents are intended to receive or prove.

4- Or by impersonating or substituting another person.

Article 26 of law no. 88-09 of 07 Jomada II 1408 corresponding to January 26<sup>th</sup> 1988 relating to the national archives stipulates that ‘If the destruction, sabotage or misappropriation is facilitated by the public depositary, the penalty shall be that provided for in article 159 of the Criminal Code’.

Article 159 of the Penal Code states: ‘The public depositary shall be punished by imprisonment of six months to two years if the destruction, damage, misappropriation or embezzlement results from his negligence.

Articles 27 and 28 of law no. 88-09 of 07 Jomada II 1408 corresponding to January 26<sup>th</sup> 1988, relating to national archives, stipulate the following:



Article 27: ‘Any person who wilfully destroys or attempts to destroy private documents of archival value shall be liable to imprisonment for a term of two months to one year (I) and 2,000 to 20,000 DZD. The documents may be confiscated.

Article 28 ‘Anyone who contravenes or attempts to contravene the provisions of Article 15 of this law will be punished by imprisonment of between two months and one year and a fine of between DZD 2,000 and DZD 20,000.

#### **5.4. The Algerian archivist and profession ethics:**

After reviewing the legal controls of the archivist profession and his responsibilities in Algerian legislation, it was necessary to define moral responsibility. However, there is no charter of the archivist's profession ethics in Algeria; this is backs to the weakness or absence of the Association of Archivists. It is known that the ethics of the professionare determined by the professionals and specialists in this profession because they are more aware of its secrets. The Algerian archivist has no choice but to adopt the Code of Ethics for the Archivist Profession issued by the International Council on Archives, because it is a code for archivists who have no code.

As for the provisions of this charter, which were adopted by the General Assembly of the International Council on Archives at its thirteenth session held in Beijing on September 6, 1996, and which Algerian archivists can adopt directly or start from as a first building block for establishing an Algerian charter for the profession, they are ten provisions as follows:

- 1- Archivists should protect the integrity of archival material and thus guarantee that it continues to be reliable evidence of the past.
- 2- Archivists should appraise, select and maintain archival material in its historical, legal and administrative context, thus retaining the principle of provenance, preserving and making evident the original relationships of documents
- 3- Archivists should protect the authenticity of documents during archival processing, preservation and use
- 4- Archivists should ensure the continuing accessibility and intelligibility of archival materials.
- 5- Archivists should record, and be able to justify, their actions on archival material.
- 6- Archivists should promote the widest possible access to archival material and provide an impartial service to all users.
- 7- Archivists should respect both access and privacy, and act within the boundaries of relevant legislation.
- 8- Archivists should use the special trust given to them in the general interest and avoid using their position to unfairly benefit themselves or others.



- 9- Archivists should pursue professional excellence by systematically and continuously updating their archival knowledge, and sharing the results of their research and experience

Archivists should promote the preservation and use of the world's documentary heritage, through working co-operatively with the members of their own and other professions

## 6. CONCLUSION

Throughout the elements of this study, we tried to show the sensitivity of archivist's profession in Algeria, who should make equivalence between the respect of law from one side and the respect of ethics from the other side, as they are important in the practical field. It came out with a set of results, which are:

- The Algerian archivist sustain his profession depending to a group of laws, that determine his moral responsibility, the most prominent of these are the public employment law and the law related to archive.
- The archivist according to the Algerian law related to archive is not just those who graduate from the library science and documentation to work in managing g the archive, but also the administrative assistant is responsible to manage the documents.
- The ethics in archivist's profession in Algeria are not regulated by a national charter. However, one can resort to the Code of Ethics for the Archival Profession issued by the International Council on Archives.

The study recommends the following:

- The necessity for Algerian archivists to establish a national association or union of their own, whose mission is summarized in:
  - Advancing the archivist profession in Algeria
  - Updating the law related to archive issued in 1988.
  - Applying an Algerian professional code of ethics.
- It also recommends the necessity of including professional ethics in the curricula of archivists in Algerian universities.

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