

Judicial jurisdiction in crimes endangering national security between military courts and ordinary courts**Tahanout Nadia***Faculty of Law - University of Algiers 1 , <mailto:n.tahanout@univ-alger.dz>

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Abstract: Military justice is specialized in examining all military crimes as defined by its laws, including those affecting national security, in addition to offenses stipulated by criminal law committed by civilians. This study aims to delineate the jurisdiction of military courts within the framework of these serious crimes, especially after the Algerian legislature changed its stance and amended the military judiciary law under law 18-14, revoking the third paragraph of article 25, which expanded the jurisdiction of military courts in trying civilians committing crimes endangering national security. Post-amendment, this jurisdiction is now within the purview of regular criminal courts, affirming the litigants' right to a fair trial.

Keywords: Military justice; Regular courts; qualitative jurisdiction; crimes against national security.

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Introduction:

The rules of jurisdiction are fundamental in determining the judicial authority exclusively competent to adjudicate a lawsuit. They represent one of the procedural requirements for the validity of legal proceedings, with non-compliance or deviation resulting in nullification. The study emphasizes the significant importance of these rules in procedural laws in general, and specifically in military justice, particularly in defining the crimes falling under its purview, the individuals subject to its jurisdiction, and the procedures to be followed. This is crucial for ensuring the proper conduct of public litigation and justice on one hand, and safeguarding the rights of litigants on the other.

Under law No. 71-28 dated April 22nd 1971, the military judiciary law established specialized judicial entities to prosecute a specific category of military personnel for crimes committed against the principles of the state. This was in response to the threats faced by the state, endangering both its internal and external security. Recognizing the role of the national army in safeguarding the state's security, territories, and vital interests, the jurisdiction of military courts could extend to include civilians in cases of crimes against national security. This departure from the concept of natural justice violates the principle of equality before the law and the judiciary, undermining the independence and neutrality of the judiciary.

In the recent amendment introduced by law No. 18-14 on July 29th 2018, the military judiciary law was revised to address criticisms of its old formulation. While retaining some procedural peculiarities that maintain its character as a special type of judiciary, dedicated to a specific category and a sensitive sector closely linked to the security and safety of the nation, the amendment altered its approach to crimes endangering national security. Specifically, it abolished the third paragraph of article 25, eliminating the specialized jurisdiction of military justice in cases involving civilians committing crimes against national security. In such cases, the judicial jurisdiction now falls within the purview of regular courts, affirming the litigants' right to a fair trial.

Consequently, this research aims to provide a comprehensive overview of actions that jeopardize national security, deemed criminal under both criminal and military law. It seeks to identify key provisions and rules regulating jurisdiction under military justice concerning these crimes, particularly in the context of the recent amendment.

The significance of the topic becomes evident in the novelty introduced by the recent amendment in delineating the boundaries of specialized jurisdiction for military courts. This is particularly crucial since these rules often raise the issue of jurisdictional conflict, whether positive or negative, in crimes endangering national security between military and regular civilian courts. From this perspective, the problem revolves around the limits of jurisdiction in crimes threatening national security, specifically addressing when military courts have jurisdiction over such cases instead of regular civilian courts.

To study this subject, I adopted the analytical and descriptive methodologies. The analytical approach is suitable for analyzing legal texts regulating crimes endangering national security, while the descriptive approach involves describing the distinctive features of both the penal law and military Judiciary law in this field, as well as the criminal procedure law and military Judiciary law in determining the scope of judicial jurisdiction in such serious crimes.

THE FIRST TOPIC: The jurisdiction scope of military courts in crimes endangering national security

The Algerian state, like other states, is committed to ensuring its security and preserving its national identity from the risks of aggression. Crimes endangering its security are considered among the most serious offenses due to their diverse forms and the harm they inflict on the state and its stability. Whether committed by military or civilian individuals, the severity of these crimes led the constitutional amendment of 2020 to stipulate in article 79 "every citizen must protect and preserve the independence, sovereignty, territorial integrity, national unity, and all symbols of the state. The law sternly punishes treason, espionage, allegiance to the enemy, and all crimes against the security of the state"¹.

Crimes endangering national security are defined as any danger or threat, internally or externally, to the components of the state and its vital interests². Therefore, the legislator granted the military justice the authority to adjudicate on them, based on the understanding that the national army is responsible for protecting the state in terms of its security, territorial integrity, and supreme interests. Due to the intertwining nature of crimes endangering national security, the general law, represented by the penal law, identified these crimes and imposed severe penalties, designating them within the jurisdiction of military justice before the amendment of the military judiciary law. Simultaneously, military justice considered them pure military crimes always falling under the jurisdiction of military courts.

First requirement: Jurisdiction of military courts in serious crimes against the state as stated in the penal code before amending the military judiciary law

Before its amendment, the third paragraph of Article 25 of the military judiciary law stated that "permanent military courts have jurisdiction, contrary to the provisions of article 248 of the criminal procedure code, to adjudicate on crimes committed against the security of the state in accordance with the text provided in the penal code, when the penalty of imprisonment exceeds a period of five years. In the case of misdemeanor crimes, permanent military courts do not have jurisdiction unless the perpetrator is a military personnel or equivalent."

The jurisdiction of military courts is not established unless the crimes committed against the security of the state are of the nature specified in the penal code, and their penalties are not less than five years of imprisonment.

Otherwise, the jurisdiction will fall under the purview of ordinary courts in accordance with the provisions of article 248 of the code of criminal procedure³, one of the most prominent political cases tried by the military court in Blida in 1992 was the case of senior leaders of the Islamic Salvation Front, despite their civilian status. Most of the charges against them were serious crimes against state security⁴.

Extending the jurisdiction of military justice to civilians is considered an exclusion of the jurisdiction of ordinary courts⁵, following the principle that "special law restricts general law." Crimes endangering national security include acts of treason and espionage (firstly), as well as other crimes posing a threat to national security (secondly). This is done by defining and specifying the legal scope of these crimes.

First section: The legal scope of crimes endangering national security in the penal code

The protected interest in crimes endangering national security lies in preserving the fundamental interests of the state related to its existence, organization, and unity. This broad concept encompasses all actions harmful to the necessary conditions for the existence of the state, not just those posing a threat to its security⁶.

Treason crimes are among the most dangerous offenses an individual can commit against their own country. The perpetrator of this crime, regardless of their status,

severs the sacred allegiance that binds them to their country and nation when they take a stance against their homeland, supporting a foreign state against their own. Therefore, treason is defined as a crime involving a serious breach of allegiance by any citizen towards their country⁷, and it is only applicable to individuals holding Algerian nationality, whether birthright or acquired, or foreigners serving in the Algerian military or navy. Treason can take various forms, as outlined in Articles 61,62, and 63 of the penal code.

According to article 61 forms of treason include waging war against Algeria, engaging in espionage with a foreign state with the intent of inciting aggression against Algeria, providing means to facilitate the entry of foreign forces into Algerian territory, undermining the loyalty of land, sea, or air forces, or any other method. Additionally, treason encompasses the crime of delivering Algerian forces, lands, cities, fortresses, facilities, or stores intended for defense to a foreign state or its agents. It also includes the destruction or sabotage of ships, aircraft, equipment, provisions, buildings, or structures of any kind, with the intent to harm national defense or introduce defects or cause accidents, all in pursuit of the same purpose.

Article 62 of the penal code addresses a category of actions that could undermine the morale of the armed forces, considering them constitutive of the crime of treason if committed during wartime, whether by Algerians or those under the authority of the Algerian state, including military personnel or sailors in the service of Algeria. It defines these actions into four types, including incitement of military personnel or sailors to join a foreign state or contribute to recruiting for a state at war with Algeria, espionage with a foreign state or one of its agents with the intent to assist that state in its plans against Algeria, the crime of obstructing the passage of military equipment, and the crime of contributing to undermining the morale of the army or the nation.

As for the forms of treason specified in article 63 of the penal code, they include tangible acts that affect war plans and secrets. These forms always falls under military jurisdiction in accordance with Article 32 of the military judiciary law because they are committed during times of war.

On the other hand, the crime of espionage, as per article 64 of the penal code, is characterized by its danger and continuous evolution. Modern methods, particularly with the vast technological advancements in all fields, may be employed in espionage, making detection difficult. This category of crimes is not committed by one individual against another but is, in fact, a crime against state

security perpetrated by an individual or a group, impacting public welfare and affecting anyone residing within the state without distinction⁸.

The crime of espionage is essentially the same as the crime of treason when committed by a foreigner. The criterion for distinction is nationality, as explicitly stated in article 64: "Any foreigner committing the crime of espionage shall be punished with death...". Therefore, espionage committed by a foreigner involves the same actions that would be considered treason if committed by an Algerian. The exception is a foreigner who is considered military personnel or a sailor in the service of Algeria, even though he is a foreigner; the acts he commits, regulated by articles 61 and 62, are considered treason and not espionage. Similarly, waging war against Algeria, even if committed by a foreigner, cannot be considered an espionage offense. article 64 explicitly exempts paragraph 1 of article 61 of the penal code.

Second section: Legal scope of other crimes endangering state security in the penal code

In addition to treason and espionage crimes addressed in the first section, the penal code explicitly mentions other crimes that threaten state security. These include other offenses against national defense and the national economy, assaults, conspiracies, and other crimes against the authority of the state and the integrity of the homeland, as well as crimes involving assassination, sabotage against the state, crimes characterized by terrorism or subversive acts, and crimes contributing to insurgencies.

Among the crimes addressed by the penal code in articles 65 to 76 is the offense of gathering information, items, documents, and designs with the intent to deliver them to a foreign country. The act of collecting and exploiting such information causes harm to national defense and the national economy. However, in the misdemeanors committed against state security, the specialized jurisdiction of military courts is only established if the perpetrator is military personnel or a similar entity. It is not permissible to prosecute a civilian before military courts for offenses committed under general law, even if they relate to state security. This includes offenses such as providing military information that was not made public by the competent authority, and the disclosure of which could potentially harm national defense. If committed by someone without military status, the act would only be considered treason or espionage if it was done with the intention of betrayal and espionage, unless the perpetrator has military status⁹. In this context, the supreme council has decided that if the committed crime affects state

security but carries a sentence of less than five years of imprisonment, military courts have jurisdiction to try military personnel, while civilians fall under the jurisdiction of regular courts¹⁰.

The situation is no different for the offense of obstructing the passage of military equipment, facilitating such acts, or organizing them during times of peace, as per article 74 of the penal code. However, it is considered a crime if committed during wartime, falling under the specialized jurisdiction of military courts. The same applies to the offense outlined in article 76 regarding recruiting volunteers or mercenaries for a foreign state on Algerian territory during peacetime. In times of war, jurisdiction falls to military courts for directly addressing crimes against state security, regardless of whether the crime is a felony or misdemeanor, and regardless of the perpetrator being military or civilian¹¹.

As for crimes related to assaults, conspiracies, and other offenses against the state authority outlined in articles 77 to 83 of the penal code, their purpose is to eliminate or change the ruling system, undermine territorial integrity, incite citizens to wage war against the state or against each other, or conspire to commit such attacks through a simple agreement between two or more individuals. Crimes of assassination and sabotage against the state, as mentioned in articles 84 to 87 of the penal code, take the form of leading armed gangs with the intent to disrupt state security, administration, formation, organization, or actions related to these.

Article 87 of the penal code also addresses crimes characterized by terrorist or sabotage acts, defining them as any act targeting state security, national unity, territorial integrity, and the stability of institutions and their normal functioning by spreading terror among the population, causing a lack of security through attacks on lives, freedoms, and property, among other terrorist or sabotage acts¹².

Regarding crimes related to participating in rebellious movements, as mentioned in Articles 88 to 90 of crimes against state security, some forms of these crimes include establishing obstacles to hinder public forces, preventing their summon or gathering through violence and threats. Additionally, occupying buildings or other structures with the intent to attack or resist public forces, seizing weapons or ammunition by force, carrying or using them, and managing or organizing a rebellion, as clarified by article 90 of the penal code.

Second requirement: Jurisdiction of military courts in crimes against state security as per military judiciary law

The Algerian legislator has designated the jurisdiction of military justice for specific and defined crimes, without requiring a specific status of the perpetrators or a specific location. The focus is on the type and subject matter of the crime, the first case handled by the military justice in 1964 was the case of the most prominent officers of the National Liberation Army, Mohamed Chaabani, a junior colonel, who was accused of attempting to rebel against the authority and sow discord within the army; He was later sentenced to death¹³. The case of Brigadier General Abdelkader Ait Ouabri, also known as Hassan, the former head of the counterterrorism service (intelligence agency), who was arrested in 2015 on charges of violation of instructions issued by the military command, was tried before the military court, which sentenced him to 5 years in prison¹⁴.

And the military justice system is tasked with adjudicating these crimes. These are exclusively military crimes, mentioned only in the military judiciary law and not in other laws¹⁵, these crimes are outlined in book III, chapter ii, section ii, articles 277 to 285 of the military judiciary law.

First section: Crime of treason according to the military judiciary law

The text of the military judiciary law, both before and after its amendment¹⁶, addresses the crime of treason in articles 277, 278 and 279. Article 277 stipulates that every military person in the service of Algeria who wages war against Algeria shall be punished with the death penalty and demotion. Additionally, any military person in the service of Algeria, who falls into the hands of the enemy and regains freedom on the condition that they never wage war against Algeria, shall be punished with imprisonment ranging from three to five years. If the offender is an officer, they shall be additionally punished with isolation. In all cases, the convicted individual is deprived of civil, national, and family rights. Joining the enemy ranks is considered a severe form of betrayal and disloyalty to the homeland, contradicting loyalty and belonging to the land and nation. It weakens the country's defensive strength and undermines the unity of the nation¹⁷.

Article 278 further stipulates that “anyone who incites military personnel to join the enemy, facilitates their means to do so with knowledge of the matter, or recruits individuals on behalf of a state at war with Algeria is considered a recruiter for the enemy and is punished with the death penalty.”

Also, joining the enemy's ranks includes recruiting military personnel or civilians, all with the aim of enlisting for the benefit of an enemy state, especially in times of war with Algeria, by contacting military or civilian individuals, all for the

purpose of recruitment for the benefit of an opposing state, whether inside or outside the country¹⁸.

Article 279 stipulates the death penalty:

1. Every military personnel who delivers to the enemy or for the enemy's benefit the division under their command, the assigned location, army supplies, warzone maps, facilities related to war industry, ports, basins, secret codes, military operations, campaigns, or negotiations.
2. Every enemy who contacts another enemy to facilitate their actions.
3. Every military personnel involved in conspiracies with the intention of pressuring the decisions of the responsible military leader.
4. Every military personnel who incites defeat in the face of the enemy or hinders the gathering of soldiers.

Upon analyzing the text, we find a common theme among its paragraphs, represented by the Algerian military personnel in the service of Algeria. It is essential for the military personnel themselves to assist the enemy or act in the enemy's interest by committing actions defined as crimes against the state to which they owe loyalty.

Second section: Espionage crime in the military judiciary law

The Algerian legislator, under the military judiciary law, addressed various forms of espionage. These differ from espionage crimes committed by foreigners, which we will discuss based on the texts of articles 280 and 281. All these crimes are described as espionage, whether committed by military personnel or the enemy.

Espionage crimes committed by military personnel involve entering military sites, centers, camps, or military locations to obtain documents or information for the enemy. They also include providing the enemy with documents or information that could harm army operations or compromise the security of facts, centers, or other military institutions. Military personnel engaging in espionage may hide themselves or be agents or enemies sent for reconnaissance while being aware of their actions¹⁹.

Regarding espionage crimes committed by the enemy, article 281 stipulates that “Every enemy entering disguised into built places in the previous article shall be punished with death.” The term 'enemy' refers to the army and its individuals, whether military or civilian personnel attached to it, engaging in activities related

to war such as experts in explosives, weapons, chemical substances, and military equipment...”. The text conditions punishment for the act on the enemy's disguised entry into the location, military facility, or places mentioned in article 280, a characteristic not applicable to the actions of an opposing military personnel wearing their military uniform²⁰."

Third section: Conspiracy crime in military judiciary law

Conspiracy as a crime against state security is defined as "the agreement of several individuals to commit a crime harmful to state security and the preparation of the necessary means for that"²¹. The military judiciary law addresses conspiracy crimes in articles 283 to 285 under the title "Military Conspiracy." The purpose of committing a conspiracy crime, according to article 284, is to undermine the authority of a military formation, naval vessel, military aircraft, or to compromise the order or security of the military formation, naval vessel, or aircraft. If the conspiracy occurs during times of war and in territories where martial law or a state of emergency has been declared, or in any circumstances that could endanger the security of the military formation, naval vessel, or aircraft or aim to pressure the decisions of the responsible military leader, it is punishable by the death penalty.

Conspiracy is established by the mere agreement of two or more persons to commit it, making the criminalization of conspiracy an exception to general principles of complicity. It considers the agreement aiming to commit a crime harmful to state security as a crime in itself, even if no criminal results are achieved. The law punishes it based on the intent and determination to commit such a crime²².

THE SECOND TOPIC: The jurisdiction of the criminal courts in crimes harmful to state security

The penal courts adjudicate actions described as crimes, including crimes committed against state security, misdemeanors, and offenses related to them. They are present in every court of justice, and consist of two levels: a court of first instance and an appellate criminal court, in line with the constitutional principle of having two levels to ensure fair trial guarantees in criminal matters. Due to the gravity of crimes harmful to state security committed by civilians, the criminal courts have jurisdiction over them according to general rules. However, there are exceptional cases where jurisdiction is assigned to military courts when specific criteria are met (secondly).

First requirement: The scope of the jurisdiction of the criminal courts

the jurisdiction is defined as the authority granted by the Code of Criminal Procedure to a court to adjudicate cases concerning the accused person, whether a minor or an adult, civilian or military, according to the type of crime, its seriousness as a felony, misdemeanor, or violation, the place of the crime, the residence of the accused, or the place of arrest²³. Accordingly, we will first address personal and qualitative jurisdiction, followed by local or territorial jurisdiction.

First section: Personal and qualitative jurisdiction of the criminal court

The criminal court does not have jurisdiction to consider crimes defined as serious offenses against state security unless the conditions related to the accused person, known as personal jurisdiction, or the type of crime, known as qualitative jurisdiction, are met.

Regarding personal jurisdiction, the criminal court has jurisdiction to adjudicate cases brought before it related to crimes committed against state security. These cases are referred to it by a final decision from the chamber of accusation without taking into consideration the status of the accused person. According to article 249 of the criminal procedure code, the criminal court of first instance has full jurisdiction in criminal judgments against adults at the age of criminal responsibility, set at 18 years old as a general rule, accused of committing a crime²⁴. The criminal court cannot decide on its lack of jurisdiction except in cases where the accused, charged with a crime against state security, has not reached the age of 18. In such a case, jurisdiction is transferred to the juvenile section located at the judicial court²⁵, in accordance with article 59, paragraph 2, of law N° 12-15 related to child protection²⁶.

Foreign diplomatic politicians with diplomatic immunity in Algeria, as per international law²⁷, are exempt from prosecution. Judicial immunity for this category serves as a manifestation of the inviolability of the accredited diplomatic envoy, even if they commit a serious crime against state security, such as espionage.

Qualitative jurisdiction of the criminal court is determined by the nature of the committed crime. The court has jurisdiction to consider acts defined as crimes under Article 248 of the amended criminal procedure code, under the law 17-07. According to this article, the described actions are felonies as a general rule, with exceptions granted by Algerian legislator to consider misdemeanors and violations when they are associated with the referred crime by the chamber of

accusation based on a final decision, as stipulated in article 188 of the criminal procedure code.

The jurisdiction of the criminal court of first instance is extended as it possesses comprehensive jurisdiction and general authority, it decides on all cases presented before it and is not allowed to rule on its lack of jurisdiction according to article 251 of the criminal procedure code. It is bound by the provisions of the final referral decision from the chamber of accusation, and in accordance with article 250 of the criminal procedure code, it cannot adjudicate any charges not mentioned in the referral decision. The accused cannot raise the lack of jurisdiction of the criminal court of first instance except before the chamber of accusation after the final referral decision²⁸.

It is worth noting that, concerning the type of crimes that pose a threat to state security and committed by civilians, and based on their severity, as the national army is responsible for safeguarding the state in terms of its security, the military judiciary was initially granted the authority to adjudicate them. However, after amending the military judiciary law and abolishing the third paragraph of article 25, the jurisdiction to adjudicate crimes against state security became the exclusive prerogative of civilian criminal courts, except when committed during a state of war, where jurisdiction is always attributed to military courts, even if the perpetrators are civilians.

Second section: Local jurisdiction of the court of first instance

The local or territorial jurisdiction of the court of first instance is interconnected and parallel to the jurisdiction of the chamber of accusation assigned to the same judicial court, to which the court of first instance belongs as the primary degree. It does not have the authority to adjudicate charges other than those referred by the chamber of accusation. Article 251 of the criminal procedure code stipulates that the court of first instance cannot decide on its lack of jurisdiction regarding cases referred to it by the chamber of accusation, even if the referral decision contains an error in describing the crime²⁹.

In accordance with the second paragraph of article 252 of the criminal procedure code, an exception to local jurisdiction extends to the court of first instance when it convenes outside the jurisdiction of the judicial council. In this case, jurisdiction is transferred to it by a decision issued by the supreme court. The original jurisdiction authority instructs the original court to relinquish jurisdiction over the case to the court of first instance outside the jurisdiction in another judicial court.

Additionally³⁰, article 548 of the criminal procedure code stipulates that the supreme court may, for reasons of national security, the proper conduct of justice, or legitimate suspicions, order a judicial entity to refrain from hearing a case and refer it to a judicial entity of the same degree. It is a discretionary matter decided by the supreme court without appeal.

The court of first instance has jurisdiction to hear crimes committed by Algerians outside the territory, provided that the perpetrator returns to the country and is not definitively convicted abroad, has served his sentence, or the charges have lapsed due to prescription or amnesty, according to the provisions of article 582 of the criminal procedure code. Moreover, article 588 of the same law allows the extension of its jurisdiction to adjudicate on crimes or offenses committed by foreigners abroad, harming the sovereignty and security of the Algerian state and its interests³¹.

Second requirement: Jurisdiction of military courts over crimes against state security after amendment

After amending the third paragraph of Article 25 of the Military Judiciary Law, which granted military courts the specific jurisdiction to adjudicate on crimes against state security committed by civilian individuals, the review of such cases is now within the purview of criminal courts, in accordance with Article 248 of the Criminal Procedure Code³². Crimes against state security are now under the jurisdiction of ordinary courts like other offenses under public law. Before the amendment, it was stipulated that unless the crime was committed within a military institution, during duty, or by the host, military jurisdiction would not apply unless the case was related to state security and carried a punishment exceeding five years³³. Under the amendment and the concept of violation, military courts cannot have jurisdiction over state security cases unless one of these objective criteria is met³⁴. This indicates that military courts have relinquished their jurisdiction to hear crimes against state security committed by civilians in favor of criminal courts, but have not relinquished their jurisdiction based on personal or territorial jurisdiction rules³⁵. This is not limited to crimes committed during duty or by the host (firstly), and it also includes offenses within military areas or during wartime (secondly).

First section: Committing crimes endangering state security during duty or with the host.

The occurrence of crimes endangering state security during duty or with a host is a condition for the establishment of jurisdiction for military courts, as specified by the law. The law emphasizes that for military courts to have jurisdiction, the crime must be committed when, on duty or with a host. Otherwise, jurisdiction is transferred to criminal courts.

Crimes endangering state security may be committed due to or on the occasion of performing a service or duty, such as executing orders from superiors. There must be a causal relationship between the crime and this service. It is essential for the person committing the crime to have the status of a military employee or a civilian affiliated with the ministry of national defense.

Law 18-14 related to military Judiciary law expands jurisdiction to include all employees and civilians working in the ministry of national defense. If the status is absent, military justice does not have jurisdiction. Similarly, if the criterion during service is absent, even if the status is present according to article 25 of the military judiciary law, the jurisdiction of military courts does not apply. The requirement for status alone is not sufficient unless it is related to the service³⁶.

Crimes endangering to state security may also be committed with a host. However, the term " the host" is not explicitly defined in military Judiciary law. It is referred to in article 296, which punishes any military personnel or equivalent civilian, accused of theft, provided the act occurred during peacetime, and the accused took refuge with or sought protection from a host. The host, in this context, generally refers to any person who provides shelter or accommodation for a military unit for exploitation within the framework defined by the law³⁷. This person can be Algerian or a foreign national, and can be a natural person or a legal entity³⁸.

The fact that article 296 is limited to theft crimes only, does not mean that other crimes are not committed, such as crimes endangering state security according to the host country's laws. The article explicitly states that the accused holds a military status or its equivalent, and it assumes that the accused's resort to it indicates that he was on duty. Therefore, military jurisdiction applies to him in accordance with the provisions of the second paragraph of article 25 of the military judiciary law, whether the accused is an original perpetrator, an accomplice, or a partner in the crime endangering state security.

Second section: Committing crimes endangering state security within military areas or during wartime

The amendment retained other cases for the jurisdiction of military courts in crimes endangering state security, when it comes to crimes of state security stipulated in the military judiciary law alongside what is provided in the penal code, if committed in military areas or during wartime, as specified by law 18-14 amending the military judiciary law. The military law, in its article 29, defines military areas as all facilities or barracks established permanently or temporarily and used by the army, naval vessels, and military aircraft wherever they may be. Therefore, military jurisdiction extends to state security cases when the latter are committed in one of the specified locations in this law³⁹.

Among the crimes falling under the jurisdiction of military courts is an assault on national defense, as stipulated by the penal code and committed by a civilian who enters surreptitiously or under a false name or conceals his identity or nationality into a fortress, facility, center, warehouse, workplace, barracks, camps, or military installations or commercial establishments used for national defense, or in ships, aircraft for navigation, military vehicles, military institutions, or their workshops, or sets up any covert means of correspondence or remote communication likely to reveal information concerning national defense by a foreign aircraft over Algerian territory without permission from the Algerian authorities, or engaged in actions impeding national defense, or entered without authorization from the Algerian authorities, or made drawings, took photos, drew maps, or conducted topographical operations in a restricted area designated by the military or naval authority concerning national defense, or resided in a specific area around fortified facilities or military or naval institutions, or disclosed to a person without status information related either to measures taken to detect perpetrators of crimes and misdemeanors and their accomplices and arrest them and either by proceeding with investigation procedures or by conducting trials⁴⁰.

It is noteworthy regarding the third paragraph of article 25 that it did not specify the requirement for the status of being a military employee or a civilian affiliated with the ministry of national defense, nor did it stipulate a specific type of crime, but rather any crime, including crimes endangering state security. Whether committed by the primary perpetrator, an accomplice, or a participant in its commission. In this regard, the brother of the former president and other accomplices were prosecuted in a case of conspiracy against the authority of the army and conspiracy against the state, which are actions endangering state security as stipulated in article 284 of the military judiciary law and articles 77 and 78 of the penal code. The acts attributed to them were committed within a

barracks which falls within military areas, thus the jurisdiction was transferred to the military court in Blida ⁴¹.

Furthermore, military courts have jurisdiction to consider crimes endangering state security committed by civilians during wartime, in accordance with article 32 of the same law, or engaging in correspondence such as establishing relationships or conducting business with citizens of an enemy state without the permission stipulated by article 72 of the penal code. The law punishes any deliberate act that harms national defense, not specified or punished by any other provision, during wartime. Military courts have jurisdiction over such acts as long as they occur during wartime.

Military courts also have jurisdiction over crimes described as treason or espionage under Article 63 of the penal code, committed only by civilian Algerians excluding military personnel and sailors in the service of Algeria. These crimes include actions that involve disclosing secret information, documents, or designs related to national defense to a foreign state or one of its agents by any means, as well as obtaining such information with the intention of handing it over to a foreign state or one of its agents, or destroying such information, documents, or designs.

Finally, it is essential to note that decisions of the military court are subject to the oversight of the supreme court in accordance with article 1 of the military judiciary law. Matters concerning the jurisdictional conflict, whether negative or positive, are also resolved⁴². within this context. In this regard, military courts have jurisdiction over cases referred to them by the supreme court, regardless of the nature of the crime, including crimes against state security, pursuant to article 548 of the code of criminal procedure.

Conclusion:

Judicial jurisdiction in crimes endangering state security depends on the type of crime committed, whether it is criminalized and punishable under the Penal code or under the military judiciary law, and based on specific criteria that make the latter competent over ordinary courts.

Among the most important findings reached during this research are:

- That crimes endangering state security, as covered by the penal code, are serious crimes to the extent that military judiciary law previously vested jurisdiction over them in military courts. Before the amendment by Law 18-14, military courts

were empowered to adjudicate cases involving civilians during peacetime or wartime. This made military courts susceptible to criticisms, leading to a change in their jurisdiction, now granting full jurisdiction over such cases to ordinary criminal courts, except for crimes endangering state security committed during wartime, which remain within the jurisdiction of military courts.

- Another key finding is that crimes endangering state security under the military judiciary law are military crimes, over which military courts have undisputed jurisdiction, both before and after the amendment of this law. This applies whether the perpetrator is the primary actor, an accomplice, and regardless of whether the perpetrator has a military status or not.

- The jurisdiction of ordinary courts over crimes endangering state security, as specified in the penal code and committed by civilians, remains similar to crimes under general law unless specific criteria are met that render military courts competent. These criteria include committing the crime endangering state security during service, on military premises, or during wartime.

More importantly, regardless of the jurisdictional disputes, military courts are under the supervision of the criminal chamber of the supreme court, especially since challenging jurisdiction is one of the grounds for appeal before the supreme court.

To clarify the delineation and boundaries of military jurisdiction without encroaching on ordinary criminal courts, and based on these findings, the following suggestions should be considered:

- The organization of crimes endangering state security by separating crimes committed during wartime or within military areas from the penal code as crimes under military jurisdiction, even if committed by civilians.

- The establishment of criminal courts similar to specialized courts to adjudicate crimes endangering state security during peacetime due to their severity and maximum penalties.

- Limiting military judicial jurisdiction over crimes endangering state security to what is stipulated in the military judiciary law and to individuals who possess military status or its equivalent.

- The necessity of defining certain terms in the military judiciary law that grant jurisdiction to military courts even if the perpetrator is a civilian, such as defining the term "host" and its scope. This is especially important as the law does not only

require the military status but also necessitates that the crime be committed within the scope of the host for military jurisdiction to apply.

- There is a necessity to utilize and leverage communication technology to provide enhanced protection for documents and secrets related to state security and national defense. This is crucial for preemptively addressing and combating these crimes before they occur and before the Algerian state security is jeopardized. It is imperative to develop effective strategic plans aimed at addressing the underlying causes leading to the commission of such crimes and combating them to prevent their dangers.

Footnotes:

¹- The Algerian Constitution, as amended by Presidential Decree No. 20-442 dated December 30, 2020, Official Gazette No. 82, issued on December 30, 2020.

²- Al-Labidi, Ibrahim Mahmoud, "Criminal Protection of State Security," Legal Books House, Egypt, 2010, p. 6. It is established that if a crime affects state security and its punishment exceeds 5 years of imprisonment, it falls under the jurisdiction of military law, whether the perpetrator is military or not. In cases where the defendant has been prosecuted for committing a crime against state security punishable by imprisonment ranging from 10 to 20 years, military courts are legally competent to adjudicate the case, and challenging their jurisdiction out of context results in the dismissal of the appeal.

³- File No. 47851 dated 10/3/1987, Case (A.A) vs. Public Prosecution, Supreme Court Journal, Special Issue on Judicial Jurisprudence of the Criminal Chamber, 2019, pp. 864-867.

⁴ - Yahya Abu Zakaria, "The Fate of the Leaders of the Islamic Salvation Front: Sheikh Abbasi Madani and Ali Belhadj," Elaph Daily Newspaper, published on Thursday, January 30, 2003, at 12:59, last updated on April 1, 2004, at 18:16. Website: (<https://elaph.com/Web/Archive/1043963792040829100.htm>) .

⁵- Shalabi, Alaa Eldin, El-Reimawi, Abdul Malik. "The Standard of Jurisdiction of Military Judiciary in Military Affairs," International Journal of Legal and Political Research, Volume 5, N° 1, 2021 page 403.

⁶-Salama, Mamoun Mohamed, "General Provisions in Crimes Against State Security from Internal and External Perspectives," Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 12.

⁷- Mansour, Isaac Ibrahim, "Explanation of the Algerian Penal Code 'Special Criminal' in Crimes against Persons, Morality, Wealth, and State Security," 2nd Edition, Algerian University Press, 1988, p. 158

⁸- Bougerraf, Abdelghani, "Espionage as a Serious Crime against State Security under the Penal Code," Afak Journal of Sciences, Volume Eight, Part One, 2017, p. 338

⁹- Article 69 of the penal code

¹⁰ - File No. 47851 dated 10/3/1987, Case (A.A) vs. Public Prosecution, Supreme Court Journal, Special Issue on Judicial Jurisprudence of the Criminal Chamber, 2019, pp. 864-867.

¹¹- According to the explicit text of Article 32 of the Military Judiciary Law "Military courts have jurisdiction during wartime to adjudicate cases of attacks against state security."

¹²- Article (87 repeated), amended by Law No. 14-01 dated 4/2/2014, the complementary and amended to the Penal Code, Official Gazette No. 7 issued on 2/16/2014.

¹³- "Maghreb Voices," Algeria: "From Chaabani to 'The HISSABA (gang)' - 8 Trials That Shook Algeria," published on December 6, 2019, accessed on March 19, 2024, at 18:00. Website: (<https://www.maghrebvoices.com/2019/12/06/>) .

¹⁴- France 24, Algeria: "Five Years Imprisonment for a Senior Official in the Intelligence Apparatus on Charges of 'Violation of Military Instructions,'" published on November 27, 2015, at 09:50, last updated on October 24, 2019, at 22:24, accessed on March 19, 2024, at 18:00. Website: (<https://www.france24.com/ar/20151127>) .

¹⁵ - Military crime are defined as any act committed by a person subject to military law that violates the military system imposed on them by the law. See Faraj Reda, Explanation of Algerian Penal Code - General Provisions. 2nd edition, National Publishing and Distribution Company, Algeria, 1976, p. 191.

¹⁶ - Law No. 18-14 dated July 29, 2018, amending and supplementing Order No. 71-28 dated April 22, 1971, containing the Military Judiciary Law. Official Gazette No. 47, issued on August 1st, 2018.

¹⁷ -Abdullah Suleiman, Explaining Algerian Penal Code - Special Section. University Press Office, Algeria, 1998, p. 12.

¹⁸ - Abdullah Suleiman, Ibid., p. 27.

¹⁹ - Najm Mohamed Sobhi, Explanation of Algerian Penal Code - Special Section. University Press Office, Algeria, 2000, p 169, 197.

²⁰ - Alaa Zaki, Military Judiciary in Light of the Cassation Court's Provisions before the Supreme Military Court According to the Latest Amendments. 1st edition, Modern University Office, Alexandria, Egypt, 2015, pp. 105 and 106

²¹ -Mahmoud Suleiman Moussa, Crimes against State Security "Comparative Study". Alexandria University Press, Egypt, 2009, p. 150

²² -Rabie Imad Mohammed, Nawayseh Abdulilah Mohammed, Crime of Conspiracy against State Security in Jordanian and Emirati Legislation "Analytical Study", Al-Balqa Journal of Research and Studies, Volume 22, N° 1, 2019, p. 121.

²³ -Najm Mohamed Sobhi, Explanation of Principles of Criminal Trials Law. 2nd edition, Dar Al-Thaqafah Library for Publishing and Distribution, Jordan, 2002, p. 441

²⁴-Saad Abdul Aziz, Principles of Procedures before Criminal Courts. Homa Printing, Publishing, and Distribution, Algeria, 2012, pp. 15-16

²⁵ -Mukhtar Sidhoum, Judicial Precedent of the Criminal Chamber at the Supreme Court (Lecture Decisions). Moufam Publishing House, Reghaia - Algeria, 2017, p. 90.

²⁶ - Article 59, paragraph 2 of Law No. 15-12 dated July 15, 2015, regarding Children Protection. Official Gazette No. 39, issued on July 19, 2015.

²⁷ - Articles 29 and 31 of the Vienna Convention on Diplomatic Relations 1961, to which Algeria adhered by Decree No. 64-84, dated March 4, 1964. Official Gazette No. 29, issued on April 7, 1964.

²⁸ - Ohayebia Abdullah, Explanation of Algerian Criminal Procedure Law - Final Investigation (Trial) Part Two. Homa Printing, Publishing, and Distribution, Algeria, 2017-2018, pp.90-91.

²⁹ - Saad Abdul Aziz, Ibid., pp. 17-18.

³⁰ - Khelfi Abderrahmane, Criminal Procedures in Algerian and Comparative Law. 6th edition, Belqis Publishing House, Algeria, 2022, p. 431.

³¹ - Nejimi Jamal, Algerian Criminal Procedure Law in Light of Spatial Precedent (Article by Article). 4th edition, Home Printing, Publishing, and Distribution, Algeria, 2018, p. 378.

³² - Article 248 of the Criminal Procedure Code was amended following the constitutional amendment that guarantees the principle of litigation in two instances, pursuant to Law No. 17-07 dated March 27, 2017 (Official Gazette No. 20, issued on March 29, 2017).

³³ - Case No. 514140, issued on 21/05/2008 Military Prosecutor vs. (M.B.), Supreme Court Journal, Supreme Court, Special Issue on Jurisprudence of the Criminal Chamber, Year 2019, Pages 876-878

³⁴ - The Supreme Court ruled that if the law requires the crime to fall within the crimes specified in the third book of the Military Judiciary Law or to be committed within a military institution or by the host, or if it involves official duties, and if these conditions are not met, then the jurisdiction of the military judiciary does not apply to the case of the civilian defendant, and it falls under the jurisdiction of civilian courts. This was affirmed by the Supreme Court in file No. 807515, decision dated December 20, 2012, case of the Military Prosecutor against (M.J). Supreme Court Journal, Special Issue on Jurisprudence of the Criminal Chamber, pages 868-870.

³⁵ - Mena Murad,. The Right of the Accused to a Fair Trial before the Military Judiciary. Doctoral Thesis submitted for the Degree of Doctor of Laws, specializing in Criminal Law and Criminal Sciences, Larbi Ben Mhidi University, Oum Al Bouaghi, Faculty of Law and Political Science, 2019/2020 Page 39.

³⁶ - Refer to the second paragraph of Article 25 of the Military Judiciary Law amended by Law 18-14.

³⁷ - Mersali Abdelhak, Military Judiciary Jurisdiction in Pursuing Environmental Crime. Ijtihad Journal of Legal and Economic Studies, Volume 9, Issue 1, 2020.

³⁸ - There are those who have expanded the concept of 'host' to include, in addition to the residence, the institution or property owned by him, as well as his vehicle, ship, or aircraft. See:

- Jabbar Salah Al-Din, Trial of Civilian Individuals Before Military Courts, Analytical Study on Cases in Which the Civilian Accused Is Referred to Military Courts Instead of

Civil Jurisdiction According to Algerian Legislation. *Bajuth Journal*, University of Algiers, Volume 9, N° 1, 2016.

³⁹ - The jurisdiction of the military judiciary extends if both a civilian and a military person contribute to the commission of a crime, even if it falls under the general law if committed in one of the places specified by the law. See: AbdelAzim Morsi, *Non-fragmentation and Linkage between Crimes and Their Impact on Jurisdiction*, Dar Al-Nahda Al-Arabiya, Cairo, 1988, p. 69.

⁴⁰ - Article 70 of the penal code

⁴¹ - "Algerian News Agency, 2021, 'Acquittal of Bouteflika, Said, Mediene, Tartag, and Hanoun in the Conspiracy Case Against the Army', posted on Saturday January 2nd 2021 13:24 accessed on March 24th 2022 17:47 <https://www.aps.dz/ar/algerie/99182-2021-01-02-12-25-21>

⁴² - The jurisdiction of the Supreme Court is no longer limited to adjudicating conflicts between ordinary courts only, but also includes conflicts between criminal and exceptional (military) jurisdictions.

-Abd Al Raouf Obeid, *Jurisdictional Conflict in Criminal Matters*, 1st edition, Wafa Al Quanuniya Library, Alexandria, Egypt, 2012, p. 74.

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3- Law No. 14-01, dated February 4, 2014, amending and supplementing the Penal Code, Official Gazette No. 7, issued on February 16, 2014.

4- Law No. 18-14, dated July 29, 2018, Official Gazette No. 47, issued on August 1, 2018, amending and supplementing Order No. 71-28 dated April 22, 1971, which includes the Military Judiciary Law.

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- 10- Abid, Raouf. "Conflict of Jurisdiction in Criminal Matters," First Edition, Al wafa Al Qanuniya Library, Alexandria, 2012.
- 11- Mansour, Issac Ibrahim. "Explanation of the Algerian Penal Code 'Special Criminal' in Crimes against Persons, Morals, Property, and State Security," 2nd Edition, Diwan Al-Matbouat Al-Jamiya, Algeria, 1988.
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