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Table of Contents

Editorial Foreword

Prof. Haïssam Fadlallah
Editor-in-chief of JurisPolitica

It is with great honor and academic dedication that we present the inaugural issue of *JurisPolitica Journal*, a new interdisciplinary platform designed to bridge the worlds of law, political science, governance, and emerging technologies. This first issue marks the official launch of a journal whose mission is to foster research excellence, stimulate critical dialogue, and advance scholarly inquiry across legal and political domains at both national and global levels.

The creation of *JurisPolitica* responds to a scholarly need: a space where contemporary legal challenges can be examined alongside the shifting geopolitical, technological, and socio-economic landscapes that shape them. As artificial intelligence, transnational security, humanitarian crises, and global mobility redefine the contours of modern governance, *JurisPolitica* positions itself as a venue for rigorous, comparative, and forward-looking research that speaks to these transformations.

This inaugural issue reflects the journal's commitment to intellectual diversity, methodological depth, and multilingual scholarship, bringing together contributions in both English and Arabic. The articles address cutting-edge topics that span the intersections of law, technology, human rights, public policy, and political conflict.

This issue features **seven peer-reviewed research papers**, each offering a distinctive and thought-provoking contribution:

1. "AI's Ethical 'BAPT'ism in Journalism: Navigating the Pillars of Bias, Accuracy, Privacy, and Transparency".
2. "Facial Recognition in Public Spaces: Balancing National Security and Privacy in the European Union and the United States — A Comparative Legal Analysis".
3. "Power in the Age of Integration: From Human to Algorithms".
4. "مستقبل المسؤولية المدنية عن أنظمة الذكاء الاصطناعي بعد سحب التوجيه الأوروبي"
5. "Foreign-Trained Workers, Access to Regulated Professions, and Public Safety: What Canadian Human Rights Law Has to Teach".
6. "الرسوم القضائية (إعفاء – إسترداد)"
7. "Famine as a Weapon of War: A Critical Geopolitical and Legal Analysis of Starvation Crimes in Contemporary Armed Conflicts".

The *JurisPolitica* editorial team extends its deepest appreciation to all contributing authors for their trust in this new academic venture and for the scholarly rigor of their submissions. We hope that this inaugural issue will stand as a compelling testament to the journal's vision, a vision that unites legal analysis with political inquiry, and theory with real-world relevance.

We warmly encourage researchers and practitioners to engage with the ideas presented here and to consider *JurisPolitica* a home for their future research. It is our aspiration that this first issue ignites a lasting scholarly dialogue and contributes meaningfully to the advancement of legal and political sciences.

AI's Ethical "BAPT"ism in journalism: Navigating the Pillars of Bias, Accuracy, Privacy, and Transparency

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Abstract

The ethical challenges that come with AI use in newsrooms can be framed through four key pillars: Bias, Accuracy, Privacy, and Transparency (BAPT). Even though AI gives journalism quick, widespread, and efficient help in the news creation process, it can also displace the core of that process: journalistic integrity.

This paper seeks to answer a central question: How can the ethical pillars of bias, accuracy, privacy, and transparency be governed to preserve both journalistic integrity and public trust, while allowing AI to achieve its full potential?

Through an ethical study of case studies, this paper tries to analyze how AI changes the core norms and rules of traditional media. This paper uses an analytical approach that includes normative ethics and comparative legal analysis in order to build an actionable framework for ethical AI journalism.

The main findings show that if AI algorithms are not controlled, they are not just tools but forces that can change public trust and democracy. If there is not enough ethical control, journalism could become a tool of spreading false information and public manipulation. The findings of this study conclude with policy suggestions, with a call to action for regulators to unite around a shared ethical mission. Only by fully integrating AI into the BAPT framework can we protect the future of journalism and ensure that it remains the watchdog of democracy throughout the digital revolution.

Keywords: *Accuracy, Artificial Intelligence, Bias, Privacy, Transparency*

1. Introduction

Technological progress in journalism has led to a complete transformation of the industry while changing how people find and understand information. The printing press achieved two major accomplishments by giving people access to information and breaking down the knowledge barriers that forced leaders to reduce their power. Radio served as more than a device for bringing news into homes because it functioned as a consistent and intimate voice, which directly addressed each person who tuned in. The telegraph operated as more than a speedy communication system because it created the initial division between existing limits. This started a new era of instant worldwide communication that eliminated all spatial and temporal boundaries (Katsh, 1995, p. 1375). The changes in news delivery methods transformed into major events, which altered how people communicate publicly while reshaping social standards and changing human connections at their base level. The New York Times Co. v. Sullivan (1964) case demonstrates how changing circumstances affect legal standards while showing how media must adapt to new technology by delivering accurate information to the public (Abdul Rauf, 2023, p. 3).

The arrival of Artificial Intelligence (AI) technology within newsrooms creates a complete transformation which alters how information travels and how news organizations create their content and present it to their audience. The contemporary digital landscape operates through systems which create new obstacles to ethical and legal compliance. The 2018 Belgian deepfake scandal revealed AI technology's negative impact on truth verification and its ability to create biases which requires strict monitoring and clear responsibility standards (Pinheiro de Resende, 2021, p. 2). The current AI-driven period demands journalists to base their work on authentic information, democratic values, and total openness because these elements function as the ultimate protective shield (Ouchchy et al., 2020, p. 935).

The Dartmouth Summer Research Project of 1956 introduced the term "Artificial Intelligence". From that point onward, scholars have defined AI differently; Nils J. Nilsson sees it as enabling intelligent behavior in machines in perception-based environments, while Winston defines it as making computers perform human-like intelligent tasks (Cui, 2020, p. 6). Hence, AI is the study aiming to create machines and programs mirroring human problem-solving and decision-making abilities (Dennehy et al., 2022, p. 1).

AI journalism transforms data into news articles through AI systems, which operate by using Fourth Industrial Revolution technologies for current media content generation. According to Reuters 75% of media platforms use AI journalism. Robots will generate 90% of news content during the next decade, and computers will surpass human brain abilities by 2040 in the technological singularity (Saad & Issa, 2020, p. 1-6).

Consequently, this era of "post-industrial journalism" marks a profound shift in the media landscape, as technology steadily dismantles traditional methods of news production (Chen, 2024, p. 154). AI algorithms in automated journalism function beyond their role as tools because they create a revolutionary system which enables machines to determine news value independently. The transition undermines the basic principles of journalistic honesty and human editorial decision-making (Monti, 2018, p. 3).

Resultantly, in today's rapidly evolving world of AI-driven journalism, the need to baptize AI into the quadruple paradigm of Bias, Accuracy, Privacy, and Transparency (BAPT) is more pressing than ever. Just as civilized societies are built on a foundation of ethical

principles, AI must be similarly grounded in a robust ethical framework to prevent a dystopian future for journalism. The BAPT framework serves as an essential tool to create dependable news content through AI systems, which prevents both human errors and technological misuse (Alzubi, 2024, p. 173).

As AI fundamentally alters journalism, a pivotal question emerges: How can we ethically master the pillars of bias, accuracy, privacy, and transparency to safeguard journalistic integrity and preserve public trust, all while exploiting AI's immense potential?

This research aims to determine the optimal methods for AI to enhance the trustworthiness of news reporting which supports democratic values. AI has shown its ability to support democratic values by providing accurate and accessible diverse and timely news; however, this research specifically investigates how AI can improve journalism credibility (Opdahl et al., 2023, p. 2). In this context, this research explores the ethical dimensions of AI-driven journalism through the lenses of transparency, bias, privacy, and accuracy; collectively termed the "BAPT" pillars. Thus, this paper will delve into the ethical imperatives of AI-driven journalism, structured into two main chapters addressing critical concerns within this field: Chapter 1, "Ethical Imperatives in AI-Driven Journalism," will examine the foundational ethical principles of transparency and bias; while Chapter 2, "Balancing Privacy and Accuracy in AI Journalism," will address how to navigate the delicate balance between privacy concerns and the need for accuracy in news content.

2. Ethical imperatives in AI-driven journalism

2.1. The Crucible of Transparency in AI Journalism

Gyges' ring, which makes you invisible and gives limitless power, serves as a perfect example to show how AI operating without restrictions creates dangerous situations. The analogy presents AI as a contemporary "ring", which provides corporations and media organizations with substantial control, but minimal regulatory supervision (Leib, 2023, p. 234). Accordingly, will they wield this power responsibly, or will AI's cloak of invisibility lead to manipulation and exploitation in the shadows? The Cambridge Analytica scandal demonstrated how Facebook user data from millions of people was collected to manipulate political views through unauthorized data collection, which exposes the dangers of unregulated data management. AI decisions become vulnerable to manipulation because opaque systems conceal both unrecognized biases and corporate interests, which operate without public awareness or approval (Boddington, 2017, p. 20). This instance shows that authorities must implement stronger regulations to stop these types of unauthorized AI and data analytics applications (Chavali et al., 2024, p. 1254)

More precisely, transparency in AI is an ethical and legal necessity, essential for safeguarding fundamental rights. On the one hand, the principle of transparency is not merely a journalistic ideal but is grounded in legal standards that demand accountability from media outlets. This process allows for AI system transparency, which meets legal requirements for open decision-making systems (Abdul Rauf, 2023, p. 5). The Washington Post employs AI technology to validate sources and conduct fact checks which shows how open AI systems can improve journalism standards (The Washington Post, n.d.).

Hence, transparency in AI journalism involves the obligation to disclose the sources of data, akin to the legal duty of revealing sources in traditional journalism. The legal system faces

a challenging situation because it must find a way to show transparency while safeguarding sensitive data, which resembles the protection of whistleblowers through shield laws (Monti, 2018, p. 5).

On the other hand, as AI embeds itself in journalism, concerns grow over the widening divide between those who grasp AI-generated content and those who do not. The unequal access to information creates ethical challenges regarding equal access to information, which requires legal changes to achieve complete transparency for people at all stages of information understanding (Monti, 2018, p. 14). The AI algorithms operating Google News and Facebook News Feed generate digital information spaces that provide users with content which supports their existing beliefs. AI-generated content creates a greater gap between people who can analyze it effectively and those who lack this ability (Kim, 2023, p. 3).

To address this risk, legal safeguards are needed to ensure AI-generated explanations uphold rigorous standards of accuracy. The process would require oversight through regular audits that check both the transparency and factual accuracy of AI system explanations. The evaluation process needs to go beyond basic checklist methods because it requires complete assessments by independent regulatory bodies that have been given authority to make decisions. The evaluation criteria in these assessments need to maintain consistent standards throughout different jurisdictions to prevent regulatory arbitrage and to uphold uniform ethical standards worldwide. AI explanations will lose their usefulness if no unified system exists, because they would only display technical transparency while still providing incorrect information (Opdahl et al., 2023, p. 8).

On this matter, conducting human rights impact assessments (HRIAs) across the AI lifecycle is a crucial legal tool for spotting and mitigating potential harms. These assessments need to be strong, regular, and open so that they create a legal framework to handle any rights violations that occur. Therefore, making these analyses publicly available ensures that the public can hold AI developers and users accountable for their impact on human rights (Haas, 2020, p. 5). Moreover, the HRIAs process needs to continue after deployment because it must be performed throughout the entire operational period and during AI system modifications. The system would enable ethical adjustments to be made instantly based on user behavior patterns and unplanned system results. The oversight system becomes more democratic when civil society organizations team up with legal experts and journalists to base their work on multiple ethical viewpoints. Human-in-the-Loop (HITL) systems function to decrease autonomous AI system risks through human oversight which creates a vital safety mechanism that stops major system failures (Bird et al., 2020, p. 17).

Finally, while the concept of AI accountability is still evolving, it is evident that transparency by itself is not enough. Organizations need to develop algorithms that both experts and decision-affected people including the public can understand (Monti, 2018, p. 14). More specifically, organizations need to treat explainability as a legal requirement because it has moved beyond being a technical advantage. AI systems which operate in public spheres that influence journalism and public communication require specific standards of transparency to enable legal evaluation, community monitoring, and moral opposition when necessary (Boddington, 2017, p. 20). The future of responsible AI journalism hinges not just on innovation but also on a deeply entrenched ethical architecture, one that transforms opaque machine logic into a legally navigable and morally comprehensible terrain (McGraw, 2024, p. 10).

2.2. Confronting and Mitigating Bias in Artificial Intelligence

First, there is a fundamental problem in AI ethics that needs to be addressed: the vulnerability of AI to bias. This problem is rooted in the harsh fact that we create all of our AI, and therefore they are reflections of our society in an unfiltered sense (Diakopoulos, 2021, p. 219). Bias can stealthily seep into the algorithms and data that drive AI, posing a challenge to fairness and objectivity in journalism. The risk of systematic bias is especially high when the data used to train AI are only representative of certain demographic groups or societal biases (Bird et al., 2020, p. 17).

Specifically, when AI is trained on biased or incomplete datasets, it can result in biased outputs in news reporting. This can lead to the spread of misinformation and harm to marginalized communities. The biases in AI can harm journalism's credibility and integrity and erode public trust in news media, and perpetuate harmful stereotypes. In other words, bias is a ticking time bomb within AI systems; since AI is only as objective as the data it is fed. Therefore, if you feed biased data into AI, it will not just produce biased journalism; it will magnify those biases and spread misinformation (Monti, 2018, p. 14).

For these reasons, bias in AI systems directly erodes journalistic credibility by diminishing public trust. Biased AI can perpetuate stereotypes and spread inaccurate information, affecting the quality of news and perpetuating systemic discrimination (Diakopoulos et al., 2024, p. 7). For instance, ProPublica's investigation on COMPAS, an AI used by the American criminal justice system, showed that it was more likely to falsely predict that African American defendants were future criminals. This illustrates how biased algorithms reinforce harmful stereotypes (Angwin et al., 2023).

Accordingly, combating bias in AI goes beyond ethics; it is a mandatory responsibility for developers and journalists alike (Hidayat & Dirantika, 2024, p. 71): only by showing and stopping biases, and using different fair data sets can we protect the truth (Pagano et al., 2023, p. 15). For this reason, the Society of Professional Journalists' (SPJ) Code of Ethics underscores the importance to cause as little harm as possible and keep away from stereotyping ('SPJ Code of Ethics', 2014).

However, ensuring that AI adheres to ethical standards requires a more nuanced understanding of bias. Bias cannot simply be erased; rather, we must determine which biases should be eliminated and which may be necessary to support sound moral judgment. For instance, incorporating forms of empathetic or emotion-aware reasoning is essential if AI systems are to make ethically informed decisions (Tretter, 2024, p. 3).

At this point, it might be helpful to acknowledge "constructive bias," or intentional bias deployed in the spirit of acknowledgment of historical wrongs or structural inequities. Sometimes neutral data is not enough; sometimes justice requires tilting the scales to make sure those who have not been heard can now be heard. When we introduce these sorts of positive biases, it is not a matter of bias winning over objectivity; rather, it is a matter of rebalancing the moral scales in a world where neutrality is fundamentally unfair. Consequently, removing context in journalism in the name of neutrality can be a form of bias (Bareis, 2024, p. 1).

The need for diversity in AI development teams is further highlighted by this complexity. Diversity of thought is critical to identifying and controlling biases and thus ensuring that AI systems are always equipped to make complex ethical decisions most

optimally (Boddington, 2017, p. 16). For instance, a lack of diversity in the development of Google News algorithms was criticized for curating news feeds that underrepresented minority perspectives. A more diverse team could have identified and controlled for these biases (Evans, 2023, p. 1686).

Therefore, to mitigate bias, it is crucial to encourage diversity in AI training datasets. The models need to reflect the whole spectrum of society, requiring careful compilation of varied data sources. For instance, when Reuters used AI to produce news summaries, the company ensured that its datasets included diverse perspectives to avoid biased reporting (Somorin & Ademola, 2024, p. 33). Given this, identifying and correcting bias requires thorough testing, with robustness through fairness audits and bias mitigation techniques.

These fairness audits should be standardized, made public, and rise to robust legal thresholds that also define ethical standards. Without legally enforceable accountability, the best-designed audits could devolve into box-checking exercises (Koshiyma, 2024, p. 4). Legislatures will need to intervene to provide binding benchmarks for AI journalistic tools. These benchmarks can be evolving, but they must be binding and enforceable through meaningful legal sanctions. In addition to sanctions, ethical certifications could become a prerequisite for the use of AI tools in media environments (as seen with GDPR compliance).

For example, the Associated Press employs regular audits to maintain the impartiality and accuracy of their AI-generated content (Diakopoulos et al., 2024, p. 36). Enforcing rigorous guidelines for AI-generated content and nurturing accountability cultures among developers and journalists alike ensures that AI advances journalistic integrity (Cachat-Rosset & Klarsfeld, 2023, p. 718).

3. Balancing privacy and accuracy in AI journalism

3.1. Safeguarding Privacy in the Era of AI Journalism

Privacy turns out to be one of those tricky ideas that covers a lot of ground. It includes physical and mental limits people set for themselves. It also involves personal freedom and the protection of one's personal information: these issues face real threats now in this time of AI (Zahid Huriye, 2023, p. 38). Moreover, the whole idea of privacy has long been a challenging legal matter, and its subjective side makes it even harder to define clearly (Reis et al., 2024, p. 74). Back in the day, people saw it as a basic human right. The Universal Declaration of Human Rights in 1948 put it on the books for the first time in Article 12. These days, over 150 countries have included the right to privacy into their laws in one way or another.

In the digital age and with the rise of AI, protecting information has become an even greater challenge. Informational privacy means you get to decide how your personal data gets gathered, handled, and passed around (Zostant & Chataut, 2023, p. 185). Let us take the United States as an example. The Privacy Act of 1974 focused on how federal agencies could use personal info. It laid the foundation for privacy rights just as digital records were becoming increasingly significant (Gutterman, 2023, p. 2).

In this setup, AI brings up real privacy worries. These center on a tough choice between people keeping hold of their own data and big tech firms pursuing profit from that same data. Companies use AI to extract personal info all the time. This tips the balance between personal privacy and corporate gain in a risky way. This situation calls for swift ethical and legal interventions to address these challenges (James & Lucas, 2024, p. 10). It also highlights the

difficulty of protecting individuals, who often have little control over how their data is used. People share data without thinking much about it. That includes spots they go, pictures they take, who they know, and even body scans like fingerprints (Lao & Baker, 2021, p. 159). The real issue comes down to setting up rules that prevent unauthorized access to data (Elliott & Soifer, 2022, p. 1).

On a closer look, these fears over how personal data gets misused grow stronger in the media environment. This happens because media groups have wide reach in grabbing data. Their powers often go way beyond what single users can do. Big players in tech, such as Google and Facebook, illustrate these privacy problems clearly (Baker & Robinson, 2021, p. 17): there is a swap of privacy for free apps and services (Jain & Jain, 2019, p. 35).

The truth is data powers AI in every way, and forms the base of the online world. Ultimately, outfits like Facebook, Snapchat, and Google do more than social platforms or handy tools. Their main business is focused on handling data (Mukhtar, Vigneshwari, & Mohan, 2022, p. 40).

Hence, AI usage has raised data privacy concerns as it can access information that the user did not actually share (Devineni, 2024, p. 40). As a result, AI enhances the mass surveillance capability of social media platforms, by enabling an automated and indiscriminate collection of data on individuals (Msbah et al., 2024, p. 10). Governments and private entities such as the media conduct such practices covertly and on a large scale, involving almost all individuals who use smartphones or devices and applications within the Internet of Things (Elliott & Soifer, 2022, p. 4). In addition, AI can generate sensitive information from non-sensitive data, causing many privacy leakage problems.

Moreover, the ability of the AI to collect big data in an extensive manner creates new ethical challenges in journalism. That is, how do we protect individual privacy without jeopardizing the public interest? As AI becomes more advanced, the disparity between surveillance and media ownership intensifies. This will shape the ethical journalism's overall future (Al-Zoubi, Ahmad, & Abdul Hamid, 2024, p. 404). This ethical conflict between privacy and public interest is a key concern in journalistic ethics and raises difficult legal issues. At the heart of this dilemma is the principle of proportionality stating that any interference with the individual's privacy must be justified by a correspondingly important public interest (Ranjan, 2024, p. 32). For example, exposing the misconduct of a public figure might be considered justifiable if the information serves to protect the public or uphold democratic accountability. However, when it comes to private individuals, the threshold for what constitutes public interest must be considerably higher to avoid unwarranted harm (Dove, 2023, p. 17).

The complexity intensifies further as AI becomes engaged in automating the extraction of data from private digital spaces; such as social media, search histories, biometric inputs, and so on, creating profiles of individuals without their consent. In this regard, journalism cannot afford to become complicit in algorithmic encroachment. A responsible journalist must act as a gatekeeper for ethics, rejecting data that may be legally accessible but ethically impermissible (Syahri, 2020, p. 3).

In today's digital ecosystem, information travels faster than lawyers or editors can handle. Hence, a single AI-generated headline based on misread private data could go viral in moments, doing immediate reputational harm. This requires a fresh model of anticipatory ethics, whereby editorial teams anticipate not only what is legal but also what may cause trouble

for publication. In the age of AI, a rights-respecting newsroom should build digital ethics protocols into the editorial pipeline, combining the journalist's instinct with the algorithmic foresight (Shi & Sun, 2024, p. 590).

Due to this complex legal and ethical landscape, journalists must weigh transparency against privacy infringement. In other terms, journalists are forced to strike a balance between informing the public and respecting personal privacy (Olayinka & Odunayo, 2024 37). In fact, breach of privacy can lead to severe results, particularly in cases of defamation and violations of data protection laws. Conversely, failing to disclose important information can weaken the credibility of journalism with the public. In AI-driven journalism, these stakes are higher than ever (Ademola, 2024, p. 3).

3.2. Ensuring Accuracy in AI-Crafted News Content

To begin with, credibility in AI journalism depends on the accuracy and reliability of the data. In contrast, reporting based on flawed data can misinform people, undermine public trust, and even create legal liability for defamation or falsehood (Luo et al., 2023, p. 286). Within this context, media outlets remain legally obliged to ensure the accuracy of the content they publish; the use of AI does not reduce this responsibility (Monti, 2018, p. 14).

With the emergence of AI technologies, especially GANs, ensuring accuracy in journalism became more challenging. These tools create false media that violate verifiability standards. The use of deepfakes, highly realistic fake audio, video, and images, makes it hard for media to prove the truthfulness of events, blurring the line between what is real and what is not (Helmus, 2022, p. 3). If misused, the public may start believing fake news, ultimately undermining trust in journalism. One example is a deepfake of former President Obama created using GANs. This shows the extent to which information can be faked (Sheehan, 2024, p. 15). In the video, Obama was manipulated to appear as if he said things he never actually said. The virality of such content illustrates how easily deepfakes can be used to distort reality. The increasing creation of deepfakes raises legal concerns, including defamation, privacy breaches, and intellectual property violations, compelling the law to adapt. To address these challenges, advanced detection systems leveraging deep-image analysis and GAN-based techniques should be developed (Opdahl, 2023, p. 6).

Hence, these systems should comply with the regulatory framework, which should be evolving with the technology. Legal responses may become irrelevant if not integrated at this stage. Collaboration is necessary among policymakers, tech professionals, and media regulators for the designing of adaptive legal frameworks to identify and respond to AI-mediated deception in real time (Walter, 2024, p. 14).

In parallel, an ethical framework should be developed to ensure the legality of journalism through the embedding of verification processes in AI news reporting to counter misinformation and inaccuracies in content (Sarkar & Ghosh, 2024, p. 167). The core defense against the danger of misinformation generated by AI is fact-checking, which is nothing less than verifying the veracity of a statement. Inculcating a culture of verification of facts will prevent disinformation and thereby help retain trust in the media. To review and audit the algorithms used for fact-checking ensuring that no bias, error, or contextual gap exists, news organizations should establish an AI ethics board (Al-Zoubi, Ahmad & Abdul Hamid, 2024, P. 405).

AI, especially Natural Language Processing (NLP), is central to modern fact-checking. AI can accelerate the speed at which claims are fact-checked and make the process more accurate. This is achieved through the automation of claim detection, evidence retrieval and truth evaluation (Johnstone & Klaas, 2024, p. 12). NLP enables in-depth text analysis, offering speed and scalability far beyond manual verification. However, these models often lack sufficient transparency for easy interpretation. It is therefore reasonable to assume that AI models used in journalism should be explainable and auditable.

Finally, AI can cross ethical and legal boundaries when content generation is left unrestricted. For this reason, continuous verification by humans prevents serious mistakes and can maintain journalistic standards (Helberger et al., 2022, p. 1620). If no humans are involved, the potential for media organization liability for inaccurate or misleading information damaging outcomes arises.

4. Conclusion

The use of AI in journalism represents a significant shift in how news is produced and disseminated, while also introducing new legal and ethical challenges. This article inspects four key ethical principles that must be observed as journalism evolves, aimed at maintaining integrity in the field (Zaragoza, 2023, p. 10).

First, when using AI for journalism, it is important to be transparent about its application and to use open algorithms. This is justified by the fact that AI could be hard to understand. Hence, openness is important for both technological and ethical reasons. Readers should always know when AI helped in generating or selecting news (de-Lima-Santos, Yeung, & Dodds, 2024, p. 11)

Second, it is important to address bias in AI. AI uses historical data to learn and often repeats the biases contained within it. This article stresses the importance of solid techniques to stop bias, including using different kinds of training data and continuously auditing algorithms. Since the media influences the public, any bias in AI generated content can have serious effects. Hence, addressing bias in AI systems becomes a priority (Liao, 2024, p. 83).

Third, in our discussion on privacy, we emphasized the importance of safeguarding personal information in the era of AI journalism. The potential for AI to infringe on privacy through mass data collection and analysis is significant (Gilbert & Gilbert, 2024, p. 10). Journalistic practices must adapt to protect individuals' rights, balancing the need for public information with the imperative to respect personal privacy.

Fourth, accuracy is crucial in journalism, and it has a dual effect on it. On the positive side, AI strengthens fact-checking and helps journalists verify content more easily. On the negative side, AI can spread more misinformation if not harnessed properly. Thus, when using AI, we must ensure its outputs are reliable by having humans in the loop and committing to uphold the highest standards in factual reporting.

In closing, we are at the intersection of AI and journalism, where AI should be baptized into the quadruple pillars of Bias, Accuracy, Privacy, and Transparency (BAPT). Doing so is not only a moral imperative; it is, in fact, the only way to keep AI from driving journalism toward a dystopian future. Just as a civilized human is baptized into a code of ethics, AI must undergo a quadruple baptism into a four-cornered code of ethics, ensuring its powers are tamed into only producing trustworthy, reliable journalistic outcomes. Not only does the quadruple

BAPT framework keep AI safe from human misconduct, but it also keeps humans safe from AI's technological misuse. The result is a framework that paves the way for the creation, consumption, collection, and dissemination of AI-powered journalism that upholds the highest standards of truth, integrity, and public trust.

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Facial Recognition in Public Spaces: Balancing National Security and Privacy in the European Union and the United States — A Comparative Legal Analysis

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Abstract

Across borders and political systems, facial recognition has quietly redrawn the boundaries of what it means to be seen by the state. Its rise was never announced as a revolution, yet it has changed the ordinary meaning of public space. The technology's strength—instant identification—is also its greatest risk. Between security and freedom lies a legal space that both the European Union and the United States are still trying to define. The EU treats biometric surveillance as a matter of principle: it must be justified before use, restricted by the GDPR, the Charter of Fundamental Rights, and the proposed AI Act. The United States approaches the same issue through practice rather than doctrine. Regulation appears later, through court challenges, state bans, and public backlash. The contrast reveals two moral instincts—Europe's caution and America's faith in innovation. Neither instinct alone provides stability. This paper suggests a middle path: one that allows experimentation but demands transparency, periodic review, and genuine channels for contesting wrongful identification. What matters is the system not how fast operating, but whether it remains under human judgment. Technology can serve democracy only when it remembers who it serves.

Keywords: *Artificial intelligence governance, Data protection, Facial recognition, National security Surveillance law.*

1. Introduction

Facial recognition began as a technical curiosity—something that made border checks faster and airport lines shorter. But it did not stay that simple for long. What once seemed like a harmless convenience has turned into one of the most debated technologies of the past decade. Today, cameras do more than record; they identify, categorize, and even anticipate behavior. That shift has forced governments to decide where efficiency ends and intrusion begins.

In Europe, the answer leans toward caution. The European Union treats facial images as highly sensitive limiting their use under the General Data Protection Regulation (Regulation (EU) 2016/679, 2016, Art. 9(1)), the Charter of Fundamental Rights of the European Union (European Union Agency for Fundamental Rights, 2019, p. 22) and the proposed Artificial Intelligence Act (European Commission, 2021, p. 4). The idea is preventive: stop misuse before it happens. The United States takes a very different path. There isn't one unified privacy law. Instead, protection comes in fragments — a mix of agency policies, state rules, and court cases that often appear only after damage has been done. It's a patchwork that gives room for quick experimentation, and sometimes that freedom helps technology grow faster than it would in Europe. But it also means there are cracks big enough for misuse to slip through. Accountability doesn't arrive automatically; it depends on who challenges a practice and when. And that uncertainty leads to the central question running through this study: how can two democratic systems, built on such different legal traditions, draw the line between necessary security and the right to remain unobserved?

Over the past few years, this debate has grown louder on both sides of the Atlantic. In Brussels, the final stages of the AI Act (European Commission, 2021, Art. 5(1)(d)) reignited arguments about whether any form of real-time facial scanning should be permitted in public spaces. Some governments, like France and the Netherlands, argue that national security demands limited use. Others, especially within the European Parliament, believe that such tools cannot coexist with fundamental rights. Across the Atlantic, the absence of a federal privacy law has pushed cities and states to act on their own. Massachusetts, Virginia, and Washington have all restricted or temporarily banned facial recognition, usually after local protests or lawsuits (Electronic Frontier Foundation, 2021, p. 2). The details vary from one country to another, yet the unease is the same—how to protect people without eroding the very freedoms that define public life, in a world where being watched has become almost routine.

Beneath these policy differences lies a deeper cultural divide. Europe's legal tradition assumes that individuals must be shielded from the state in advance, while the American system trusts in courts and public scrutiny to repair violations afterward. Both legal systems now confront the same structural dilemma: how to preserve democratic oversight once surveillance becomes silent and continuous. Law, in this context, is more than a protective shield; it serves as a mirror that reflects a society's conception of authority and restraint. In practice, once surveillance becomes part of daily life, the focus starts to drift. It is no longer simply a matter of what technology can do; it becomes a question of who, in the end, still has the legal authority—and the moral weight—to determine when its use must finally be restrained (Council of Europe, 2021, p. 5).

2. Security Justifications vs. Civil Liberties Risks

Every government claims the same dilemma: how to stay secure without becoming watched. Facial recognition entered public life through promises of safety and speed—airports that move faster, streets that feel safer, borders that rely less on human error. Yet beneath that narrative lies a quiet tension between protection and privacy. When the state can identify anyone at any time, security becomes inseparable from control. The question is not whether these systems work, but what kind of society they create when they do.

2.1 Facial Recognition as a National Security Tool in the EU and the U.S.

Facial recognition is often presented as a tool of necessity rather than choice; Governments do not introduce it by advertising new powers but by framing it as simple efficiency. Border agencies in the EU use it to shorten queues and verify identities automatically, especially in major entry points like airports (European Commission, 2021, p. 4). In the United States, the justification is similar but more closely tied to policing. The FBI and immigration authorities use facial databases to match suspects or locate individuals who may be avoiding detection (U.S. Government Accountability Office, 2020, p. 12). In both regions, the logic is the same: if a technology can help find a dangerous person more quickly, it seems hard to argue against it. Even so, neither system provides clear proof that facial recognition actually prevents serious crime. Much of the support rests on expectation rather than measurable results.

2.2 Risks of Mass Surveillance, Discrimination and Chilling Effects

Still, the risks are far easier to see than the promised benefits. Facial recognition is not limited to tracking suspects; it captures everyone who happens to walk through its frame. What begins as a targeted security measure quickly resembles broad surveillance. Even if no law is broken, people may change their behavior simply because they feel watched—avoiding protests, public gatherings or even casual movement in shared spaces. Research has also shown that the technology makes more mistakes with certain demographic groups, which increases the chance of unfair stops or questioning (Garvie, 2019, p. 9). The problem is therefore not only technical but social. A system designed to provide protection may instead erode trust if people believe it is used more against them than for them. The question is no longer whether facial recognition functions—but whether it does so justly, and at what cost to everyday freedom.

3. Legal Foundations Governing Facial Recognition

Before comparing how facial recognition is used in practice, it is necessary to understand the legal ground on which it stands. Europe and the United States do not regulate the technology from the same legal tradition. One builds its limits from data protection and fundamental rights, while the other relies more heavily on constitutional interpretation and sector-based rules. These foundations shape when facial recognition may be used and also who must justify it and at what stage—before deployment or only after challenge.

3.1 Data Protection and Constitutional Guarantees: GDPR & EU Charter vs. Fourth Amendment and U.S. Sectoral Rules

The starting point for understanding facial recognition law in Europe is data protection. Under the General Data Protection Regulation, facial images are not considered ordinary information; they are placed in the category of “special data,” which means they cannot be

processed unless a clear legal ground exists (Regulation (EU) 2016/679, 2016, Article 9(1)). This rule is not simply technical. It is rooted in higher constitutional rights set out in the EU Charter, which protects privacy (Article 7) and personal data (Article 8). In practice, the combination of these instruments requires authorities to justify surveillance in advance; They must show necessity and proportionality before deploying facial recognition in public settings.

The United States approaches the issue from a different angle. Instead of one clear data protection law, the United States relies on a mix of constitutional interpretation and scattered sectoral rules. Much of the legal debate falls under the Fourth Amendment which protects against unreasonable searches; But U.S courts usually apply it only when a person is seen as having a clear expectation of privacy, a standard that often excludes public spaces (Katz v. United States, 1967, p. 351). In practice, this means that being watched in the street is rarely treated as a legal intrusion unless the monitoring becomes extremely persistent or targeted. Because public spaces are often seen as "open," facial surveillance is not automatically treated as a search unless it becomes overly persistent or intrusive. Outside constitutional law, regulation is fragmented. Health data, children's data and financial data are separately protected, but biometric surveillance by law enforcement or commercial actors often falls outside federal control.

3.2 Regulatory Instruments: AI Act EU vs. Agency Guidelines and Legal Gaps U.S.

Europe has attempted to move beyond general privacy principles by setting specific rules for artificial intelligence. The proposed AI Act classifies real-time remote biometric identification in public places as a high-risk or nearly prohibited practice, allowing it only for narrowly defined purposes such as preventing serious crimes or locating missing persons (European Commission, 2021, Article 5(1)(d)). This places facial recognition with a controlled legal threshold rather than leaving it to administrative discretion. It also imposes transparency, documentation and human oversight requirements on those who deploy such systems.

The United States has no equivalent federal legislation. Federal agencies, such as Customs and Border Protection or the FBI issue their own policies on facial recognition use but these are internally drafted and rarely binding outside their departments (U.S. Government Accountability Office, 2020, p. 12). In many cases, deployment proceeds without independent assessment. Some states have tried to fill the gap—Illinois, Washington and California have enacted restrictions on biometric use—but these measures are local rather than national. As a result, the U.S. model leaves considerable freedom at the enforcement stage but limited clarity at the regulatory one.

4. Governance Models of Public and Law Enforcement Use

Even when laws define the limits of facial recognition, what truly matters is how those rules are applied in practice. Some systems require official authorisation before surveillance tools can be used; others allow deployment first and justification later. Europe generally treats facial recognition as a controlled power that must be supervised before it reaches public spaces. The United States, by contrast, often leaves such decisions to individual agencies or local authorities, intervening only when controversy forces a response. These different attitudes toward authorization and accountability reveal not just legal contrasts, but contrasting expectations of trust between citizens and the state.

4.1 Prior Authorization and Proportionality Tests in the EU vs. Permissive Deployment in the U.S.

In the European Union facial recognition is not simply deployed at the discretion of law enforcement. Most countries require prior legal authorization before cameras can be used for biometric identification in public spaces. In France for example, police must obtain approval from both judicial authorities and data regulators before trial deployments of facial recognition at large events (CNIL. 2019, p. 6). Germany follows a comparable approach through its Federal Data Protection Act, which obliges authorities to demonstrate that any biometric surveillance is genuinely proportionate before it is introduced in public spaces (Bundesdatenschutzgesetz, 2018, §47). Put simply, the state cannot switch on facial recognition and justify it later — it must show in advance why it is needed, how long it will be used and who it might affect.

The United States moves in the opposite direction. Facial recognition is often rolled out first and only examined once concerns arise. Local police forces or transit agencies can install the technology without external clearance as long as they use commercially available software or existing camera networks (Woodrow & Bedoya, 2021, p. 14). Regulation arrives after deployment rather than before.

Only when there is public backlash or media exposure do questions about proportionality emerge. In several cities, facial recognition was discovered in use only after journalists filed freedom of information requests. The legal burden falls on citizens or advocacy groups to challenge its use rather than with law enforcement to substantiate it from the outset. This contrast goes deeper than administrative habit; it reflects two different ways of thinking about state authority. In Europe, privacy is seen as something that must be secured before the state can act. Oversight is therefore built into the legal process itself — no measure is legitimate until it passes a proportionality test. In the United States, the logic runs the other way. Innovation is assumed to be lawful until someone proves otherwise. The courts, the press, and public advocacy become the main instruments of correction once harm is revealed (Kosta, 2021, p. 180). These two legal traditions reflect the deeper divide between civil-law systems, which rely on prior control, and common-law systems, which depend on correction after the fact. Each seeks to protect liberty, though by opposite routes: one through precaution, the other through confrontation. Yet both now face the same dilemma — technology moves faster than the frameworks designed to contain it. The question is no longer whether the law will respond, but whether it can respond in time before the idea of accountability becomes purely symbolic.

4.2 Oversight Mechanisms: Data Protection Authorities EU vs. Litigation and State Bans U.S.

Oversight in Europe is largely administrative. National Data Protection Authorities supervise the use of facial recognition, investigate complaints and can issue binding corrective measures. Spain's AEPD and Italy's Garanti have already imposed temporary bans on certain municipal surveillance projects where prior assessment was lacking (AEPD, 2021, p. 3; Garante per la Protezione dei Dati Personali, 2022, p. 5). These bodies do not wait for harm to occur they can intervene pre-emptively if they believe legal standards are not met. In some cases, they require impact assessments or demand the suspension of software until safeguards are proven adequate.

In the United States, oversight relies far more on confrontation than administration. Litigation is the main corrective tool. When police departments in cities like Detroit and Boston

were found using facial recognition without public knowledge, it was lawsuits, not regulators, that forced transparency (Buolamwini & Raji, 2020, p: 75). Some states, like Massachusetts and Virginia, have passed outright bans or moratoriums on public agencies using facial recognition. However, these bans are very different in terms of how they are enforced and what they cover. (Electronic Frontier Foundation, 2021.p. 2). Rather than one nationwide authority there is a patchwork of resistance driven by public pressure by local politics and civil rights litigation.

5. Comparative Assessment and Future Direction

The contrast between the European Union and the United States does not lie only in their legal texts, but in the logic that drives their surveillance governance. One system assumes that certain risks must be controlled before they materialise, while the other presumes that intervention is justified unless proven harmful. Neither approach is inherently superior; both have strengths and vulnerabilities that become visible only when applied in real public environments.

5.1 Preventive Regulation EU vs. Reactive Accountability U.S: Strengths and Weaknesses

The European Union's approach has the advantage of being predictable. Before facial recognition can be used, the authorities must justify it through proportionality checks, formal authorization and detailed assessments. That means the technology cannot quietly appear in public spaces without explanation. People do not have to wait for a scandal to question it—the state must defend its decision from the start. Still, this level of control comes at a price. Approval processes can be protracted, and security services frequently contend that by the time the documentation is finalized, the necessary tools have already become obsolete (Europol, 2022, p. 11).

The United States leans in the opposite direction. Instead of waiting for legal approval agencies often deploy facial recognition first and deal with objections later. This makes experimentation easy and allows quick reactions during emergencies (National Institute of Standards and Technology, 2019, p. 3). But the burden of oversight is flipped. It is no longer the state that must prove necessity—it is the public that must prove harm. Legal action only comes after someone is wrongly identified or exposed. As a result, protection differs from one state to another, shaped less by law and more by who is willing to fight back.

5.2 Toward a Hybrid Model: Controlled Innovation with Rights-Based Safeguards

Neither system can stand on its own. that imposes excessive restrictions on technology may leave security agencies unprepared while one that allows free expansion risks normalizing constant surveillance. A realistic path forward would borrow the best elements from both regions: Europe's demand for proportionality and oversight, paired with the United States' ability to test new tools under controlled conditions. Pilot programmes could be authorized for limited periods, overseen by independent bodies, and suspended automatically unless they are shown to be both effective and fair.

Transparency would be fundamental to this model. Authorities should make clear when and why facial recognition is used, without disclosing sensitive operational tactics. Audits should review not just technical performance but also the social effects of deployment, especially on groups most likely to be misidentified. Above all, people must have a way to

challenge incorrect matches or misuse. A technology that operates on millions of faces cannot be trusted by default—it must prove that it serves the public, not the other way around.

6. Policy Recommendations and Implementation Roadmap

Neither prohibition nor permissiveness offers a stable path forward. Every model tried so far has revealed its limits: strict regulation can slow necessary innovation, while open experimentation can erode public trust long before results are proven. If facial recognition is to remain part of modern security policy, it must be used under conditions that earn consent rather than assume it. The following recommendations outline how states can permit development without surrendering oversight. Their purpose is not to halt progress but to ensure that technology is introduced with caution and evaluated with fairness and withdrawn when it fails to meet basic standards of justice.

6.1 Operational Guidelines for Responsible Deployment

Facial recognition does not need to be accepted blindly or rejected outright. The real challenge is deciding when it can be useful without silently reshaping public space into an environment of constant monitoring. One way forward is to treat deployment as an exception rather than a standard setting. Instead of granting open-ended authorizations, authorities could approve only temporary pilot programs with automatic expiry dates *(European Union Agency for Fundamental Rights, 2019, p. 22)*. If a system genuinely improves security, it may be renewed; if not, it should disappear without ceremony. Every use should also have a clearly stated purpose that cannot be quietly expanded over time. What begins as a search tool for missing persons should not later be applied to monitoring protests or identifying political gatherings *(Electronic Frontier Foundation, 2021, p. 2)*.

Transparency should not depend on public scandal or journalistic discovery. People do not need technical breakdowns of algorithmic models, but they deserve to know when biometric scanning is active *(AEPD, 2021, p. 3)*. Visible notifications, whether digital or physical, can function as a basic recognition that consent is not presumed. Oversight must extend beyond the evaluation of accuracy in laboratory environments. The primary issue is whether some communities are disproportionately identified, interrogated, or marginalized. If a particular demography frequently appears in false alarms, the issue is not technological but systemic (Buolamwini & Raji, 2020, p. 75).

6.2 Rights-Based Innovation Framework for Democratic Surveillance

Technology that affects millions of people cannot be shaped only by the institutions that plan to use it. If facial recognition is to be tolerated in a democratic system, its design and deployment must include those most likely to bear its risks (Council of Europe, 2021, p. 5). Human rights impact assessments should become a prerequisite, not a formality, before any biometric tool reaches public space. These assessments lose meaning when written solely by technology vendors or internal police units; they should instead involve data protection authorities, civil society organizations and representatives from affected communities (European Union Agency for Fundamental Rights, 2019, p. 22).

Protection is not achieved through abstract legal principles alone. Individuals must be able to contest automated identification decisions without needing legal expertise or political influence (Katz v. United States, 1967, p. 351). A person wrongly flagged should be informed when it happens and given a clear route to demand correction. Accountability cannot rely on

goodwill. It must be embedded into the system before harm occurs and not offered afterward as an apology (Buolamwini & Raji, 2020, p. 75). Innovation becomes legitimate only when it strengthens public confidence rather than testing its limits (Europol. 2022, p. 11).

7. Future Governance Challenges and Legal Adaptation

The regulation of facial recognition is only the beginning. Each legal boundary creates new ways for technology to move around it. What once identified a face now tries to read emotion or intent. Surveillance is shifting from recognition to interpretation, and the law still struggles to define where that shift should stop. These changes raise a larger question: can rules made for a single technology keep up with an ecosystem that keeps reinventing itself?

7.1 The Expansion of Biometric Surveillance Ecosystems

The challenge is that these systems rarely appear as a single, visible product. They are woven quietly into what already exists—public surveillance cameras, online platforms, and private databases—until their operation becomes almost invisible. Ordinary users may never realize that an airport camera or a social media filter is powered by several layers of algorithmic analysis working together. Once connected, these layers can produce conclusions that even their designers did not plan. What begins as a simple facial match may expand into an emotional reading or a behavioral forecast, created without any new consent from the individual (AlgorithmWatch, 2021, p. 18). This change makes it hard to tell the difference between identification and prediction. It also makes it harder to figure out who is legally responsible if something goes wrong, the developer of the software, the data controller, or the public agency that uses it?

European regulators are starting to recognize this gap. The European Union Agency for Fundamental Rights (2019, p. 22) warned that combining biometric and behavioral data could undermine existing safeguards built around transparency and purpose limitation; Yet, even this warning is only the beginning. Traditional privacy frameworks treat data as something static—collected, stored, and processed. In reality, biometric data behaves more like a flow: it changes meaning depending on context, interpretation, and the purpose for which it is reused. Laws written for isolated systems must therefore evolve into frameworks capable of supervising interaction—where multiple technologies, not a single database, determine how a person is seen and classified.

7.2 The Role of International Coordination in Digital Governance

The distance between law and technology grows wider when every country tries to manage it alone. In the United States, rules often appear only after a scandal or lawsuit, and without a federal framework, oversight shifts from one agency to another (U.S. Government Accountability Office, 2020, p. 12). Europe faces a different risk: regulation that moves faster than reality, leaving new systems outside its scope almost as soon as they emerge. The result is imbalance on both sides of the Atlantic—too much caution in one place, too much freedom in the other. A stable approach needs dialogue, not isolation. Data does not stop at borders, and neither should accountability. Coordinated standards between the EU and the U.S., supported by the OECD and the United Nations (Council of Europe, 2021, p. 5), could set a shared foundation for fairness without erasing national diversity. Perfection is not the goal; consistency is. Without it, protection depends less on rights than on geography.

8. Conclusion

Facial recognition is often described as a technological step forward, but its real weight lies elsewhere. It has forced lawmakers to confront questions that reach far beyond efficiency or innovation. The way a country regulates surveillance shows how much it trusts its own institutions. In Europe, the instinct is to act before harm appears—to prevent misuse through prior control. In the United States, the impulse is the opposite: act first, correct later. Both systems seek the same goal, yet they travel in different directions to reach it.

Neither approach is complete. Regulation that moves too cautiously risks leaving governments unprepared for genuine threats, while permissive models invite mistakes that can erode trust long before accountability catches up. The only sustainable path sits somewhere between both extremes—a system that welcomes innovation but surrounds it with limits clear enough to keep freedom intact. Facial recognition should operate only under defined legal conditions, reviewed at fixed intervals, and subject to independent oversight. People must have a real right to contest its decisions—not years later, but while those systems are still being tested.

As technology becomes routine in public administration, legitimacy will depend less on technical guarantees and more on openness. Citizens deserve to know when surveillance is active, who runs it, and what happens to the data it collects. Rules must evolve in the same rhythm as the systems they govern; otherwise, protection turns into a promise without practice. Oversight cannot be written once—it has to be renewed, debated, and lived.

The true measure of democracy in a digital age is not how quickly it embraces new technologies, but how wisely it limits them. Security gains meaning not from how much the state can observe, but from how carefully it decides to observe.

Perhaps the most important lesson of facial recognition has little to do with data or algorithms. It is a reminder that restraint is also a form of strength. A democracy that knows when not to use its most powerful tools shows more confidence than one that deploys them without reflection; The challenge ahead is not technological—it is ethical: to decide, again and again, where visibility must end so that freedom can continue.

In the end, the question is not whether facial recognition can be controlled, but whether societies can control themselves in using it. Law alone cannot guarantee restraint; it must be supported by civic awareness and institutional humility. When regulation, ethics and collective judgment work together technology becomes less a threat and more a test; a test of whether freedom can survive even when it is constantly being watched. That will be the real victory of law in the digital century—not the control of machines, but the preservation of meaning in what it means to be human.

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Power in the Age of Integration: From Human to Algorithms

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Abstract

In light of the transformation we are experiencing, by entering the digital age, and the immediate impact that artificial intelligence (AI) has had on all aspects of political, social, and economic life—along with the anticipated future effects—radical transformations are expected to reshape traditional concepts of authority and political systems. As we move further into the digital era, the very notion of power is bound to change organically. Authority is no longer confined to political systems, classical leadership figures, or even large parties with strong ideological foundations. Power is no longer exercised through known traditional method. In the digital age, it has become exercised using new methods that humanity has never seen before.

The objectives of this study are as follows, to analyze how the relationship between citizens and authority is transformed in a world governed by algorithms.

`To address the problem posed, we have relied on the historical method to review selected theories proposed by various philosophers and legal scholars; the analytical method to examine certain phenomena as influenced by the advent of artificial intelligence; and the comparative method to contrast the physical (real) world with the digital one. In conclusions, the social contract is entering a new stage linked to digital rights. In recommendations, Ensure the democratic use of artificial intelligence and prevent a slide into digital authoritarianism by establishing mechanisms that safeguard rights and freedoms.

Keywords: *Artificial Intelligence, Digital Social Contract, Human Rights, Political Authority, Liquid Democracy*

1. **Introduction**:

The relationship between politics and power is deeply problematic and philosophical in nature, depending on each existing political system. Under the Internet, it will become a deep, virtual, and ambiguous relationship. power symbolizes authority, while control has become embedded in our socio-electronic life, presenting profound challenges to democratic systems. We live in a "post-human" era, in which power has shifted from merely seizing control to flowing like an unseen web through the social, economic, and political details of daily life. This shift has brought political theory into the virtual world—into what we might call "post-humanity."

One major reason democracy's meaning is harder to grasp today is that it evolved over thousands of years from varied roots. The meaning of democracy today differs greatly from what it meant to the citizens of Athens under Pericles. Greek, Roman, medieval, Renaissance, and later ideas have blended in uneven, often discordant ways—mixing theory with practice in a way that often lacks consistency (Dahl, 2005, p. 13).

Power struggles in small groups occur among individuals, where power is weakly organized in early forms of distinction between "rulers" and "ruled," or between leaders and members. In larger societies, political conflict involves social factions, intermediary groups within the broader community, as well as individuals. Power in large groups is rigorously structured in hierarchical levels. Some sociologists limit politics to analyzing those complexities in large groups, neglecting the study of leadership in smaller ones. But these two phenomena are tightly linked and cannot be properly understood in isolation. In legislatures, administrative committees, party leadership councils, and other levels in large group governance, small subgroups wield political power. Thus, we must distinguish micro-political analysis, on the level of interpersonal relations, from macro-political analysis, which concerns large collectivities where personal connection is replaced by mediated relations (via patronage, bureaucratic mechanisms, or staged rituals such as formal proclamations or televised addresses). Transitions between these levels raise significant theoretical questions (Duverger, p. 8).

Desire for possession, too, is natural. Those who succeed in it are praised; those who cannot may do whatever it takes, sometimes making missteps that draw much criticism (Machiavelli, p. 30).

Jean Bodin explored a traditional model aligned with sovereignty by linking authority to the family structure, which he considered the genuine paradigm of republican order (Bodin, 1955, p. 69).

The second major transformation both contracted democracy's boundaries and expanded them. Once political community grew large in nation-states, direct participation by all citizens became impracticable. Representation had to replace direct legislative discussion and voting that citizens in ancient city-states engaged in—even though in some places local units still offer more direct participation. Although democratic opportunity diminished in one dimension, it expanded in another: the theory of representation crossed many theoretical limits, allowing the rule of law and unified legal legitimacy to cover entire nations—something inconceivable under the city-state model (Dahl, 2005, p. 528).

Artificial intelligence is poised to reshape the traditional notion of power, which has long depended on democratic participation by citizens. In its place may emerge spider-web

political systems in which decisions are driven by algorithms. “That is to say that when thinking about the power of the algorithm, we need to think not just about the impact and consequences of code, we also need to think about the powerful ways in which notions and ideas about the algorithm circulate through the social world. Within these notions of the algorithm, we are likely to find broader rationalities, knowledge-making and norms– with the concept of the algorithm holding powerful and convincing sway in how things are done or how they should be done”(David, 2017, p. 2).

This transformation will affect classical democracy, potentially turning it into a form of “liquid democracy”. “Uncertainty about the algorithm could lead us to mis judge their power, to overemphasise their importance, to misconceive of the algorithm as a lone detached actor, or to miss how power might actually be deployed through such technologies”(David, 2017, p.3). In this context, micro-political interactions among citizens and macro-political structures—state, political parties, pressure groups, trade unions—may converge under what can be called algorithmic power.

We pose the following problem: To what extent is artificial intelligence capable of reshaping authority in an integrated world? And what is the fate of the traditional theory of the social contract?

The significance of this research lies in its engagement with a revolution we are currently experiencing—one whose broad title is Artificial Intelligence. This revolution is expected to bring about profound transformations in all aspects of human life, including authority, the social contract, and fundamental rights and freedoms, all under the influence of algorithmic systems.

The objectives of this study are as follows:

1. To examine traditional authority from a philosophical perspective.
2. To explore the mechanisms by which AI affects the political and legal spheres.
3. To analyze how the relationship between citizens and authority is transformed in a world governed by algorithms.

To address the problem posed, we have relied on the historical method to review selected theories proposed by various philosophers and legal scholars; the analytical method to examine certain phenomena as influenced by the advent of artificial intelligence; and the comparative method to contrast the physical (real) world with the digital one.

2. Transformations of Power between Theory and Reality: From Democratic Ambitions to the Challenges of the Digital Social Contract

Politics, which in the time of the greatest ancient philosophers was practiced in the city-states of Greece, has now shifted into a virtual realm intertwined with physical reality. Within this hybrid space, human intelligence-based decisions are increasingly merged with those made by artificial intelligence—particularly as AI can process and analyze massive amounts of data.

Just as the Industrial Revolution was, the revolution related to artificial intelligence will move humanity from one stage to another, so that this will affect the nature and quality of relations between countries and between humans. We may be entering a post-human era, and within this phase, classical democracy could evolve into what might be called liquid democracy, driven by the presence of super intelligent AI. This shift will undoubtedly affect the existing social contract in any political system and, by extension, impact individual rights

and freedoms. As a result, rights and freedoms may be reclassified in new ways, beyond the classical categorization currently known.

Over history, the concept of power has undergone fundamental shifts—both in its philosophical foundations and in how it is exercised in societies. These transformations have always been tied to changing political, economic, and technological contexts. From divine or hereditary absolute authority to democracy grounded in popular representation and the separation of powers, major ideas like the "social contract" have served as reference frameworks for reorganizing the relationship between state and citizen and for limiting power in favor of freedom and justice. As Plato asked in The Republic: "Should we allow the person who does not know truth to steer the ship?" (Book VI, the Ship-of-State metaphor).

What was presented in The Republic via the ship metaphor was part of a philosophical discussion about the ideal ruler—someone who must possess wisdom to discover truth deeply. In this metaphor, the "ship" symbolizes the state. To lead the ship is to require a wise captain who understands the path the state must follow and who can articulate goals that serve shared interests.

Today, we revisit this deep metaphor in the presence of algorithms and artificial intelligence—tools based on data and analytic computation, unlike deep human thought—which create laws and make decisions that affect citizens' rights and freedoms across the political, social, and economic spectrum. If we place algorithms instead of a human captain at the helm of the ship, we grant them control over society's future and its political course. Thus, one could claim that the "Ship of the Future" will be navigated by an algorithmic captain. Throughout history, humans have struggled and revolted over who should lead that ship. "one key problem with attempting to explore the social power of algor ithms is in how we approach those algorithms in the first place. Should we treat them as lines of code, as objects, or should we see them as social processes in which the social world is embodied in the substrate of the code? The problem comes if we try to detach the algor ithm from the social world in order to analyse its properties and powers– seeing it as a technical and self-contained object that exists as a distinct presence is likely to be a mis take. Detaching the algorithm in order to ask what it does requires separating the algor ithm from the social world in the first place and then to treat it as a separate entity to those social processes. Algorithms are inevitably modelled on visions of the social world, and with outcomes in mind, outcomes influenced by commercial or other interests and agendas (as discussed by Williamson, this issue). As well as being produced from a social context, the algorithms are lived with, they are an integral part of that social world; they are woven into practices and outcomes" (David, 2017, p. 4).

In this context, utopian ambitions are linked to what algorithms might potentially offer: a flawless future without corruption, racial division, or parochial interests, in favor of what benefits society as a whole. From this emerges the necessity of a digital social contract—a contract compelled by the need to understand the relationship between citizen and machine.

Nevertheless, entering the digital age deeply changes the nature of power—not only in its tools, but in its structure and sources of legitimacy. The digital revolution has produced a new model of social and political relations based on algorithms, data, and technological platforms that now influence individual and collective behavior, redrawing the public sphere in unprecedented ways. In this framework, calls have emerged to rethink concepts such as democracy, citizenship, and legitimacy, and to develop what is now called the "digital social

contract," an attempt to adapt the classical contractual framework to new realities of digital power.

Yet between the theoretical ambitions that promised a more transparent, inclusive digital democracy and the complex reality of invisible forms of control, surveillance, and direction, there exists a deep gap demanding critical analysis. Are traditional political theories still able to interpret this transformation? What are the limits of their capacity to encompass the new structure of power? Is the "digital social contract" a natural extension of the democratic model, or does it re-produce patterns of control under the guise of technical modernity?

2.1 Theoretical Approaches to the Transformation of Digital Power

Political power dissolves in the age of liquid modernity; power now exists in a global space beyond the confines of the nation/state. Yet politics, once tied to personal and public interests, remains local and unable to operate effectively on a planetary level. Power without political control becomes a profound concern, while politics seem increasingly disconnected from the real problems and anxieties of many people" (Bauman & Leon, 2017, p. 29).

Concerning the types and forms of governance, Bodin held that the ideal blend of rule may achieve consensus—even under a single ruler—if the ruler distributes his influence equally among different social classes (Bodin, p. 110).

For philosophers, political science has always been inseparable from ethics. The book Politics by Aristotle begins with propositions about human nature and obligations toward authority. Political philosophy concerns freedom (Introduction to *Politics*, 1947, p. 6). More broadly, politics in its most widespread meaning is the science of power and its organization in societies (Duverger, 1964). Thought is defined as "the work of the mind over phenomena to reach their true understanding; it includes reasoning and reflection opposed to intuition" (Saliba, 1982, pp. 154-155). The theory's value lies in how precisely it analyzes phenomena based on given data (Hill, 1977, p. 567).

Political theory is divided into two major strands:

1- **Classical political theory**: which begins with assumptions about human nature and duties toward power, as seen in Plato, Hume, etc.

2- **Modern political theory**: more focused on political practice than purely philosophical abstraction; includes those who revisit old concepts such as justice, those who analyze individual political behavior, and others—starting with thinkers like Ernest Barker—who connect political ideas with political behavior (Bailey, 2005, p. 512).

There are four foundational approaches to research in political theory (Mohanna, 2009, pp. 45-55):

1- A **historical method**, exemplified by Sabine, which traces political theory back to its roots in Greece, via Plato, Aristotle, Hobbes, Locke, Rousseau.

2- A **sociological method**, as with George J. Catlin, linking politics with the general theory of society.

3- A **philosophical method**, represented by Leo Strauss, which views values as indispensable in political philosophy.

4- An **integrated method**, exemplified by Carl J. Friedrich, which sees the necessity of combining insights from sociology, psychology, etc., because political science relates to individual, society, state, and beyond.

2.2 Digital Democracy's Disillusionments and the Challenges of the Digital Contract

Historical governance of city-states and kingdoms, which once followed their own laws before conquest, provides insight. Machiavelli observes that when states accustomed to freedom under their own laws are taken over, there are three ways to rule them: by abolishing their laws; by settling in and ruling directly; or by allowing them to keep their old laws while paying tribute. A government composed of a few loyal individuals can maintain control so long as it retains the ruler's favor. Control through citizens can sometimes be even more effective than external coercion when the city has enjoyed freedom (Machiavelli, p. 36).

The story of democracy is as much a story of failure as of success: failures to transcend existing boundaries, temporary successes followed by massive defeats, utopian promises that ended in disappointment and despair. Compared with its highest ideal, actual democracy reveals such visible lack that the discrepancy between the ideal and the real inspires constant hope that perhaps the ideal might somehow come true (Dahl, p. 519).

Political and social order in a post-human world will undergo profound transformation, *especially* under AI. Many democratic systems have faltered in practice: leaders elected via democratic means who later transform into authoritarian rulers.

The French Revolution had immense impact on human rights and democracy: it marked a radical *turning* point after long suffering under absolute monarchy, the power of clergy, and feudal structures. It culminated in the Declaration of the Rights of Man and Citizen in 1789, a foundational document for rights and freedoms.

For Rousseau, the tangled relationship between natural liberty and civil liberty is a pact of mutual gain between citizens as individuals and the public authority that unites them. "Through the social contract man loses his natural liberty but gains civil liberty."

A pivotal moment in rights history came when rulers were no longer considered divine, but instead as representatives, then power began to shift to popular and national sovereignty.

Socrates viewed one of democracy's main flaws as the incompetence of many officeholders chosen by lot; he distrusted popular assemblies and their power to elevate the unwise to positions of influence. He has been known to mock that the assembly might vote for donkeys instead of horses if the former were preferred (Nersisian, p. 100).

The transformations affecting traditional democracy may have profound consequences for governance: reducing human participation in decision-making, delegating some or all political agency to AI and intelligent machines. Used wisely, AI might aid in more judicious decisions, resolving dilemmas that affect social, economic, political life. But the risk of machine dictatorship remains.

Respect for law is a hallmark of the "seven sages." For instance, Chillon is credited with saying "Obey the law". He believed the greatest city-state is one where citizens obey law more than orators. Similarly, the proverb "Obey the law that you make for yourself," attributed to Pittacus, was accepted by the people of Mytilene when they appointed a ten-year dictatorship

to protect them from exiled nobles. According to some, supreme authority resides in laws (Nersisian, p. 21).

Today, democracy enjoys global popularity. Most governing regimes claim some democratic practice; those that do not, often assert that their non-democratic status is a necessary *phase* toward democracy. Even authoritarian rulers now find it essential to adopt the language of democracy to endow their rule with legitimacy (Dahl, p. 12).

After the fall of the Roman Empire, the Middle Ages ushered in a new era in which religious *authority* dominated, leading to the church's preeminence in political, social, and economic life.

Bodin's theory rests on the principle of consensus between the nobility and the *common* people, between rich and poor. From these dynamics he preferred the monarchical form of rule, believing that each class has its own function: the nobles war and govern law; the common people occupy public offices; the rich seek honor (Bodin, p. 78).

As Raymond Aron wrote in 1944 in (L'homme contre les tyrans): "Myths, religions will be manipulated scientifically by cunning leaderships" (Aron, 1944, p. 21).

In a *post*-human world, values and societal political traditions will be reshaped, especially under liquid democracy—an era of fluid political systems where AI, intelligent devices, and robots tied into the web determine identity and culture. Boundaries between human and robot become liquid, entering the realm of civil and political rights in the post-human condition.

3. From Democracy to the Digital Social Contract: Transformations of Power in the Digital Age

Human life has evolved through pivotal historical eras that have driven profound transformations in its nature and progress, laying the groundwork for subsequent qualitative developments. With the emergence of representative democracy, methods of governance evolved from rulers who claimed divine authority to leaders who derive their legitimacy from the sovereignty of the people. "Given that algorithms are seen to be the decision-making parts of code, it is perhaps little surprise then that there is an interest in understanding how algorithms shape organ isation, institutional, commercial and governmental decision-making. The second issue, which, related to the above, concerns the role of algorithms in such decision-making. This is to reflect on the role of algorithms in shaping how people are treated and judged. Orthewaythat algorithms shape outcomes and opportunities. This is to reflect on the way that algorithmic systems are built into organisational structures and to think about how they then shape decisions or become integrated into the choices that are made– and how those choices then become a part of people's lives. Karen Yeung's contribution explores the role of algorithms in regulation and governance. Yeung looks at the part played by algorithms and big data in 'design-based' regulation" (David, 2017, p.4).

Today, we have entered the digital age, which is reshaping political and social participation through algorithms and advanced technologies. This shift is prompting a redefinition of the relationship between citizens and power.

As technological advancements continue, and with the rise of new digital rights and a new kind of relationship based on digital foundations, a concept is emerging that can be described as the "digital social contract".

3.1 Democracy as a Model for Breaching the Boundaries of Power

Democracy emerged in antiquity with the Athenian city-state, which became the cradle of the democratic process (though Rome also offered a model of representative democracy through its republican system). Citizens—exclusively free males, with women, foreigners, and slaves excluded—participated in decision-making through public assemblies and councils.

Democracy is one of the richest and most evolved political concepts, having undergone significant development over the centuries. During the Renaissance, the ideas of John Locke and Jean-Jacques Rousseau introduced new understandings of freedom and natural rights (a topic to be addressed further in the next chapter on revolutionary transformations).

A major turning point occurred with the American and French Revolutions, which brought about the widespread adoption of democratic ideals following long centuries of absolute monarchy and despotism.

Robert Dahl argues that "Democracy is an instrument of freedom in three ways" (Dahl, 1971, pp. 1–16):

1- **Free, fair, and honest elections**: These require a certain degree of freedom of expression, organization, and opposition.

2- **Democracy enables self-determination**: It allows individuals to live under laws they themselves have chosen.

3- **It facilitates moral sovereignty**: Every citizen becomes capable of normative judgment and autonomous decision-making, promoting human growth, responsibility, intelligence, and protection of shared interests.

Thus, the "government of the people" becomes the only legitimate source of authority serving the public good. According to Aristotle, the most suitable form of government was the civil or constitutional polity—a blend of democracy and oligarchy. He viewed the city-state (or political system) as a framework for political participation, and warned that deviant forms of constitutions, particularly tyranny, represented the worst distortions of governance (Nersisian, p. 151).

Dahl notes that early democrats breached the prior limits of traditional governance—be it monarchy, aristocracy, oligarchy, or autocracy—by establishing new structures based on majority rule in democratic or republican city-states. Two millennia later, democracy extended its reach to the nation-state, replacing old institutions with polyarchic forms of governance grounded in popular sovereignty (Dahl, p. 518).

In the modern era, particularly from the 19th and 20th centuries onward, democracy expanded beyond parliamentarism to encompass broad political, economic, and social dimensions. Technological innovations like the internet and social media have further enhanced citizen participation, making democracy more interactive and flexible.

3.2 The Digital Social Contract

The social contract represents the most important political theory that governs the relationship between citizen and ruler, and its most prominent theorists include Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. This theory aimed to regulate the relationship between the ruler and the ruled by preserving rights and freedoms, and this is done by individuals giving up some of their freedoms to public authority for the purpose of

protecting the rest of the rights and freedoms and for the public good. Today, with the rapid development of technology and our entry into the era of artificial intelligence, we need to re-establish a new concept of the social contract that keeps pace with the ongoing development. This is due to the digital rights that have emerged as a result of this development, which creates a new relationship between citizens and the state, and consequently increases the state's duties to protect these digital rights and freedoms.

The term “contract” comes from the Latin contractus, and appears in French as contrat, and in English as contract. In Arabic, the root word "ʿaqada" implies binding, tying, or concluding, as in “tying a rope” or “making a pact” (Ibn Manzur, 1999, p. 309). The term implies mutual obligations and agreements (Al-Wakshari, 1998, p. 665). Philosophically, it refers to any relationship involving reciprocal commitments among two or more parties (Lalande, 2001, p. 224).

The political contract thus serves as the foundation for organizing public life, reconciling the general will with individual desires, and preventing competition over interests from escalating into destructive conflict (Chevallier, 1980, p. 35).

For Rousseau, freedom and equality are natural gifts: “Men are born free and equal, and no parent has the right to deprive them of this inheritance” (Rousseau, 2012, p. 119).

Hobbes, meanwhile, believed that peace is a natural law stemming from the rational realization that life under absolute individual freedom is intolerable (Hobbes, 1982, p. 96). He contrasted chaotic, violent societies with civil ones governed by contracts (Hobbes, 1982, p. 146). In his view, the sovereign is the sole legislator and judge during times of both peace and war (Hobbes, 2002, p. 32).

John Locke held that civil authorities must ensure equal legal protections for all individuals: “No one has the right to infringe on another’s life, health, liberty, or possessions” (Locke, A Letter Concerning Toleration, 1988, p. 76). He emphasized that the law of reason reveals that all people are free and equal, and that the legislative authority must serve the common good (Locke, Two Treatises of Government, p. 19).

However, Locke excluded enslaved individuals from civil society, arguing they had forfeited their rights and property, and therefore could not be considered members of the political community (Locke, 1959, p. 168).

In today’s age of liquid democracy, concepts of authority and society are undergoing substantial shifts. Technological advances and evolving social dynamics have led to more fluid and fragile identities. This affects political relationships between citizens and the state, making the delineation of rights and authority more complex. It calls for a new formulation of the social contract that aligns with the emerging concept of the "digital social contract"—one that addresses several key dimensions:

1- Privacy and Data Protection:

In traditional contracts, individuals relinquish certain rights for the public good. However, in the digital world, personal data—once protected by law—is often surrendered in exchange for access to digital platforms. Given the centrality of the digital realm, a digital contract must safeguard individual privacy.

2- Digital Rights:

As the classical social contract focused on offline freedoms, the digital age demands recognition of new rights—such as digital freedom of expression, access to information, and protection from identity theft. States must build national strategies to regulate and protect rights in algorithmic societies.

3- Digital Justice:

The dominance of tech corporations in shaping digital content can create disparities. Unequal internet access and algorithmic bias can entrench digital inequality. Ensuring digital justice is essential to prevent marginalization and foster equitable participation in digital life.

4- Regulating the Digital Public Sphere:

As digital platforms facilitate mass expression—sometimes threatening public order—governments must develop mechanisms to balance free speech with national security. In digital spaces, forms of "digital protest" or "electronic disobedience".

4. Conclusion

The concept of authority has evolved slowly since the emergence of the interventionist state, as if constitutional theories had entered a state of stagnation following the developments of the twentieth century. Today, however, with the advent of the digital age and the rise of artificial intelligence, the role of authority has become highly significant in matters related to fundamental rights and freedoms—particularly as artificial intelligence and technological progress have become intertwined with the ways power is formed and exercised.

On the other hand, individuals now practice their fundamental rights and freedoms through social media platforms and applications powered by artificial intelligence. This reveals a growing challenge regarding the future of the relationship between citizens—who seek to enjoy their rights and freedoms—and governments, which aim to achieve the public good.

In our view, following the interventionist state, a digital state has emerged, characterized by the power of artificial intelligence, which increasingly intervenes in all aspects of political, economic, and social life.

Conclusions:

1- A fundamental transformation has emerged in the concept of authority.

2- The social contract is entering a new stage linked to digital rights.

3- A new category of digital rights and freedoms has emerged.

Recommendations:

1- Enact new legislation that keeps pace with developments in algorithms and artificial intelligence.

2- Integrate artificial intelligence into educational programs at schools and universiities.

3- Ensure the democratic use of artificial intelligence and prevent a slide into digital authoritarianism by establishing mechanisms that safeguard rights and freedoms.

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مستقبل المسؤولية المدنية عن أنظمة الذكاء الاصطناعي بعد سحب التوجيه الأوروبي

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الملخص

سعى الاتّحادُ الأوروبّي إلى اقتراحِ توجيهٍ خاصٍّ للمسؤوليةِ المدنيةِ عن الذكاءِ الاصطناعيّ في أيلول من العام 2022، وذلك بهدفِ تحديثِ الإطارِ القانوني، وضمانِ توازنٍ مناسبٍ بين حمايةِ حقوقِ المتضرّرين وتشجيعِ الابتكارِ التقني. غيرَ أنّ عدّةُ عواملَ ساهمت في اتّخاذِ قرارِ التخلّي عن التوجيه في شباط من العام 2025، أبرزُها الضغوطات السياسية الداخلية والخارجية، وتأثير لوبي الشركات الإقتصادية الكبرى، فضلاً عن اعتمادُ اللائحة 1689/2024 في آذار 2024 التي تضعُ إطارًا تنظيميًا لأنظمةِ الذكاءِ الاصطناعي بناءً على مستوى خطرها، وتحديث التوجيه بشأن المسؤولية عن الأضرار الناتجة عن المنتجات بتاريخ 2024/11/18، المتعلّق بالمسؤولية من جراء الأشياء المعيوبة. يُسهّل التوجيه على الضحايا المطالبة بالتعويض عن الأضرار الناجمة عن عيب في المنتج، سواء كانت هذه الأضرار مادّية أم غير مادّية، كما يخفف عبء الإثبات عن كاهل الضحايا. بُنيَ التوجيهُ الذي تمّ سحْبُه على اجتهادٍ أوروبّي سابق، إلّا أنّه طُوّر لتطبيقه على تعقيدات الذكاء الاصطناعي. فتحوّلت بذلك المبادئ القانونية التي تطوّرت عبر الاجتهاد إلى قواعدَ تشريعيةٍ محدّدة وواضحة تأخذ بعين الاعتبار خصوصية الذكاء الاصطناعي. وبالتالي فإن غياب التوجيه لا يعني غياب المبادئ القانونية. بالاستناد إلى الاجتهاد السابق، عندما تتناول المحاكم الوطنية البتّ بطلبات متعلّقة بالذكاء الاصطناعي ستخضع هذه القضايا لمبادئ قانون الاتّحاد الأوروبّي ولا سيما مبدأ الفعالية. لن تعمل المحاكم الوطنية بشكل مستقلّ عن قانون الاتّحاد الأوروبّي، على الرغم من سحْب التوجيه. يمكن للمحاكم الاستناد إلى القواعد القانونية العامة ومبادئ المسؤولية المعمول بها، لتطبيق مبدأ افتراض العلاقة السببية بشكل عملي ومرن يضمن حماية المتضرّرين من أنظمة الذكاء الاصطناعي. بالإضافة إلى استنادها إلى قرارات محكمة العدل الأوروبّية لتفسير المبادئ العامة وتطبيقها على الذكاء الاصطناعي، لا سيما في مسائل الإثبات. بذلك، يتطلب المستقبل القانوني رؤية متكاملة لتحفيز الابتكار المستدام.

كلمات مفتاحية: *افتراض العلاقة السببية - حوكمة الابتكار - سحب التوجيه الأوروبي - مسؤولية مدنية - مبدأ الفعالية.*

1. مقدمة

التطوّرُ المتسارعُ للذكاءِ الاصطناعيّ جعلَ منه عاملًا أساسيًّا ومؤثّرًا في القطاعاتِ كافّة، لا سيّما الاقتصادية والاجتماعية، ما أحدثَ ثورةً في طريقةِ معالجةِ البياناتِ واتّخاذِ القرارات. لكنّ التحدّيَ الأكبرَ كان في المجالِ القانوني، لا سيّما في ما يتعلّقُ بالمسؤوليّةِ المدنيّةِ عنِ الأضرارِ الناجمةِ عن أنظمةِ الذكاء الاصطناعي المعقّدة.

تثير استقلاليةِ الأنظمةِ الذكية، وإمكانيةِ اتّخاذِ القرار دونَ تدخّلٍ بشريّ، صعوبةَ تطبيقِ القواعدِ التقليديةِ التي تعتمدُ على إثباتِ الخطأ أو الإهمال. في هذا السياق، سعى الاتّحادُ الأوروبّي إلى اقتراحِ توجيهٍ خاصٍّ للمسؤوليةِ المدنيةِ عن الذكاءِ الاصطناعيّ في أيلول من العام 2022، ينظّمُ هذه المسؤوليةَ بهدفِ تحديثِ الإطارِ القانوني، وضمانِ توازنٍ مناسبٍ بين حمايةِ حقوقِ المتضرّرين وتشجيعِ الابتكارِ التقني. غيرَ أنّ سحبَ هذا التوجيهِ في شباط من العام 2025 فتحَ البابَ أمام تساؤلاتٍ جوهريةٍ حولَ قدرةِ الاتّحادِ الأوروبي على التوفيقِ بين حمايةِ الحقوقِ وتعزيزِ الابتكار، الأمرُ الذي يُعتبرُ مؤشّرًا إلى أزمةٍ تنظيميّةٍ تستحقُّ القراءةَ النقديّة. علّلت المفوضيةُ الأوروبّيةُ قرارها بأنّه "لا يوجد اتّفاق متوقّع" بشأنه، وبصعوبةِ التوصّل إلى توافقٍ بين الدولِ الأعضاء والبرلمان الأوروبّي، بحيثُ قرّرت بعضُ الجهاتِ العودةَ عن اعتمادِ مشروعِ التوجيهِ بسبب ضغوطٍ سياسيةٍ واقتصاديةٍ طالبت بتبسيطِ القوانين لتشجيعِ الابتكار، كما تأثّرت المواقفُ بآراءِ دولٍ كبرى مثل الولايات المتّحدة التي دعت إلى تنظيمٍ أكثرَ مرونةً وأقلَّ تقييدًا للذكاء الاصطناعي. هذا التراجعُ يطرحُ تساؤلاتٍ مهمّةً حولَ مستقبلِ المسؤوليةِ المدنية في أوروبا، خصوصًا في ظلّ اجتهاداتِ المحكمةِ الأوروبّية التي تميلُ إلى اعتمادِ مبدأ افتراضِ العلاقةِ السببيّة بين استخدامِ الأنظمةِ الذكية والضرر، كآليّةٍ لتسهيلِ التعويضِ على المتضرّرين. ما يتطلب البحث في ما اذا كان قرارُ سحبِ توجيهِ المسؤولية المدنية يمثل تراجعًا في الإرادة التنظيميّة، أم ضبْطَ التوازنِ بين الابتكارِ والمساءلة؟ وما هي البدائل التشريعية والقضائية المتاحة للإتحاد الأوروبي لمعالجة التحديات التي خلفها التراجع عن اصدار التوجيه؟

2. تنظيم الذكاء الاصطناعي بين التردّد وإطلاق الابتكار

تتلخّصُ الحاجةُ إلى إيجادِ إطارٍ قانونيٍّ شفّافٍ للذكاءِ الاصطناعي في وجوبِ حمايةِ حقوق الأفراد، والحدِّ من انتهاكِ خصوصيّتِهم، وضمانِ حصولِهم على تعويضاتٍ من جرّاء الأضرارِ التي قد تلحقُ بهم. نظرًا لأنّ القوانينَ التقليديةَ لا يمكنُها الإحاطةُ بالتقنيّةِ الجديدةِ التي تتطوّرُ بسرعةٍ هائلة، باتَ من الضروريّ تطويرُها لضمانِ العدالة، ووضعِ قواعدَ موحّدةٍ بين الدول.

شكّل إعلانُ المفوّضيةِ خيبةَ أملٍ لأحزابِ البرلمان الأوروبّي، وارتياحًا من لوبي شركاتِ التكنولوجيا الكبرى(Anupriya Datta, Théophane Hartmann, Après les critiques de JD Vance, la Commission retire la directive sur la responsabilité en matière d'IA, 12/2/2025, www.euractiv.fr). إذ أدان عضو البرلمان الأوروبّي أكسل فوس (حزب الشعب الأوروبّي) قرارَ المفوّضيةِ معتبرًا أنّ المفوّضيةَ اختارت نشاطَ عدمِ اليقين القانوني، واختلالَ توازنِ القوى في الشركات، ونهجَ الغربِ المتوحّش الذي يفيد فقط شركاتِ التكنولوجيا الكبرى. فيما رحّبت أورا سالا، عضو البرلمان الأوروبي الفنلندي من حزب الشعب الأوروبي، بقرارِ سحب التوجيه (Béatrice Bohémier-Piché La Commission européenne abandonne l'AI Liability Directive, 13 février 2025, https://www.gautrais.com,) كذلك أبدى المستهلكون ومنظّماتُ حقوقِ الإنسان خوفَهم من ضياعِ حقوقِ

الأفراد نتيجةَ عدمِ وضع إطارٍ قانوني واضح، فيما أبدت شركاتُ التكنولوجيا ارتياحَها للتراجعِ لأنّه يسمحُ لها بتطويرِ منتجاتها، وإطلاقِ العنانِ للابتكارِ بمرونةٍ أكبر، دونَ أيّ قواعدَ قانونيةٍ مكبّلةٍ لها.

بذلك يكونُ الاتّحادُ الأوروبيُّ قد تراجعَ عن أحدِ أعمدةِ تنظيمِ الذكاء الاصطناعي، بعد أن سبقَ له التراجعُ عن اقتراحِ منْحِ الذكاءِ الاصطناعي شخصيّةً قانونية في العام 2020. هذا التراجعُ المتكرّرُ يطرحُ تساؤلاتٍ جدّيةً حولَ مدى استقلاليةِ القراراتِ التشريعية عن نفوذِ المصالحِ الاقتصادية. فما هي الأسباب المعلنة والأسباب الحقيقية لسحب التوجيه؟

2.1 أسباب سحب اقتراح التوجيه المتعلّق بالمسؤولية المدنية

ساهمَت عدّةُ عواملَ في اتّخاذِ قرارِ التخلّي عن التوجيه، ومن أبرز الأهداف المعلنة اعتماد اللائحة رقم 1689/2024، في آذار من العام 2024 التي تضعُ إطارًا تنظيميًا لأنظمةِ الذكاءِ الاصطناعي بناءً على مستوى خطرها، ممّا قلّل منَ الحاجة إلى توجيهٍ منفصلٍ بشأنِ المسؤولية عن الأضرار. كما تم تحديث التوجيه بشأن المسؤولية عن الأضرار الناتجة عن المنتجات بتاريخ 2024/11/18، بموجب التوجيه رقم 2024/2853 (EU) ، المتعلّق بالمسؤولية من جراء الأشياء المعيوبة. لم يعد نطاق المسؤولية يشمل فقط المنتجات المادّية، بل أصبح يشمل أيضًا مكوّناتها والبرمجيات المرتبطة بها. إذ تمّ توسيع تعريف "المنتج" ليشمل صراحةً البرمجيات (المستقلّة أو المدمجة)، وملفّات التصنيع الرقمية (على سبيل المثال، للطباعة الثلاثية الأبعاد)، والخدمات الرقمية المتّصلة التي تشكّل مكوّنًا لمنتج مادّي (مثل أنظمة التشغيل الآلي للمنازل الذكية، وخدمات مراقبة الصحّة في الساعات الذكية). ومع ذلك، لا يشمل التعريف الملفّات الرقمية بحدّ ذاتها (مثل الأفلام أو الموسيقى). كما تُستثنى البرمجيّاتُ المجانية والمفتوحةُ المصدر التي يتمّ تطويرُها أو توفيرُها خارجَ إطار نشاطٍ تجاري.

من جهة أخرى، يُسهّل التوجيه على الضحايا المطالبة بالتعويض عن الأضرار الناجمة عن عيب في المنتج، سواء كانت هذه الأضرار مادّية أم غير مادّية، مثل الأضرار النفسية أو فقدان البيانات، كما يخفف عبء الإثبات عن كاهل الضحايا، خصوصًا في الحالات المعقّدة المتعلّقة بالمنتجات الرقمية أو الذكاء الاصطناعي. بحيث تمّ إدخال افتراضات للعيوب في بعض الحالات، مثل: رفض المدّعى عليه الكشف عن أدلّة ذات صلة، أو عدم إمتثال المنتج لمتطلّبات السلامة الإلزامية الهادفة لمنع نوع الضرر الذي لحق بالضحية .في حالات التعقيد التقني أو العلمي المفرط، يمكن للمحكمة أن تفترض وجودَ عيبٍ أو علاقة سببية إذا أثبت المدّعي أنّ المنتج ساهم على الأرجح في الضرر. يبقى اللإسهام الأكبر في توسيع دائرة الجهات التي يمكن تحميلها المسؤولية. بالإضافة إلى الشركة المصنّعة، يمكن للتوجيه أن يُحمّل المسؤولية لجهات أخرى في سلسلة التوريد، ومنها: مطوّرو البرمجيات، ومقدّمو خدمات تلبية الطلبات والمنصّات الإلكترونية التي تعمل كجهة مصنّعة أو مستوردة أو وكيلة أو مقدّمة لخدمات تلبية الطلبات أو موزّعة لمنتج معيب، والشركات التي تُجري تعديلات جوهرية على منتج بعد طرحه في السوق قد تُعتبر مسؤولة كجهات مصنّعة جديدة.

في الواقع، وراء هذه الأسباب المعلنة هناك أسباب أخرى أكثر تأثيراً دفعت المفوضية الأوروبية إلى سحب توصية توجيه المسؤولية المدنية في مجال الذكاء الاصطناعي من برنامجها للعام 2025، ولم يكن هذا التراجع مجرّدَ قرارٍ تشريعي تقني، بل جاء نتيجةً لسياقٍ سياسي معقّد اتّسم بتوتراتٍ داخلية وضغوطٍ خارجية، عكست طبيعةَ الصراع بين نموذج التنظيم الوقائي الأوروبي، والنموذج الليبرالي الذي تدفع به قوى عالمية أخرى، كالولايات المتحدة والمملكة المتحدة. أكبر المنتقدين كان نائب الرئيس الأميركي فانس خلال مؤتمر الذكاء الاصطناعي الذي عقد في باريس في 11 و12 شباط من العام

2025 والذي عبّرَ فيه عن مخاوفِه من أن يكونَ التنظيمُ الأوروبي صارمًا بشكلٍ مفرط من شأنه أن يعيقَ الابتكار. كذلك، برز خلال المؤتمر المذكور، خلافٌ عميقٌ بين الدول الأعضاء بشأن مدى تدخُّلِ التشريع الأوروبي في رسم قواعد المسؤولية المدنية في هذا المجال التقني المتطوّر.

لعب الفاعلون الصناعيّون، وخصوصًا في مجالات التكنولوجيا، دورًا كبيرًا في التأثير على القرار السياسي، معتبرين أنّ التوجيهَ المقترح يُدخل أعباءً قانونية وإجرائية على المطوّرين والناشرين، ويزرع الغموض حول من يتحمّلُ المسؤولية في حال تعدُّد الفاعلين.

2.1.1 خلفية توجيه المسؤولية المدنية عن الذكاء الاصطناعي 496 (2022)COM

أُطلقت مبادرةُ التوجيه من المفوضية الأوروبية بتاريخ 28 أيلول 2022، وكان الهدفُ منها معالجةَ فجوة قانونية، تتمثّل في صعوبة تحميل المسؤولية في حالات الضرر الناتج عن أنظمةٍ ذكية، لا تنتمي إلى كيان قانوني تقليدي. وقد تضمّن التوجيهُ مقترحاتٍ لتبنّي مبدأ افتراض العلاقة السببية القابل للدحض، وتوزيع المسؤولية بين الفاعلين التقنيّين، مع تسهيل عبء الإثبات على الضحية. كان من المفترض أن يعملَ هذا التوجيه الذي تمّ تقديمُه في العام 2022 بشكلٍ تكميلي ومتّسق مع "قانون الذكاء الاصطناعي" للاتّحاد الأوروبي، الذي يركّزُ على تنظيم وتصنيف أنظمة الذكاء الاصطناعي بحسب مستوى المخاطر، ووضع متطلّبات السلامة والأمان لها. يشير التوجيه إلى الالتزامات المنصوص عليها في قانون الذكاء الاصطناعي لتحديد الأطراف التي يمكن افتراضُ مسؤوليتها عن الأضرار. ويهدف إلى تسهيل طرق الحصول على تعويضٍ للضحايا عن الأضرار الناجمة عن أنظمة الذكاء الاصطناعي من خلال تخفيف عبء الإثبات، وقد وضع قواعد موحّدة للمسؤولية المدنية عن هذه الأضرار. أمّا الأهداف الرئيسية له فتكمن في ضمان اليقين القانوني، وحماية المتضرّرين، و تعزيز الابتكار والثقة، وتحسين أداء السوق الداخلية، وذلك من خلال تكييف قواعد المسؤولية المدنية غير التعاقدية.

قدّم التوجيه "افتراضًا قانونيًّا قابلاً للدحض" للعلاقة السببية بين الخطأ والضرر في سياقات معيّنة، وذلك عند استيفاء الشروط التالية:

– عدم امتثال المدّعى عليه لموجب العناية الذي يحمي ضدّ الأضرار التي تسبّب فيها النظام الذكي.
– من المرجّح بشكل معقول أنّ خطأ المدّعى عليه أثّر على المخرجات، أو عدم وجود مخرجات أنتجها نظام الذكاء الاصطناعي.
– أخيرًا، يظهر المدّعي أنّ المخرجات، أو الفشل في إنتاج مخرجات النظام، قد أدّت إلى الضرر الحاصل. إذا كان النظام عاليَ الخطورة فسيكون من المفترض أنّه تمّ خرقُ موجب العناية، إذا ثبتَ عدم توافق النظام مع قانون الذكاء الاصطناعي. في حالة أنظمة الذكاء الاصطناعي العالية المخاطر، إذا أثبت المدّعي وجود ضرر وخطأ من جانب المدّعى عليه، مثل عدم الامتثال لالتزامات معيّنة بموجب "قانون الذكاء الاصطناعي، وافترضت المحكمة أنّ هذا الخطأ هو سبب الضرر، فإنّ عبء إثبات أنّ الضرر لم يكن ناتجًا عن خطأ المدّعى عليه ينتقل إلى المدّعى عليه.

يهدف هذا الافتراضُ إلى تجاوز صعوبة إثبات العلاقة السببية المباشرة بين عمل الذكاء الاصطناعي والضرر بسبب تعقيد النظام.

كان التوجيه يسمح للمحاكم في دول الاتّحاد الاوروبي بإصدارِ أوامرَ تطلب من المدّعى عليهم (مقدّمي الخدمات أو مشغّلي، أو مستخدمي أنظمة الذكاء الاصطناعي) تقديمَ أدلّة تتعلّق بأنظمة الذكاء الاصطناعي العالية الخطورة. ويمنح

المحاكمَ الوطنية صلاحيّةَ إصدارِ أوامرَ للكشف عن الأدلّة ذات الصلة بالضرر الناجم عن أنظمة الذكاء الاصطناعي العالية المخاطر، وذلك بهدف مساعدة الضحايا في جمع المعلومات اللازمة لتحديد الأطراف المسؤولة وإثبات دعاويهم، من خلال إلزام مزوّدي ومستخدمي هذه الأنظمة بتقديم معلوماتٍ تقنية محدّدة ومفصّلة حول كيفية عمل النظام. يأخذ هذا الإجراء في الاعتبار المصالح المشروعة للأطراف، بما في ذلك حماية الأسرار التجارية والمعلومات الحسّاسة. وفقاً للتوجيه يُلزم مقدّمو خدمات الذكاء الاصطناعي بإعطاء المعلومات اللازمة للتحقّق من نظام الذكاء الاصطناعي وكيفية عمله، ما يسهّل الإثبات. تشكّل هذه النصوص ضمانةً للمتضرّرين، لأنّها تسهّل وصولهم إلى حقوقهم، وتعزّز ثقة المستخدمين لهذه التقنية؛ بالمقابل يدفع التوجيهُ الشركاتِ إلى اعتمادِ معاييرَ عاليةٍ من السلامة والشفافية.

2.2 الواقع القانوني بعد سحب التوجيه المتعلّق بالمسؤولية المدنية في مجال الذكاء الاصطناعي

لا يقتصرُ أثرُ سحْبِ التوجيه على البعد القانوني وحده، بل يتعدّاه إلى إضعاف المنظومةِ الأوروبية ككلّ، وإلى إحداث فراغٍ تشريعي قد تستغلُّه القوى التكنولوجية العالمية، لإعادة تشكيلِ معايير الحوكمة الرقمية وفقَ مصالحها الخاصّة. وفي ظلّ هذا الواقع، يبرز دورُ القضاء الأوروبي كمحورِ ارتكازٍ مؤقّت، لكن غير كافٍ، في غياب نصٍّ تشريعيٍّ صريح وشامل. يظهر إذًا أنّ هذا التوازن المختلّ قد يُفضي إلى مراجعةٍ أوسعَ لاستراتيجية الاتّحاد تجاه الذكاء الاصطناعي في السنوات المقبلة، وربّما إلى إحياء التوجيه في صيغةٍ معدّلة أو بديلة.

وبالتالي، فإنّ تعليقَ المفوضيةِ الأوروبية لتوجيه المسؤولية في مجال الذكاء الاصطناعي وضعَها في مأزقٍ تنظيمي مزدوج: فهي من جهة مطالبةٌ بحماية الحقوق الأساسية في فضاءٍ رقمي شديد التعقيد، ومن جهة أخرى تواجهُ ضغوطًا متزايدة للحفاظ على مرونة الأسواق وبيئة الابتكار.

2.2.1 أثر تعليق المسار التشريعي لتوجيه المسؤولية المدنية عن الذكاء الاصطناعي

إذا كان الاتّحاد الاوروبي يصبو إلى خلْقِ توازنٍ بين حماية الحقوق وتشجيع التطوّر التكنولوجي، فإنّ سحْبَ التوجيه ستكون له تداعياتٌ على الصعد كافّة، فضلاً عن أنّه سيعيد موضوع المسؤولية المدنية إلى الواجهة، ويعتبرها مجالًا قانونيًّا قيدَ التشكيل، يمزج بين قانون المسؤولية والتقنيّات والأخلاقيات.

فعلى الصعد السياسية والاستراتيجية، والتنظيمية ستترتّب نتائج مهمة على تعليق المسار التشريعي لتوجيه المسؤولية المدنية عن الذكاء الاصطناعي، ذلك أن تراجُعُ المفوضية تحت ضغطٍ صناعي ودولي يعطي انطباعًا أنّ الاتّحاد الأوروبي يفضّل مصلحةَ الأسواق على حساب حماية الحقوق الأساسية، ويُفقد المفوضية جزءًا من سلطتها المعنوية كقوّة قانونية وقيمية رائدة عالميًّا في مجال تقنين التقنيات.

ومن الناحية الاستراتيجية، وبعدما كانت أوروبا تروّج لنموذج الابتكار الأخلاقي القائم على تنظيمٍ مسؤول ومبنيّ على الإبتكار الأخلاقي، جاء التخلّي عن التوجيه ليُضعف هذا النموذج، ويثير شكوكًا حول جدّية الاتّحاد في إنشاء بيئة رقمية آمنة وشاملة. كما أنّه يعطي انطباعًا بعدم القدرة على فرض التزاماتٍ فعليّة على الشركات التكنولوجيّة الكبرى.

أما من الناحية التنظيمية، فإن التضارُب بين المفوضية والبرلمان الأوروبي قد يؤدّي إلى إضعاف التنسيق المؤسّسي بين أجهزة الاتّحاد، ويؤثّر على مساراتٍ تشريعية مستقبلية.

أما من الناحية التنظيمية فيبرز التضارب بين المفوضية والبرلمان الأوروبي الذي كان من أبرز المدافعين عن التوجيه، وقد أعرب بعض أعضائه عن خيبة أمل كبيرة بعد قرار سحبه، الأمر الذي قد يؤثر على مسارات تشريعية في المستقبل.

إلّا أنّ التحدّي الأكبر يبقى في تكييف القواعد الكلاسيكية مع التقنيّات الذكية، والتي غالبًا ما تكون غامضة، ما سيؤدّي إلى صعوبة ضمان تعويض الضحايا دون إعاقة الإبتكار.

2.2.2 التداعيات القانونية لسحب التوجيه

قد يؤدّي غياب إطارٍ قانوني موحّد إلى زيادة عدم اليقين حول كيفية تطبيق قواعد المسؤولية المدنية، ممّا قد يؤثّر على الشركات والأفراد على حدٍّ سواء، نتيجةَ ترْكِ فراغٍ في الإطار القانوني للمسؤولية المدنية من جرّاء الذكاء الاصطناعي، ما قد يتسبّب في صعوبة حصول الأفراد على تعويضٍ بسبب الأضرار اللاحقة بهم.

يؤدّي غيابُ إطارٍ موحّد للمسؤولية إلى تفاوُتٍ بين الدول الأعضاء في حماية الأفراد من الأضرار الناتجة عن أنظمة الذكاء الاصطناعي، ما يضعف مبدأ "الوحدة القانونية" في السوق الأوروبية الموحّدة. ومع غياب التوجيه، يصبح القضاءُ المحلّي ملزمًا بابتكار حلولٍ دون مرجعية واضحة.الأمر الذي قد يفتح الباب لتضارُب الاجتهادات، ويقلّل من فعالية التنظيمات الأخرى كاللائحة العامّة للذكاء الاصطناعي التي تنظّم فقط الجانبَ الوقائي، دون معالجةٍ كافية للجوانب التعويضية.

في غياب توجيهٍ موحّد، تعود الصدارة للقوانين المدنية المعمولِ بها في كلّ دولة على حدة. قد تختلف هذه القوانين بشكل كبير في تعريف المسؤولية المدنية، وشروطها، وأنواعها، وطرق تقدير التعويضات، والجهات القضائية المختصّة. يمكن أن ينشأ تضارُبٌ في القوانين بين الدول المختلفة، ممّا يزيد من صعوبة تحديد القانون الواجبِ التطبيق في الحالات التي تتجاوز الحدود الوطنية.

تلعب القرارات والأحكام الصادرة عن المحاكم دورًا حاسمًا في تفسير وتطبيق القوانين القائمة. في غياب التوجيه، ستزداد أهمّية السوابق القضائية في التوحيد غير الرسمي للممارسات القانونية. سيُضطرُّ القضاء إلى لعب دورٍ أساسي في هذا المجال لتفسير المسؤولية الناجمة عن أضرار الذكاء الاصطناعي.

إذا كانت هناك معاهداتٌ أو اتّفاقيات دولية ذاتُ صلة بالمسؤولية المدنية، فإنّها قد تظلُّ ساريةَ المفعول، وتوفّر إطارًا قانونيًا في بعض الحالات، خصوصًا في العلاقات العابرة للحدود. في بعض الأنظمة القانونية، قد تُطبّق المبادئ العامّة للقانون لسدّ الفراغات القانونية التي قد تنشأ عن سحْب التوجيه.

على الرغم من سحْبِ التوجيه، يمكن للمتضرّرين من الذكاء الاصطناعي التوجُّهُ إلى المسؤولية عن عيب في المنتج التي تمّ تحديثها في كانون الأول من العام 2024، وقد أصبحت هذه المسؤولية تطبّق على المنتجات الرقمية والبرمجيات. يتيح هذا التوجيهُ افتراضَ وجودِ عيبٍ في بعض الحالات، ممّا يسهّل تقديمَ الدعاوى القضائية، لكنّه في بعض الحالات قد لا يتناسب مع تعقيدات الذكاء الاصطناعي.

3. النتائج المباشرة لسحْب التوجيه حول المسؤولية المدنية

تثير قضايا المسؤولية عن أضرار أنظمة الذكاء الاصطناعي تحدّياتٍ قانونيةً مهمّة. من الركائز الأساسية لتفعيل المسؤولية المدنية إثباتُ العلاقة السببية بين الفعل الضارّ والضرر، وهو أمرٌ معقّد في الذكاء الاصطناعي.

بُنيَ التوجيهُ الذي تمّ سحْبُه على اجتهادٍ أوروبّي سابق، إلّا أنّه طُوّر لتطبيقه على تعقيدات الذكاء الاصطناعي. فتحوّلت بذلك المبادئ القضائية التي تطوّرت عبر الاجتهاد إلى قواعدَ تشريعيةٍ محدّدة وواضحة تأخذ بعين الاعتبار خصوصية الذكاء الاصطناعي. اعتمدت المحكمة الأوروبية في قضايا المسؤولية عن المنتجات المعيوبة على مفهوم الافتراض القانوني للعلاقة السببية، وكان التوجيه المقترح يسعى إلى توسيع هذا المبدأ ليشمل الأضرار الناجمة عن أنظمة الذكاء الاصطناعي المعقّدة.

تبنّت المحكمة الأوروبية (Court of Justice of the European Union – CJEU) وكذلك المحاكم الوطنية الأوروبية مبادئ معيّنة في قضايا المسؤولية عن الأضرار الناجمة عن التكنولوجيا، وخصوصًا في مجال المنتجات المعيوبة. مثلًا، في قضايا المسؤولية عن المنتجات(Product Liability) ، تمّ تطوير معايير تسمح بتحميل الشركات المصنّعة المسؤولية حتى في حالات عدم الإهمال، بناء على افتراض وجود عيب. كذلك، هناك اجتهادات في مجال حماية المستهلكين تعزّز حقّهم في التعويض عن الأضرار، مع تحريك عبء الإثبات في بعض الحالات.

3.1 استناد المحاكم الوطنية إلى القانون الأوروبي

ستستند المحاكم الوطنية إلى القانون الأوروبّي في أحكامها، خصوصًا قانون الذكاء الاصطناعي، الذي ينص على"العناية اللازمة" وهو عنصر من عناصر المسؤولية من خلال تحديد التزامات المطوّرين والمستخدمين لهذا الذكاء بشأن الاستخدامات المحدّدة. عندما تعتمد المحاكم الوطنية على هذا القانون في قضايا المسؤولية، فإنّ البتّ بالمسائل المطروحة أمامها يقع تحت طائلة قانون المسؤولية المدنية في الاتّحاد الأوروبّي الذي تحكمه المبادئ القانونية التي وضعها الاتّحاد.

يمكن للأحكام البارزة لمحكمة العدل الأوروبّية أن ترعى المفاهيم الأساسية للمسؤولية التي يمكن استنتاجها من خلال حكمين هما: (Crehan – C-295/04) و (Manfredi C-295/04). في كلتا القضيّتين كان هناك نقص في نظام موحّد للمسؤولية في الاتّحاد الأوروبي، وقد أوضحت محكمة العدل موقفها بشأن التعويض عندما ينتج الضرر عن انتهاك قانون الاتّحاد، وقضت بحقّ المدّعين بالمطالبة بالتعويض عن انتهاك القانون المذكور.

بالاستناد إلى الاجتهاد السابق، عندما تتناول المحاكم الوطنية البتّ بطلبات متعلّقة بالذكاء الاصطناعي التي تنتج عن انتهاك قانون الاتّحاد الأوروبّي، تصبح هذه النزاعات قضايا قانونية تعود إلى أحكام الاتّحاد. وبالتالي تخضع هذه القضايا لمبادئ قانون الاتّحاد الأوروبّي ولا سيما مبدأ الفعالية Principe d'effectivité الذي يحظّر على المحاكم الوطنية تطبيق قواعد إجرائية أو موضوعية تجعل من الصعب بشكل مفرط على المدّعين الحصول على تعويض.

يمكن أن تمتدّ المبادئ التي تحكم قانون التعويضات في الاتّحاد الأوروبّي إلى المسؤولية الصارمة عن الأشياء أو الأنشطة الشديدة الخطورة، لا سيما عندما تعتبر تكنولوجيا الذكاء الاصطناعي كأشياء شديدة الخطورة، وتتطابق مع تصنيف قانون الذكاء الاصطناعي لأنظمة الذكاء الاصطناعي العالية الخطورة، من هنا قد يؤثّر القانون الأوروبي على المحاكم الوطنية في تحديد عناصر المسؤولية.

بالاستناد إلى مبدأ الفعالية، فإنّ المحاكم الوطنية لن تعمل بشكل مستقلّ تمامًا عن قانون الاتّحاد الأوروبّي، وذلك على الرغم من سحْب توجيه المسؤولية عن الذكاء الاصطناعي.

3.1.1 مصير افتراض العلاقة السببية

قد تحتاج المحاكم الوطنية التي تنظر في قضايا المسؤولية المعقّدة المتعلّقة بالذكاء الاصطناعي إلى الإعتماد على القضايا الظرفية. يشكّل القرار الصادر عن محكمة العدل التابعة للاتّحاد الأوروبّي (CJUE) بتاريخ 21 أيار من العام 2017 في قضية سانوفيC-621/15 المثال الأبرز لهذا الموضوع.

نشأت القضية في فرنسا عندما أصيب رجل بالتصلّب المتعدّد بعد تلقّيه عدّة حقن من لقاح التهاب الكبد B الذي تنتجه شركة سانوفي باستور. رفع ورثته دعوى قضائية ضدّ الشركة المذكورة للمطالبة بالتعويض عن الأضرار التي لحقت بهم. كانت المشكلة القانونية الرئيسية تكمن في أنّ الأبحاث الطبّية لم تتمكّن من إثبات أو استبعاد بشكل قاطع وجود علاقة سببية بين لقاح التهاب الكبد B وظهور التصلّب المتعدّد. وجدت المحاكم الوطنية الفرنسية صعوبة في إثبات هذه العلاقة السببية المطلوبة بموجب التوجيه الأوروبّي الخاصّ بالمسؤولية عن المنتجات المعيوبة.لذلك، أحالت محكمة النقض الفرنسية أسئلة أوّلية إلى محكمة العدل الأوروبّية، تطلب منها تفسير المادّة 4 من التوجيه EEC374/85/، والتي تنصّ على أنّ "على الضحية إثبات الضرر والعيب والعلاقة السببية بين العيب والضرر."حكمت محكمة العدل الأوروبّية بأنّه في غياب إجماع علمي، يمكن إثبات عيب في اللقاح والعلاقة السببية بين هذا العيب والمرض من خلال مجموعة من القرائن الخطيرة والدقيقة والمتّسقة. منها:التقارب الزمني بين إعطاء اللقاح وظهور المرض، وغياب التاريخ الطبّي الشخصي والعائلي للمصاب بالمرض، ووجود عدد كبير من الحالات المسجّلة لظهور هذا المرض بعد تلقّي لقاحات مماثلة. شدّدت محكمة العدل الأوروبّية على أنّه يجب على القضاة الوطنيين تقدير ما إذا كانت هذه القرائن، في كلّ حالة على حدة، خطيرة ودقيقة ومتّسقة بما يكفي للسماح بالاستنتاج بأنّ وجود عيب في المنتج هو التفسير الأكثر ترجيحًا لوقوع الضرر، مع الأخذ في الاعتبار الحجج المقدّمة من المنتج.

يعتبر حكم سانوفي C-621/15 بالغ الأهمّية لعدّة أسباب:

-تخفيف قواعد الإثبات: لقد خفّف من متطلّبات الإثبات على الضحايا في قضايا المسؤولية عن المنتجات المعيوبة، خصوصًا عندما يكون إثبات العلاقة السببية صعبًا بسبب عدم وجود إجماع علمي، واعترف بأنّ السببية القانونية لا ينبغي أن تخضع لليقين العلمي المطلق.

– حماية المستهلكين: يعزّز هذا الحكم حماية المستهلكين من خلال تسهيل وصولهم إلى العدالة وتمكينهم من الحصول على تعويض، حتى في الحالات المعقّدة التي لم تقدّم فيها العلوم بعد إجابة نهائية.

– التأثير على القانون الوطني: قرار محكمة العدل الأوروبّية ملزم للمحاكم الوطنية في الدول الأعضاء في الاتّحاد الأوروبي في القضايا المماثلة، بما في ذلك فرنسا حيث نشأ النزاع.

– سابقة للمنتجات المعقّدة: يخلق هذا الحكم سابقة مهمة لمسؤولية المنتجات المعقّدة، مثل المنتجات الصيدلانية أو، من المحتمل، التقنيّات المتقدّمة مثل الذكاء الاصطناعي على الرغم من أنّ هذا الأخير يقدّم تحدّيات خاصّة، فإن هذا القرار يُظهر أنّ القانون قادر على التكيّف مع الحقائق التقنية والعلمية لضمان حماية فعّالة للضحايا.

باختصار، قضية سانوفي C-621/15 هي سابقة قضائية رئيسية أحدثت تطوّرًا مهمًا في قانون المسؤولية عن المنتجات المعيوبة في أوروبا، حيث اعترفت بصحّة الإثبات بالقرائن لتحديد العلاقة السببية.

3.1.2 التوجهات المستقبلية المحتملة

إستنادًا إلى منطق محكمة العدل التابعة للاتّحاد الأوروبّي، وعندما ستطرح قضية من قضايا المسؤولية المعقّدة المتعلّقة بالذكاء الاصطناعي على القضاء، بحيث يشكّل إثبات الخطأ أو العلاقة السببية تحدّيًا كبيرًا على المتضرّر، يمكن الاعتماد على الأدلّة الظرفية. من المهم معرفة أنّ هذا الاعتماد سيؤدّي إلى نتائج شبيهة بتلك المقترحة في توجيه مسؤولية الذكاء الاصطناعي الذي تمّ سحْبه، والذي نصّ على افتراض العلاقة السببية القابل للدّحْض.

لا يؤدّي سحب التوجيه إلى الغاء المبادئ القانونية الأساسية التي تأسّست عليها المسؤولية المدنية، لا سيما ما يتعلّق بافتراض العلاقة السببية في المسؤولية عن المنتجات المعيوبة. وبالتالي يمكن للمحاكم الاستناد إلى القواعد القانونية العامة ومبادئ المسؤولية المعمول بها، لتطبيق مبدأ افتراض العلاقة السببية بشكل عملي ومرن لضمان حماية المتضرّرين من أضرار الذكاء الاصطناعي. ستعود المحاكم الوطنية الأوروبّية إلى المبادئ القانونية العامة والأنظمة الوطنية للدول الأعضاء، لتحديد المسؤولية في القضايا التي تنطوي على استعمال الذكاء الاصطناعي. بالإضافة إلى استنداها إلى قرارات محكمة العدل الأوروبّية لتفسير المبادئ العامة وتطبيقها على الذكاء الاصطناعي، لا سيما في مسائل الإثبات. من أبرز المبادئ التي ستطبّق نذكر:

– مبدأ الفعّالية Principe d'effectivité

مبدأ الفعّالية هو مفهوم يُستخدم في عدّة سياقات، لكنّه يبرز بشكل خاص في القانون الدولي والقانون الإداري. بشكل عام، يشير هذا المبدأ إلى ضرورة أن تكون القاعدة القانونية أو الإجراء الإداري فعّالاً، ويحقّق الغرض المقصود منه عمليًّا على أرض الواقع، وليس مجرّد وجود نظري.

بشكل مبسّط، يمكن القول إنّ مبدأ الفعّالية هو التأكيد على النتائج العملية والواقعية للقواعد القانونية والقرارات والإجراءات. لا يكفي أن يكون هناك قانون أو قرار مكتوب، بل يجب أن يكون له تأثير حقيقي وملموس، ويحقّق الغرض الذي وُجِد من أجله.

على الرغم من سحْب توجيه المسؤولية المتعلّقة بالذكاء الاصطناعي، سيؤثّر قانون الاتّحاد الأوروبّي على الممارسات الوطنية المسؤولة. سيطبّق مبدأ الفعّالية على القضايا التي ستطرح على المحاكم، وهو يضمن أن تؤخذ الأدلّة الظرفية بعين الاعتبار لاستنتاج الحقائق، عندما تتحقّق أضرار عن انتهاكات لقانون الذكاء الاصطناعي. من المفيد معرفة أنّ الاستناد إلى الأدلّة الظرفية سيؤدّي إلى النتائج عينها التي كان يتوقّعها التوجيه الذي تمّ سحْبه.

– مبدأ "الشيء يتحدّث عن نفسه "Res Ipsa Loquitur"

لتطبيق مبدأ الفعّالية يمكن للمحاكم أن تشير إلى مجموعة من الفرضيات الواقعية، منها مفهوم "الشيء يتحدّث عن نفسه". في القانون، وتحديدًا في المسؤولية التقصيرية، يُستخدم هذا المبدأ للسماح للمحكمة باستنتاج الإهمال من طبيعة الحادث نفسه، حتى في غياب دليل مباشر على الإهمال. بعبارة أخرى، إذا وقع حادث لا يحصل عادةً إلا بسبب الإهمال،

وكانت الأداة أو الوضع الذي تسبّب في الضرر تحت السيطرة الحصرية للمدّعى عليه، فيمكن الافتراض أنّ المدّعى عليه كان مهملًا.

لكي ينطبق مبدأ"res ipsa loquitur" ، يجب، عادةً، على المدّعي (الشخص المتضرّر) إثبات ثلاثة عناصر رئيسية:

-أنّ الحادث لم يكن ليحدث لولا الإهمال.

- أنّ الأداة، أو سبب الضرر كان تحت السيطرة الحصرية للمدّعى عليه.

-أنّ المدّعي لم يساهم في إصابته، أي ألّا تكون الإصابة ناتجة عن فعل أو إهمال من جانب الضحيّة.

في مثل هذه الحالات، من الواضح أنّ خطأ ما قد حدث، وأنّه لم يكن ليحدث على الأرجح لو أنّ الطرف المسؤول مارس العناية المعقولة، حتى لو لم يتمّ إثبات كيفية حدوث الإهمال بشكل مباشر. يتيح هذا المبدأ إذًا للمحكمة أن تستنتج الخطأ أو السببية دون الحاجة إلى دليل مباشر عندما تشير الظروف بقوّة إلى ذلك.

3.2 مفاعيل سحْب التوجيه على الأمر بالإفصاح المعطى للقاضي

استنادًا إلى الاجتهادات المستقرّة لمحكمة العدل الأوروبّية، يملك القاضي سلطة إصدار أوامر بالإفصاح عن المعلومات(disclosure orders) ، متى تبيّن أنّ هذه المعلومات ضرورية لإنصاف المتضرّر.

رغم أنّ القاضي يمتلك هذه الصلاحية، إلّا أنّ عبء الإثبات لا يزال على عاتق المتضرّر، في حين أنّ التوجيه كان سيسمح بافتراض العلاقة السببية في حالات معيّنة. كما أنّ القاضي سيحتاج إلى مبدأ عام، أو اجتهاد سابق، يبرّر طلب الإفصاح، دون سند تشريعي صريح. لا تزال هناك أدوات قانونية تمكّن القاضي من إلزام الشركة المصنّعة بالكشف عن معلومات لازمة للتحقيق في العلاقة السببية بعد سحب التوجيه. ولكنّ غياب قاعدة صريحة يُضعف فعّالية هذا الإجراء، ويجعل تحقيق العدالة مرهونًا بمدى جرأة القاضي واجتهاده، في غياب نصّ قانوني واضح، ما يعزّز الحاجة لإعادة إحياء مشروع تشريعي مشابه للتوجيه في المستقبل.

في السياق الحالي، ونظراً لتزايد استخدام الذكاء الاصطناعي في الأنظمة القضائية والعدلية حول العالم، تبرز الحاجة المُلحّة إلى الشفافية والقابلية للتفسير (Explainability) في عمل هذه الأنظمة الذكية. ولذلك، يجب أن تكون لدى القاضي صلاحية طلب الإفصاح عن طريقة عمل أنظمة الذكاء الاصطناعي، خصوصًا إذا كانت هذه الأنظمة تؤثّر بشكل مباشر، أو غير مباشر، على اتّخاذ القرارات القضائية، أو حقوق الأفراد.

3.2.1 الأسباب التي تمكّن القاضي من طلب الإفصاح عن كيفية عمل النظام

يتّضح من خلال هذا البحث أنّ التوجيه المسحوب من قبل المفوضية الأوروبّية عن جدول أعمالها للعام 2025 لم يقدّم مفاهيم جديدة بالكامل، إنّما تضمّن مبادئ قانونية قائمة. ما يفيد أنّ التوجيه لم يوضع بهدف تغيير أحكام المسؤولية، بل لتعزيز اليقين القانوني، وهو أمر بالغ الأهمّية للقضاة الوطنيين الذين ينظرون في قضايا المسؤولية المعقّدة التي تتعلّق بالذكاء الاصطناعي، دون أدلّة مباشرة. وبالتالي عدّة أسباب تمكّن القاضي من طلب إعطائه معلومات من المدّعى عليه، على الرغم من سحْب التوجيه، مع بعض الصعوبات التي قد يواجهها في هذا الإطار. أبرز الأسباب هي التالية:

-**مبدأ العدالة والإنصاف:** من المبادئ الأساسية للعدالة أن يكون القرار القضائي مسبّبًا ومنطقيًّا وقابلاً للتدقيق. إذا كان قرار أو توصية نظام ذكاء اصطناعي غير شفّاف، فكيف يمكن للمحكمة أو الأطراف المتنازعة التأكّد من أنّه عادل وغير متحيّز؟

-**حقّ الدفاع:** يجب أن يكون للمتقاضين الحقّ في فهم كيف تمّ التوصّل إلى الأدلة أو التوصيات التي تستخدم ضدّهم في المحكمة. إذا اعتمدت المحكمة على تحليل أو تصنيف تمّ بواسطة الذكاء الاصطناعي، فيجب أن يكون للمدافعين القدرة على فهم هذه العملية والطعن فيها إذا لزم الأمر.

-**مكافحة التحيّز:** أنظمة الذكاء الاصطناعي تُدرَّب على بيانات، وهذه البيانات قد تحتوي على تحيّزات تاريخية أو مجتمعية. إذا كانت طريقة عمل النظام غير مفهومة، فمن الصعب اكتشاف وتصحيح هذه التحيّزات، ممّا قد يؤدّي إلى قرارات غير عادلة أو تمييزية.

-**المساءلة:** في حال حدوث خطأ أو ضرر نتيجة لاستخدام نظام ذكاء اصطناعي، يجب أن يكون هناك فهم لكيفية عمل النظام من أجل تحديد من يتحمّل المسؤولية (المطوّر، المستخدم، مزوّد البيانات، إلخ).

-**الأمانة القضائية:** تقع على عاتق القاضي مسؤولية التأكّد من أنّ جميع الأدوات والمعلومات المستخدمة في المحكمة موثوقة ومناسبة. وهذا يشمل فهم مدى موثوقية ودقّة أنظمة الذكاء الاصطناعي.

-**القوانين والتشريعات الناشئة:** يتّجه الاتّحاد الأوروبّي، نحو تنظيم الذكاء الاصطناعي، وخصوصًا الأنظمة العالية الخطورة المستخدمة في مجالات مثل العدالة. قانون الذكاء الاصطناعي للاتّحاد الأوروبّي(AI Act) ، يضع متطلّبات صارمة للشفافية والقابلية للتفسير لهذه الأنظمة. يجب إصدار تشريعات تلزم المطوّرين والمستخدمين بتوفير معلومات حول كيفية عمل الأنظمة، بدلاً من تخفيف الإجراءات، والإنصياع لرغبة الشركات الكبرى التي لا تبغي سوى تحقيق الأرباح المادية حتى ولو كانت على حساب حقوق الأفراد.

ماذا يعني "الإفصاح عن طريقة العمل"؟

لا يعني الإفصاح عن طريقة العمل بالضرورة اصدار قرارات قضائية تتعارض مع حقوق الملكية الفكرية. إنما قد يشتمل قرار القاضي على ما يلي:

-**الوثائق الفنّية:** تفاصيل حول كيفية تصميم النظام، ونموذج البيانات المستخدمة، والمنطق الذي يتّبع لإنتاج النتائج.

-**البيانات التدريبية:** معلومات حول مجموعة البيانات التي تمّ تدريب الذكاء الاصطناعي عليها، وكيفية جمعها، وهل تمّ تحليلها للتحيّزات المحتملة.

-**عوامل اتّخاذ القرار:** تحديد العوامل التي اعتمد عليها النظام بشكل أساسي للوصول إلى نتيجة معيّنة، ومدى تأثير كلّ عامل.

- **التقييم والتدقيق:** نتائج الاختبارات والتدقيقات المستقلّة التي تُظهر أداء النظام ودقّته وتحيّزاته المحتملة.

-**القدرة على إعادة الإنتاج** :القدرة على إعادة تشغيل النظام بالمدخلات نفسها للحصول على المخرجات نفسها، ممّا يسمح بالتحقّق من صحّتها.

-**شرح مبسّط** : القدرة على تقديم شرح مفهوم للبشر عن سبب اتّخاذ النظام لقرار معيّن، حتى لو كانت الخوارزمية معقّدة.

3.2.2 التحدّيات التي تواجه القاضي في غياب قانون ملزم

يواجه القاضي مع الذكاء الاصطناعي بعض التحدّيات، خصوصاً عند إلزام المدّعى عليه بالإفصاح عن المعلومات. أبرز هذه التحدّيات هي التالية:

-**تعقيد النماذج:** بعض نماذج الذكاء الاصطناعي، خصوصًا الشبكات العصبية العميقة، معقّدة للغاية ويصعب تفسيرها ("الصندوق الأسود").
-**أسرار التجارة:** قد تدّعي الشركات المطوّرة أنّ تفاصيل عمل أنظمتها هي أسرار تجارية. ومع ذلك، في سياق العدالة، يجب أن تتغلّب المصلحة العامّة في الشفافية والعدالة على هذه المخاوف في معظم الحالات.
-**الخبرة الفنّية للقضاة:** قد يحتاج القضاة إلى خبراء لمساعدتهم في فهم وشرح طريقة عمل هذه الأنظمة المعقّدة.

مع تزايد استخدام الذكاء الاصطناعي في الأنظمة القانونية والقضائية، يصبح حقّ القاضي في طلب الإفصاح عن طريقة عمل النظام ضرورة لضمان العدالة والشفافية وحماية الحقوق الأساسية للمتقاضين. هذا الاتّجاه نحو "الذكاء الاصطناعي القابل للتفسير (Explainable AI – XAI) "هو محور نقاش قانوني وأخلاقي هامّ على الصعيد العالمي.

4. الخاتمة

لا يمثل رجوع الاتّحاد الأوروبّي عن توجيه المسؤولية المدنية في مجال الذكاء الاصطناعي، عقب مؤتمر باريس 2025، إلى جانب تأجيل تطبيق بعض أحكام الإطار القانوني الجديد للذكاء الاصطناعي، تراجعًا تشريعيًا فحسب، بل يكشفان عن مرحلة انتقالية دقيقة تتجاوز الاعتبارات القانونية الضيقة إلى رهانات استراتيجية وسياسية واقتصادية أوسع. فقد كان من المتوقّع أن يشكّل التوجيه خطوة أساسية نحو توحيد قواعد المسؤولية وتسهيل الإثبات أمام المتضررين، غير أن الرجوع عنه أعاد المشهد القانوني الأوروبي إلى نقطة البداية، حيث تتجاذب الدول الأعضاء نماذج مختلفة من المسؤولية المدنية، ما يرسّخ حالة من عدم التجانس التشريعي. ومن هنا، يبدو أن الاتحاد الأوروبي يعيد التفكير في علاقته بالابتكار، محاولًا الموازنة بين حماية الأفراد والمستهلكين من جهة، وتشجيع التطوير الصناعي والتكنولوجي من جهة أخرى، في سياق منافسة عالمية شديدة مع الولايات المتحدة والصين.

وعليه، فإن مستقبل تنظيم المسؤولية المدنية عن الذكاء الاصطناعي في الاتحاد الأوروبي يظل مفتوحًا على سيناريوهات متعددة، قد تتراوح بين إعادة طرح توجيه جديد أكثر دقة، أو دمج قواعد المسؤولية ضمن الـ AI Act ذاته، أو حتى ترك المجال لتطوير قواعد موحدة عبر الاجتهاد القضائي الأوروبي. وفي جميع الحالات، لا يمكن تجاهل أن التحدي الأكبر سيكمن في إيجاد صيغة توفّق بين حماية المتضررين ومنح الثقة للتكنولوجيا، وبين توحيد النظام القانوني الأوروبي وتمكينه من مواكبة التطورات السريعة للذكاء الاصطناعي.

إن المرحلة المقبلة ستشكّل بلا شك اختبارًا حاسمًا لقدرة أوروبا على بناء منظومة قانونية متوازنة، تضمن حقوق الإنسان وتحفّز الابتكار، وتضع أسسًا واضحة لمسؤولية عادلة تتماشى مع التطوّر التقنيّ، مع ضرورة تعزيز الحوار الدولي لتوحيد المعايير والضوابط المتعلّقة بالذكاء الاصطناعي. وفي ضوء ما سبق، تبقى المسؤولية المدنية عن الذكاء الاصطناعي إحدى أبرز القضايا التي ستحدّد شكل العلاقات القانونية والاجتماعية في العقود المقبلة، ممّا يحتّم على صانعي القرار والمجتمع القانوني الأوروبي مواجهة التحدّيات بمرونة.

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Foreign-Trained Workers, Access to Regulated Professions, and Public Safety: What Canadian Human Rights Law has to Teach

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Abstract

This paper examines how Canadian human rights law can inform the design of mutual recognition agreements (MRAs) for professional qualifications concluded under transnational trade agreements, such as the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. While these instruments establish procedural frameworks for MRAs, they do not ensure compliance with domestic equality guarantees. The paper's objective is to identify how anti-discrimination norms, grounded in the principle of substantive equality, should guide Canadian professional regulators when negotiating and implementing MRAs.

It first sets out the analytical framework for assessing discrimination under Canadian human rights law, as articulated by the Supreme Court of Canada. It then examines leading decisions on discrimination in access to regulated professions, with particular attention to foreign-trained professionals, before applying this framework to typical features of qualification recognition processes and to existing MRAs, including those adopted under the Québec–France Agreement.

The analysis shows that conditions frequently imposed on foreign-trained candidates – such as additional examinations or internships, rigid experience thresholds, and limited opportunities to demonstrate equivalence – may create adverse effects based on individuals' place of origin, and therefore trigger a duty to justify these measures as bona fide, proportionate, and reasonably necessary to protect public safety. The paper concludes that MRAs should incorporate evidence-based compensatory measures, preserve meaningful individualized assessments of equivalence, and include mechanisms for periodic review to identify and correct systemic barriers, thereby promoting both professional mobility and substantive equality of opportunity.

Keywords: *Discrimination, Equality, Foreign-trained professionals, International mobility, Mutual recognition agreements*

1. Introduction

Following the trade tensions that emerged between Canada and the United States in the late 2010s, Canada has made concerted efforts to diversify its trade and investment relationships. This diversification strategy has led to the negotiation of several major trade agreements with partners across Europe and the Asia-Pacific region. Beyond their economic objectives, these agreements create opportunities to address broader questions of labour mobility and regulatory cooperation, particularly through the mutual recognition of professional qualifications. The *Comprehensive Economic and Trade Agreement* (CETA) between Canada and the European Union, signed in 2016, anticipated this trend by dedicating an entire chapter to the recognition of professional qualifications, an issue deemed to be one of the main obstacles to migrants' access to labour in Canada (Houle & Yssaad, 2010, p. 20; Grant, 2016, p. 5). The *Canada–United Kingdom Trade Continuity Agreement* (Canada-UK TCA), which entered into force in 2021, reflects a similar commitment to facilitating professional mobility through regulatory collaboration.

The inclusion of such provisions highlights the growing role of international trade instruments in shaping access to regulated professions, a domain traditionally governed by domestic law and professional self-regulation. In Canada, the regulation of professions falls within provincial jurisdiction (*Constitution Act, 1867*, s. 92(13)). To practice a regulated profession, individuals must obtain a license from the relevant provincial authority (often called "professional college" or "professional order"), which restricts access as a means of ensuring public safety. Foreign-trained professionals must therefore have their qualifications recognized by that authority. However, the recognition process is often lengthy and costly, and more often than not, it involves compensatory measures such as additional courses, examinations, or supervised practice that foreign-trained professionals must comply with to be fully entitled to practice their profession (Doucet, 2026). These requirements can take years to complete and may deter many qualified individuals from pursuing licensure (Bourgeault & Neiterman, 2013, p. 199). Recent trade agreements, by contrast, seek to simplify this process through frameworks that encourage the negotiation of mutual recognition agreements (MRAs) between competent regulators.

Both CETA and the Canada–United Kingdom TCA operate within the same framework for professional mobility (the latter incorporating CETA's provisions *mutatis mutandis* under its Article I). Chapter 11 of CETA, titled *Mutual recognition of professional qualifications*, establishes a structured mechanism through which regulators and professional bodies of the State Parties may negotiate the mutual recognition of credentials. This mechanism, which forms part of a new wave of transnational agreements traceable to late-1980s Europe (Côté, 2008, p. 338-348), enables competent regulators and professional bodies of the State Parties to determine in advance the conditions under which professionals trained in the territory of one Party to an MRA may practice a regulated profession in the territory of the other (Houle & Doucet, 2016, p. 139).

As part of the framework to achieve mutual recognition, Annex 11-A of CETA provides non-binding guidelines offering practical direction to regulators developing MRAs (which also apply within the Canada-UK TCA). These guidelines set out a four-step process for assessing and recognizing professional qualifications.

The first step requires the negotiating entities (i.e., the regulators) to "verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions." To do so, they must identify the activities encompassed by the profession as well as the qualifications required in each jurisdiction, including the level of education, experience, and examinations.

In the second step, regulators assess whether substantial differences exist either in the scope of qualifications or in the scope of practice. Substantial differences in the scope of qualifications arise in cases of significant disparities in essential knowledge, or in the duration or content of professional training between jurisdictions, whereas substantial differences in scope of practice occur where one or more professional activities are not part of the corresponding profession in the applicant's home jurisdiction, where they require specific training in the host jurisdiction, or where the training for these activities covers materially different subject matter. If no substantial differences are found, the qualifications are deemed equivalent. If such differences do exist, regulators proceed to the third step and identify appropriate compensatory measures to bridge the gap.

These compensatory measures may take the form of an adaptation period (i.e., a period of supervised practice, possibly accompanied by further training, under the responsibility of a qualified professional in the host jurisdiction) or an aptitude test, limited to the applicant's professional knowledge and designed to assess their ability to practice in the host jurisdiction. In all cases, any measure adopted must be proportionate to the specific differences identified. Regulators are also encouraged to consider whether the applicant's prior professional experience in the home jurisdiction sufficiently compensates, in whole or in part, for those differences before imposing additional requirements.

The fourth and last step of the process is the specification of the conditions for recognition in the MRA draft. Before it can be implemented in the corresponding jurisdictions, the drafted MRA must be approved by the Joint Committee on Mutual Recognition of Professional Qualifications established under CETA's section 26.2.1(b) or article II of the Canada-United Kingdom TCA.

However, MRAs negotiated by Canadian regulatory authorities under CETA, the Canada-United Kingdom TCA (or under any other agreement) must also conform to domestic legal norms. Canada is a dualist state, which means that international and transnational agreements, including MRAs, have no direct effect in domestic law unless implemented through legislation (Emanuelli, 2010, paras. 313-337). As such, any implementing measure must comply with the Canadian Constitution and with quasi-constitutional norms (i.e., norms which are deemed to have precedence over ordinary laws).

In Canada, the professional system, comprising the norms, practices, and decisions adopted by competent professional authorities, is subject to scrutiny under provincial human rights legislation, such as the *Charter of Human Rights and Freedoms* of Québec, the Ontario and British Columbia *Human Rights Codes*, and the *Alberta Human Rights Act*, all of which prohibit discrimination. A deep understanding of Canadian human rights law is thus of foremost importance for regulators engaging in the negotiation of MRAs, as these agreements, once implemented, may be challenged under provincial human rights legislation.

This paper aims to shed light on the obligations of professional authorities in this context, with a view to facilitating the negotiation and adoption of MRAs that align with

Canadian human rights legislation. It proceeds by first outlining the legal framework applicable to discrimination claims in access to regulated professions, followed by an analysis of the relevant case law. Finally, it considers the implications of these obligations in the specific context of MRAs and highlights potential challenges arising from the intersection between international trade law and domestic human rights protections.

2. The framework of Canadian anti-discrimination provisions

Before exploring what Canadian human rights law can teach us, it is essential to outline the framework that governs discrimination claims. The analytical approach applied by courts and tribunals under provincial human rights legislation was articulated by the Supreme Court of Canada in its landmark decisions *Meiorin* and *Grismer*. This framework involves a two-step analysis.

At the first step, the complainant must establish, on a balance of probabilities, a *prima facie* case of discrimination. The expression *prima facie discrimination* refers to the complainant's burden of proof u and requires showing that the impugned conduct or rule has a prejudicial effect on members of a protected group. It is crucial to emphasize that *prima facie* discrimination does not, in itself, constitute unlawful discrimination; it does so only in the absence of a valid justification.

Across Canadian jurisdictions, to make out a *prima facie* case, complainants must demonstrate three elements: (1°) that they possess a characteristic protected from discrimination under the applicable human rights statute; (2°) that they experienced an adverse impact in an area covered by the statute, such as employment, services, or access to professional licensing; and (3°) that the protected characteristic was a factor in the adverse impact (*Moore*, para. 33; *Stewart*, para. 24). Notably, it is not necessary to establish any intent to discriminate under Canadian human rights legislation (*Andrews*, p. 174).

Once a *prima facie* case of discrimination is made, the onus shifts to the defendant to prove that his conduct, practices or norms are justified on the basis of the exemptions provided for in the applicable human rights legislation or those developed by the courts (*Bombardier*, para. 37). If it cannot be justified, it will be found discriminatory, and the respondent may be ordered to cease the discriminatory practice, amend the impugned rule, and, where appropriate, pay compensation to the complainant (*Moore*, paras. 33 and 49; *Mouvement laïque québécois*, para. 37;). Although provincial statutes vary slightly, the justification analysis generally requires the respondent to show that: (1°) the impugned standard or requirement pursues a legitimate and rational objective; (2°) it was adopted in good faith; and (3°) it is reasonably necessary to achieve that objective (*Grismer*, para. 21).

At its core, the *Meiorin/Grismer* framework, later reaffirmed by the Supreme Court of Canada in cases such as *Moore* and *Stewart*, embodies the principle of substantive equality, according to which norms, practices, or decisions should not, because of irrelevant personal differences, impose a more burdensome or less beneficial impact on one individual than on another (*Andrews*, p. 165). Substantive equality acknowledges that equal treatment does not always mean identical treatment and that differential measures may sometimes be required to avoid perpetuating disadvantage for members of protected groups.

This framework provides the foundation for assessing whether regulatory standards in professional licensing, including qualification recognition processes applied to foreign-trained professionals, comply with the guarantees of substantive equality. The following section

examines how Canadian courts and tribunals have applied this analysis in cases involving alleged discrimination in access to regulated professions.

3. The discrimination framework applied to access to regulated professions by foreign-trained professionals

Over the years, the question of discrimination in access to regulated professions by foreign-trained professionals has been raised before courts and specialized tribunals on several occasions. Whether or not the claims were successful, these decisions provide valuable guidance on what types of conduct, practices, or norms have been considered "suspect" and therefore require a reasonable justification to avoid being deemed discriminatory and unenforceable (3.1). They also shed light on how the justification process has been interpreted, including what can – or cannot – be justified (3.2).

The purpose of this section is not to exhaustively review Canadian case law on discrimination in access to regulated professions by foreign-trained professionals, as such an exercise has already been undertaken elsewhere (Doucet & St-Laurent, 2018; Doucet, 2026). Rather, it aims to highlight the key principles and rationales that emerge from the jurisprudence, as well as their implications for professional authorities.

With a few exceptions, only conclusions drawn from cases that applied the analytical framework set out in *Meiorin* and *Grismer* are discussed here, as other cases do not reflect the current state of the law. Most of the decisions analyzed were rendered by specialized administrative tribunals – primarily human rights tribunals for the most part – while only a handful were issued by courts in the context of ordinary judicial proceedings. The majority of the selected decisions involve actions brought against professional authorities. However, in some cases, the claims also targeted other actors – such as governments, hospitals, or universities – who played a role in the admission process to a regulated profession. Finally, most decisions dealing only indirectly with access to a regulated profession (for instance, those concerning access to internships directed against employers) were dismissed.

3.1 The prima facie case of discrimination: What has been considered as "suspect" conditions and practices

Neiznanski can be considered the first decision in which the analytical framework later set out in *Meiorin* and *Grismer* was applied in the context of discrimination against foreign-trained professionals. Interestingly, the Ontario Board of Inquiry (the predecessor of the Human Rights Tribunal of Ontario) rendered this decision in 1995, several years before the Supreme Court of Canada released those landmark judgments, making its approach somewhat visionary in anticipating the reasoning that would later become central to Canadian discrimination law (Doucet & St-Laurent, 2018, p. 225-227). This case concerns Dr. Neiznanski, an ophthalmologist trained at the University of Warsaw in Poland, who had more than 20 years of work experience before arriving in Canada as a refugee. He claimed that he was discriminated against in gaining access to a funded residency position, which was one of the prerequisites for becoming licensed to practice medicine in Ontario.

Although the claim was ultimately rejected, in *Neiznanski*, the Ontario Board of Inquiry underlined, in an *obiter*, that the conditions to become a licensed physician in Ontario, which were modified after Dr. Neiznanski introduced his claim, discriminated against foreign-trained applicants:

> […] the PIP [Pre-Internship Program] is limited to 24 candidates. In contrast, every graduate from an Ontario medical school is guaranteed the opportunity of an internship position and upon successful completion of the internship, a position in a Residency Program [..]. Even though a foreign-trained person may be as qualified on the basis of objective standards as measured against the Ontario graduate, and may even be better qualified than some Ontario graduates, the foreign-trained person cannot gain access to the licensing process unless he/she is one of the 24 chosen for the PIP. If the foreign-trained physician can gain entry to the PIP, upon successful completion of the PIP the physician can then apply for a Residency position in any desired specialty. This would mean two more years for a Family Medicine residency or four or more years in other areas of specialization. [...] A foreign-trained Canadian citizen or landed immigrant physician is now discriminated against by the present system for gaining admission to Residency Programs as of 1994, because he/she would be excluded from consideration on the merits (other than through the limited number entry through the PIP). Clearly this approach is unfair to such a candidate and just as clearly this approach means that not all the most qualified persons will become specialists, to the detriment of both the profession and the public. (paras. 45-48)

Building on this reasoning, the Board further identifies one of the key elements in establishing a prima facie case of discrimination in the context of access to regulated professions by foreign-trained professionals. More precisely, the Board suggested that additional requirements imposed on foreign-trained professionals prior to licensure, on account of their foreign educational and experiential credentials, may have the effect of excluding or disadvantaging groups on the basis of place of origin, race, colour, or ethnic origin (Neiznanski, para. 51). That is because people generally obtain their education or training in their place of origin (CDPDJ, 2010, p. 6; Schwartz & Valel, 2011, p. 21). In other words, a distinction based on the place of education or training can result in discrimination based on prohibited grounds, as later confirmed by other cases, including Bitonti, Keith, and Mihaly (Doucet & St-Laurent, 2018, pp. 235-236).

An analysis of the case law allowed us to identify several types of distinctions, stemming from norms, conditions, or practices, that have created a disadvantage or burden for foreign-trained professionals. It is important to note that the courts or tribunals did not always conclude that discrimination, or even *prima facie* discrimination, existed in the cases referred to here. However, in some of these cases, certain conclusions (particularly those rejecting the existence of *prima facie* discrimination) can now be considered questionable, as they were reached under an incorrect analytical framework.

Over the years, courts and tribunals have found that charging higher application fees to foreign-trained professionals (*Durakovic*, para. 32) or imposing territorial restrictions on their practice (*Forghani*, p. 10; *Keith*, para. 29) are differential treatments. The same has been said of imposing compensatory measures – such as internships (*Bitonti*, paras. 171-173; *Neiznanski*, para. 49) or examinations (*Caliao*, paras. 34-36; *LPG*, para. 59) – if fulfilling such measures is not asked of Canadian-trained candidates. Some other conditions also raise suspicions, such as those related to the fact of not having practiced for a certain amount of time (CDPDJ, 2010, p. 7), or the requirement to have Canadian work experience (Ontario Human Rights Commission, 2013, p. 2-8).

Requiring foreign-trained candidates to fulfill the exact same conditions as Canadian-trained candidates may also amount to discrimination. Indeed, foreign-trained candidates are

not in a comparable situation to their Canadian counterparts, as they may have different forms of training and professional experience. Following this logic, tribunals have found that professional authorities must provide applicants with the opportunity to demonstrate the equivalency of their qualifications (*Bitonti*, para. 235). This implies that they cannot unnecessarily require foreign-trained candidates to restart their studies in order to obtain a Canadian diploma, or to fulfill other conditions, without first allowing them to demonstrate that their training and work experience are equivalent. As discussed in the next subsection, exceptions to this principle should only occur in very limited circumstances.

However, as the courts have stressed, not all differential treatments affecting members of a protected group are discriminatory; such treatments must also be prejudicial (*Andrews*, pp. 168-169). The prejudice can take the form of a refusal or an impossibility to access the profession (*Bitonti*, para. 190; *Neiznanski*, para. 47), or even excessive delays in the admission process (*Andrews*, p. 183). More recently, in *Mihaly*, the Court of the Queen's Bench of Alberta concluded that imposing conditions to foreign-trained candidates, in the process of assessing their qualifications, creates in itself an adverse impact. As the Court declares:

> […] having to write examinations is in itself an adverse impact. Persons required to write examinations obviously have to expend time and resources (including, but not limited to, the examination fees) in order to prepare for and write the examinations, which is a form of adverse impact independent from the issue of whether they pass the examinations. (para. 78)

3.2 A reasonable justification based on public safety

Once *prima facie* discrimination has been established, the burden of proof shifts to the defendant (in this context, the professional authority) to justify its conduct, norm, or practice. This is generally done by demonstrating that it was adopted in good faith, pursued an objective rationally connected to the authority's functions, and was reasonably necessary to achieve that objective. The professional authority may also need to establish that it cannot, in the circumstances, accommodate members of the protected group without incurring undue hardship.

The *Neiznanski* decision is also quite instructive on this step of the analysis, as it captures the complexity of the issue and describes the reasoning that professional authorities must undertake in this particular context. The Board states:

> A Respondent to such a complaint would undoubtedly assert a defence that the purported ground of discrimination is 'reasonable and bona fide in the circumstances' […] for the protection of the public interest in respect of society's concerns relating to safety, health and welfare. The Ministry of Health and its surrogates [...] might argue that they cannot access accurately the foreign training and to license the foreign-trained person in these circumstances would jeopardize the public interest. […]
>
> Clearly, the maintenance of necessary public standards is a reasonable and bona fide ground for discrimination on the basis of jurisdiction of education or training, but the question then is – can the public interest be protected while at the same time the foreign-trained person's application for licensure is accommodated without undue hardship? Is there available an alternative, less onerous, approach that would ensure the public interest is protected? […] To have a fair system, and one that produces the most qualified specialists, the admissions process should consider all candidates on the merits whatever their place of education or training. (paras. 53 and 55)

To this day, only a few decisions have reached the justification stage. Nevertheless, these decisions have clarified certain aspects of the analysis (Doucet & St-Laurent, 2018, pp. 236-240).

It goes without saying that public safety is in itself a legitimate objective linked to a professional authority's functions, as recognized in the case law (*Bitonti*, paras. 199-200; *Mihaly*, para. 113; *Caliao*, paras. 33 and 39). It should also be noted that in some jurisdictions, legislation expressly identifies public safety as the authority's primary mission. For example, in Québec, section 23 of the *Professional Code* provides that, "[t]he principal function of each order shall be to ensure the protection of the public."

In general, professional authorities will not face significant difficulty in establishing that their norms, practices, or decisions were adopted or applied in good faith, unless the plaintiff proves an intention to discriminate (an element that is not required to establish discrimination). However, without questioning their good intentions, one cannot entirely dismiss the possibility that professional authorities may act in bad faith. For instance, in *Brar*, the British Columbia Human Rights Tribunal found that the provincial Veterinary Medical Association had adopted an excessively high English-language standard with the intention of excluding veterinarians of Indo-Canadian origin from the profession (*Brar*, paras 1266-1273).

While the case law is fairly clear regarding the first two elements of the justification analysis, greater uncertainty remains concerning the third element (i.e., whether the conduct, norm, or practice is reasonably necessary to achieve its purpose). Two major difficulties typically arise at this stage.

At this point, the focus shifts to the means adopted by professional authorities, which cannot be more stringent than what is strictly necessary to ensure public safety (*Grismer*, para. 21). However, very little guidance exists on what "public safety" actually encompasses, or on how far professional authorities may go in restricting access to regulated professions on this basis. To this day, the notion of "public safety" has not been defined in legislation, and few decisions have directly addressed this issue (Doucet & St-Laurent, 2018, pp. 245-247; Doucet, 2026).

Nevertheless, two decisions from the British Columbia Human Rights Tribunal provide some insight into the level of competence that may legitimately be required from candidates seeking admission to a profession. The first concerns Mr. Gichuru, a law student who was denied membership in the Law Society of British Columbia on the basis of mental disability (he had suffered from depression). While confirming that the Law Society had a statutory duty to assess applicants' competence and fitness to practise, the Tribunal concluded, relying on *Grismer*, that "the Law Society's standard cannot be an absolute guarantee of competence to practice law. Instead, it must be something lower, such as reasonable assurance of competence to practice law" (*Gichuru*, para. 497). The Tribunal reached a similar conclusion a few years later in *Brar*. According to its reasoning, "[i]t is clear that more than a minimal risk must be established when implementing a professional standard that must be met in order to practice. The appropriate goal is reasonable safety" (*Brar*, para. 1264).

The second difficulty concerns the concept of reasonable accommodation and the obligation for regulators to adopt standards that are as inclusive as possible. According to the case law, to be "reasonably necessary," a norm, practice, or decision must incorporate "every

possible accommodation to the point of undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost" (*Grismer*, para. 32).

In the context of access to regulated professions, tribunals have held that professional authorities must accommodate foreign-trained candidates by providing them with the opportunity to demonstrate the equivalency of their qualifications (*Bitonti*, para. 235; *Neiznanski*, paras. 48 and 55), unless doing so would result in undue hardship for the professional authority (*Grismer*, paras. 32-33). The individual assessments, through which candidates can demonstrate equivalency, may allow the authority to waive some or all of the usual licensing conditions. They can also lead to the imposition of targeted compensatory measures designed to address specific deficiencies in a candidate's qualifications, thereby adapting the process to the individual's situation.

However, the case law offers limited guidance as to what form these individual assessments should take. At most, in at least two cases, tribunals suggested that certain types of individualized testing could impose undue hardship on professional authorities.

In *LPG*, a foreign-trained professional whose first language was Portuguese challenged the refusal of the College of Audiologists and Speech-Language Pathologists of Ontario to consider alternative evidence of English proficiency instead of the two standardized tests selected by the College. In reviewing that decision, the Health Professions Appeal and Review Board stated:

> Standardized tests are widely used in the professional regulatory environment to provide an objective assessment of qualifications, skills, knowledge and other matters, including language proficiency. As noted by the College, requiring applicants to demonstrate fluency by way of standardized, widely used and recognized tests helps ensure that the process of determining fluency is independent, objective, transparent, fair and impartial. Individual testing would be costly and inefficient such that it would impose undue hardship on the College, and in the Board's view would not provide a consistent, standardized and objective evaluation as offered by the TOEFL [Test of English as a Foreign Language] and the IELTS [International English Language Testing System] in terms of whether an applicant meets the fluency standard expected of the profession. (para. 70)

Similarly, in *Mihaly*, the Court of Queen's Bench of Alberta overturned the order of the Alberta Human Rights Tribunal requiring the professional association to appoint a committee to assess foreign-trained candidates, as this would have required significant resource commitments:

> As the Tribunal contemplated that APEGA [Association of Professional Engineers and Geoscientists of Alberta] could be called upon to provide this assistance for approximately 375 applicants a year, his assessment that this "would not cause undue hardship to the engineering profession nor does it appear to be cost prohibitive with all the dues-paying members" […] is questionable, to say the least. The assessment of the Appeal and Review Board in LPG that individual testing would be costly and inefficient (and would not provide a consistent, standardized and objective evaluation) is much more realistic. (para. 146)

In the Court's opinion, the opportunity offered by the association to foreign-trained candidates was sufficient, as its practice coherently ensured public safety. The association individually assessed applicants and agreed to waive examinations for those who had

completed a graduate degree at a Canadian university or at a university located in a jurisdiction covered by an MRA, or for those who possessed ten years of progressively responsible engineering experience.

Despite the Court's conclusion, one may question whether the opportunity offered by the association was indeed sufficient. As author Geneviève St-Laurent noted, the Court merely stated that the association's practice met its objective, without deeply analyzing whether it had explored alternative approaches to reduce the negative impact on foreign-trained candidates (St-Laurent, 2016, pp. 110-111). Furthermore, one may argue that such a proactive approach, which appears to be required by the jurisprudence of the Supreme Court of Canada (*Central Alberta Dairy pool*, p 518-519; *Meiorin*, para. 38; *Moore*, para. 49), is consistent with the professional authorities' duty to ensure public safety. Indeed, in *Trinity Western University*, the Supreme Court emphasized that eliminating inequitable barriers to professional membership promotes the competence of members, improves the quality of services offered, and ultimately serves to ensure public safety (*Trinity Western University*, paras. 42-44).

4. MRAs and Non-Discrimination Guarantees: Unanswered Questions and difficulties

As pointed out in the introduction, CETA and the Canada-United Kingdom TCA aims to promote greater mobility of professionals between European countries and Canada. To this end, these agreements establish a framework to be followed by negotiating entities to facilitate the mutual recognition of professional qualifications. However, MRAs negotiated and adopted under this framework must not only comply with CETA's and the Canada-United Kingdom TCA's provisions, but also with the human rights obligations that bind professional authorities under Canadian law.

Except in the rare cases where MRAs provide for the automatic recognition of foreign-trained professionals' qualifications, they generally impose some form of compensatory measures on foreign-trained candidates (Houle & Doucet, 2016, pp. 148-165). As discussed earlier, such conditions are likely to be regarded as suspect, thereby requiring justification. In that respect, professional authorities must demonstrate that the measures contained in their MRAs do not go further than necessary to ensure public safety. In other words, compensatory measures must be proportionate to the differences identified in the scope of qualification and practice between the jurisdictions party to an MRA. While the guidelines contained in Annex 11-A of CETA do not bind negotiating entities in this regard, Canadian human rights law creates a positive obligation for professional authorities to ensure proportionality.

Canadian case law on discrimination in access to regulated professions also establishes that professional authorities must provide foreign-trained candidates with an opportunity to demonstrate the equivalence of their qualifications with those of Canadian-trained candidates. This may create practical difficulties, as MRAs typically predefine the conditions under which foreign-trained candidates may practise in the host jurisdiction and leave little room for individualized assessments. This is particularly evident in the MRAs concluded under the *Québec-France Agreement on the Mutual Recognition of Professional Qualifications* (Québec-France Agreement), a transnational accord that follows a framework similar to the one established in CETA. Such rigidity raises the question of whether the procedures set out in these MRAs are sufficiently inclusive.

Indeed, a 2016 study of the Québec–France MRAs found that only 4 of the 24 professions covered allowed for the full waiver of compensatory measures based on the

professional experience of foreign-trained candidates (Houle & Doucet, 2016, pp. 153-154). Little has changed since that study was conducted. Some MRAs allow for partial waivers However, in all cases, professional experience appears to be assessed primarily in quantitative terms, rather than on the basis of the qualifications and competencies acquired through that experience (Houle & Doucet, 2016, pp. 155-157). Consequently, a candidate's experience will not be considered at all unless they meet the minimum threshold specified in the MRA (Commissaire à l'admission aux professions, 2016, p. 48).

Similarly, professional authorities rarely consider forms of experience, training, or education not expressly mentioned in MRAs when assessing applications. This issue was raised before the Commissioner for Admission to Professions in the context of a Québec–France MRA, where the *Ordre des Ingénieurs du Québec*, the authority supervising the profession of engineer in the province, refused to consider additional graduate studies completed in Québec by a French-trained engineer as part of the experiential credit that could shorten the required internship period. Following this complaint, the Commissioner recommended that professional authorities take such additional training into account (Commissaire à l'admission aux professions, 2015, p. 5).

These examples raise legitimate doubts about whether current MRAs meet the non-discrimination obligations arising from Canadian human rights law, particularly concerning the opportunity afforded to foreign-trained candidates to demonstrate the equivalency of their qualifications.

5. Conclusion

In this paper, we have demonstrated that, in order to design MRAs that effectively facilitate professional mobility between Canada and other States without compromising public safety, the negotiating entities must do more than simply follow the frameworks provided by international trade agreements. The MRAs negotiated by Canadian professional authorities must also comply with the fundamental rights of foreign-trained professionals, as guaranteed by Canadian human rights legislation.

Through an analysis of Canadian case law on discrimination in access to regulated professions, this paper has highlighted several obligations that relevant authorities must bear in mind when negotiating MRAs. However, some questions remain unanswered. For instance, very little information is available on the form that the opportunity for foreign-trained candidates to demonstrate the equivalence of their qualifications should take. Another difficulty arises when barriers to accessing a profession are the result of the combined actions of multiple actors involved in the admission process, as often occurs in health professions, where limited university placements and internship positions make it particularly challenging to fulfil compensatory measures.

In conclusion, we would like to stress that, to achieve the objectives pursued by Canada's various international agreements on professional mobility, negotiating entities should take into account the lessons learned from existing MRAs, particularly those adopted under the Québec–France Agreement. The Québec–France Agreement and other comparable frameworks share similar approaches to the mutual recognition of professional qualifications, and the MRAs developed under them result from negotiations between Canadian authorities and their foreign counterparts. More importantly, the Québec–France MRAs have now been applied for over a decade, providing valuable insight into both their strengths and weaknesses

(Houle & Doucet, 2016; Commissaire à l'admission aux professions, 2017). Professional authorities should therefore carefully examine these experiences to develop the best possible future MRAs, ones that promote not only professional mobility but also substantive equality of opportunity.

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الرسوم القضائية (إعفاء - إسترداد)

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الملخص

تتاول هذه المقالة مبدأ الإعفاء من الرسوم القضائية واستردادها بوصفهما استثناءين محدودين على القاعدة العامة التي تقضي بأنّ المتقاضي هو الملزم بتحمّل نفقات الدعوى والرسوم المترتّبة على استعماله لمرفق القضاء. ويقوم هذا المبدأ على اعتبارات تنظيمية ومالية، إذ إن الرسوم تُعدّ أحد الموارد الأساسية التي تضمن حسن سير العمل القضائي وتوفّر جزءًا من الكلفة التشغيلية للمرفق العام. ومن ثمّ، فإنّ الأصل هو بقاء الالتزام بالرسوم وعدم المساس به إلا بنصّ صريح وواضح.

وقد تدخّل المشرّع في بعض الحالات لفرض إعفاءات خاصة من الرسوم، مراعاةً لاعتبارات اجتماعية أو إنسانية أو مرفقية تقتضي تمكين فئات محدّدة من اللجوء إلى القضاء دون عبء مالي كبير، أو دعم بعض الدعاوى التي يرى أنّ فيها مصلحة عامة. وتشمل هذه الإعفاءات، على سبيل المثال، دعاوى الأحوال الشخصية ذات الطابع الإنساني، وبعض الدعاوى المتصلة بحقوق العمال، إضافةً إلى الحالات التي يمنح فيها القانون إعفاءً خاصًا للشخص نظراً لوضعيته أو لطبيعة النزاع. ومع ذلك، تبقى هذه الإعفاءات محصورة في نطاق ضيّق ويُصار إلى تفسيرها تفسيرًا حصريًّا ينسجم مع طبيعتها الاستثنائية.

أما في ما يخصّ استرداد الرسوم، فقد أجاز المشرّع ذلك عند انتفاء السبب الذي استوفيت الرسوم من أجله، كما في حالة ردّ الدعوى لعيب شكلي قبل المباشرة في النظر فيها، أو عند صدور حكم نهائي يبرّر إعادة الرسوم للمتقاضي. ويُستفاد من ذلك أنّ المبدأ الضابط هو الحفاظ على التوازن بين ضمان حقوق المتقاضين من جهة، وضمان استمرارية المرفق القضائي وتمويله من جهة أخرى.

كلمات مفتاحية: *إعفاء – استرداد الرسوم – نفقات الدعوى – إنتفاء سبب الاستيفاء – تمويل المرفق القضائي.*

1. مقدمة:

إن من مقومات الدول الحديثة والدول الديمقراطية بشكل خاص، ان تتوزع السلطات فيها وتنفصل عن بعضها البعض، إلى سلطات تشريعية وتنفيذية وقضائية، حيث تؤلف كلّ منها سلطة مستقلة تلعب دورها ضمن حدودها وما انشأت من أجله.

تعتبر السلطة القضائية إحدى دعائم النظام الديمقراطي الثلاث، وبحسب المادة 20 من الدستور اللبناني تتولى السلطة القضائية " المحاكم على إختلاف درجاتها وإختصاصاتها ضمن نظام ينص عليه القانون ويحفظ بموجبه للقضاة وللمتقاضين الضمانات اللازمه..."

في الواقع ان السلطة القضائية هي رسالة ووظيفة اساسية من وظائف الدولة الحديثة، وهي تعتبر مرفق عام يعود للجميع الإستفادة منه على السواء، بخلاف ما كان معمولاً في السابق حيث كان حق التقاضي محصوراً بفئة من الناس دون أخرى، كفئة الأشراف او رجال الدين.

الغي هذا التفاوت على اثر الثورة الفرنسية حيث اصبح الجميع أمام القضاء فئة واحدة، لا ميزة لأحدهم على الآخر، وهذا ما عرف بمبدأ المساواة أمام القضاء، الذي يعتبر تطبيقاً عملياً لمبدأ المساواة المنصوص عليه في المادة السابعة من الدستور اللبناني، التي تنص على ان:" كل اللبنانيين سواء لدى القانون وهم يتمتعون بالسواء بالحقوق المدنية والسياسية ويتحملون الفرائض والواجبات العامة دون ما فرق بينهم ".

من نتائج هذا المبدأ، ان حق اللجوء إلى القضاء لا يقتصر على المواطنين فقط دون غيرهم بل ان هذا الحق يعطى للأجانب أيضاً، دون أي تفريق بينهم وبين المواطنين، ودون تقيّدهم بموجب تقديم كفالة ما، وهذا ما ذهب إليه المشترع اللبناني في المادة 7 من قانون اصول المحاكمات المدنية حيث جاء فيها:" الدعوى هي الحق الذي يعود لكل ذي مطلب بأن يتقدم به إلى القضاء للحكم له بموضوعه.

وهي بالنسبة إلى الخصم الحق بأن يدلي بأسباب دفاع أو بدفوع ترمي إلى دحض ذلك المطلب.

وهكذا يكون حق الادعاء وحق الدفاع لكل شخص طبيعي أو معنوي لبناني أو أجنبي ".

يستتبع مبدأ المساواة أمام القضاء نتيجة لازمة له، ألا وهي مجانية القضاء، ما يعني أنه يتوجب على المحاكم ان تفصل في الدعاوى دون ان تتقاضى أي أجر او تعويض من المتداعين، على ان تتولى الدولة بنفسها دفع مرتبات القضاة، الأمر الذي يترتب عليه ان يصبح اللجوء إلى القضاء ممكناً لجميع المواطنين على السواء بصرف النظر عن درجة ثرواتهم او مستواهم الإجتماعي.

غير أنه يلاحظ ان القضاء وإن كان مجانياً، إلا ان هذه المجانية لا تعني ان ولوج باب المحاكم لا تترتب عليه أية نفقات، إذ يتحمل الخصوم نفقات كثيرة في المحاكمة، ولا يمكن تحميل الخزينة العامة كل ما يدفع من مصاريف من حين التقدم بالدعوى لحين الفصل فيها، وهي مصاريف تتشعب وتتغير، لذا وجد ما يسمّى اليوم بالرسوم والنفقات القضائية وفقاً لأحكام القانون تاريخ 10 تشرين الاول 1950 وتعديلاته.

لا شك بأن الأعباء التي تمثلها الرسوم القضائية من شأنها ان تضع عقبات كثيرة امام الفقراء في الحصول على حقوقهم من خلال القضاء، الأمر الذي يؤدي إلى إحجامهم عن اللجوء إلى القضاء في نزاعاتهم، وبالتالي حرمانهم من حق التقاضي.

إذاً يوجب القانون إستيفاء الرسوم القضائية عن تقديم الدعاوى والحكم فيها وعن تبليغ تلك الأحكام والطعن فيها وتنفيذها، وذلك وفق القواعد والنسب المقررة في قانون الرسوم القضائية.

وحتى نسير بمجانية التقاضي إلى حدها الأقصى، ولضمان مبدأ المساواة أمام القضاء، أتاح القانون لمن كان حالته المادية لا تمكنه من دفع نفقات الدعوى، أن يتقدم بطلب يحصل على اثره على المعونة القضائية التي تؤهله حق الإدعاء امام المحاكم دون ان يدفع أيّ مبلغ مهما كان بسيطاً، وذلك حتى صدور حكم يفصل في الدعوى، والتي قد تمتّد إلى ما بعد صدور الحكم.

تناول قانون الرسوم القضائية من المادة 80 إلى المادة 87 منه، مسألة الإعفاء من الرسوم القضائية، وبدورها تناولت المواد 24، 25 و 26 من قانون الرسوم موضوع إسترداد الرسوم القضائية بعد ان تكون قد إستوفيت من المرجاع المختصة.

2. الإعفاء من الرسوم القضائية

الإعفاء من الرسوم القضائية هو إعفاء مؤقت، وذلك عند رفع الدعوى لعجز المدعي وعدم مقدرته المالية على دفع الرسوم، وقد يكون هذا الإعفاء قاصراً على فئة معينة أو هيئات معينة نص القانون على إعفائها من الرسوم القضائية، وقد يكون الإعفاء خاصاً بالدعاوى التي ترفعها الدولة.

نص قانون الرسوم القضائية في المواد 80 – 87 على إعفاء بعض الدعاوى من الرسوم القضائية، يمكن تقسيم هذه الإعفاءات إلى فئتين:

الفئة الأولى: تشمل الإعفاء الممنوح بالنظر إلى أشخاصاً معينين، بمعنى ان الإعفاء يكون شخصياً، أي ممنوحاً بالنظر إلى شخص أحد الخصوم، وبالتالي يكون إعفاءً شخصياً.

الفئة الثانية: تشمل دعاوى معينة، بمعنى ان الإعفاء يكون موضوعياً بالنظر إلى موضوع الدعوى، أي إعفاءات موضوعية.

2.1 الإعفاءات الشخصية

تضمنت بعض القوانين نصوصاً صريحة، على إعفاء الدعاوى الناشئة عن تطبيق احكامها من الرسوم القضائية.

يُعد هذا الإعفاء إستثناءً من الأصل العام، ولا يجوز التوسع فيه او القياس عليه، ومن ثم لا يمتد هذا الإعفاء إلى الدعاوى التي ترفع من أشخاص القانون العام او الخاص، إلا إذا نص صراحة على هذا الإعفاء في القانون الصادر بإنشائها او المتصل بعملها، يؤكد ذلك ان المشترع حين اراد إعفاء بعض الهيئات العامة من أداء الرسوم القضائية، عمد إلى النص صراحةً على هذا الإعفاء في القانون المتصل بعملها كما هو الحال، إعفاء مصرف لبنان من الرسوم القضائية، إذ ورد النص

على هذا الإعفاء في قانون النقد والتسليف(قانون النقد والتسليف وانشاء المصرف المركزي، مرسوم رقم 13513 الصادر في الأول من آب 1963).

نص قانون الرسوم القضائية على الإعفاءات الشخصية في المادة 81 منه ، حيث ورد أنه تُعفى الدولة في جميع الدعاوى التي تقام منها أو عليها من تأدية الرسوم القضائية والطوابع الأميرية وتمغة المرافعة، عن جميع الأوراق التي تبرزها والمعاملات التي تطلبها باسم ولمصلحة الدوائر العامة الداخلة في موازنتها، ومن دفع التأمينات القضائية وتقديم الكفالة في جميع الأحوال التي يفرضها القانون على المتداعين.

كما يشمل هذا الإعفاء دوائر الجمارك واليانصيب الوطني والمصلحة الوطنية للتعمير (زلزال في لبنان عام 1956)، ومصلحة سكك الحديد والنقل المشترك(محكمة التمييز المدنية، الغرفة الثامنة، قرار رقم 2002/142، 28 تشرين الثاني 2002)، ومصرف لبنان وجميع المؤسسات العامة الرسمية(محكمة التمييز، الغرفة الأولى، قرار رقم 20، 24 تشرين الثاني 1988) والمصالح المستقلة والبلديات.

تجدر الإشارة إلى أنه فيما يتعلق بمصرف لبنان، فإنه قد وردت نصوص في قانون النقد والتسليف اعفت المصرف من جميع الضرائب والرسوم، أياً كانت منشأة او ستنشأ لمصلحة الدولة والبلديات او اية هيئة اخرى.

كما أعفي مصرف لبنان من الإجراءات القضائية ومن تقديم الكفالة او السلفة في جميع الحالات التي يفرض فيها القانون هذا الواجب على الفرقاء (المادتين 118 و119 من قانون النقد والتسليف.).

تطبيقاً لما تقدم، صدر قرار عن محكمة إستئناف بيروت(محكمة إستئناف بيروت، الغرفة الخامسة، قرار رقم 86، 28 آذار 1988)، إستندت فيه على المادتين 118 و 119 من قانون النقد والتسليف، وخلصت إلى نتيجة مفادها؛ إعفاء مصرف لبنان من الرسوم المقطوعة والنسبية، بينما كان من الممكن الإستناد إلى المادة 81 من قانون الرسوم القضائية التي نصت بشكل صريح وواضح على إعفاء مصرف لبنان من كافة الرسوم والتأمينات القضائية.

كما اعفت الفقرة الثانية من المادة 81 من قانون الرسوم القضائية، القضايا المتعلقة بإستثمار وإدارة حصر التبغ والتنباك من جميع الرسوم والتأمينات القضائية والطوابع الأميرية، وعليه تبقى إدارة حصر التبغ والتنباك ملزمة بتقديم الكفالة في جميع الأحوال التي يفرضها القانون على المتداعين.

بدورها أعفت المادة الأولى من المرسوم رقم 9977 – الصادر في 1 نيسان 1975 والمعدلة بالمرسوم رقم 11155 تاريخ 15 تشرين الأول 1997 " المجلس الوطني للصيد البري في لبنان " من الرسوم القضائية.

اما بالنسبة للبلديات، فإن الفقرة الثانية من المادة 81 من قانون الرسوم القضائية، كانت تعفي البلديات من دفع التأمينات القضائية فقط، وبالتالي تكون ملزمة ببقية الرسوم، إلا انه في العام 1984 صدر القانون رقم 8\84 تاريخ 18 كانون الأول 1984، الغيت بموجبه الفقرة الثالثة من المادة 81 وإعتبرت البلديات مشمولة بالإعفاء التام المنصوص عليه في المادة 81 من قانون الرسوم القضائية.

ولكن هذه الإعفاءات المنصوص عليها في المادة 81 من قانون الرسوم القضائية، وضعت لمصلحة الدولة والدوائر المشار إليها، بمعنى انه إذا ربحت الدولة او إحدى الهيئات الدعوى فإن جميع الرسوم والنفقات التي لم تدفع بسبب الإعفاء، تُحصَّل عند التنفيذ من الفريق المحكوم عليه وتدفع لصندوق الخزينة.

أما إذا خسرت الدولة – إذا كانت مدعى عليها – فعليها ان تدفع الرسوم والمصاريف التي دفعها المدعي، فهي تعفى ولكن ليس على حساب المدعي(محكمة إستئناف بيروت، الغرفة الخامسة، قرار رقم 86، 28 آذار 1988).

قُضي في هذا المجال :"تقول المميزة، هنا، انها، اي مصلحة... تُعتبر من المؤسسات العامة بموجب المرسوم 13583 تاريخ 3 تشرين الاول 1953، وان المادة /81/ المذكورة تعفيها من الرسوم والنفقات القضائية، وان القرار المطلوب نقضه، بالزامها، بذلك، يكون قد خالف هذه المادة، فيستوجب النقض، حسب رأيها.

وحيث ان النزاع عالق لدى القضاء الجزائي، وليس، لدى القضاء المدني.

وحيث ان الدعاوى، لدى القضاء الجزائي، لا تخضع لرسوم مسبقة، كشرط لقبول الدعوى، بخلاف ما هو الشأن، لدى القضاء المدني،

وحيث ان المادتين /129/ و/136/ من قانون العقوبات، تُلزمان، الفريق الخاسر، لدى صدور الحكم، وليس قبل ذلك، بالنفقات والرسوم وقد قضت محكمة الجنايات، بالفعل، على المتهم... وعلى المميزة –كمسؤولة بالمال – ببدل العطل والضرر، وكان من نتائج ذلك، وفقاً للقاعدة القانونية المذكورة، الزامهما، بالاشتراك، كفريق خاسر، وفي الفقرة الحكمية، بالرسوم والنفقات،

وحيث، عند الاقتضاء، يمكن تنفيذ هذه الرسوم –التي هي، مبلغ ضئيل– بحق المتهم، المسؤول، جزائياً، ومدنياً"(محكمة التمييز الجزائية، الغرفة الثالثة، قرار رقم 94/94، 10 ايار 1994).

كما قضي حديثاً ايضاً :" لكن حيث ان الاعفاء الوارد في المادة المذكورة يشمل تأدية الرسوم والتأمينات عن الاوراق التي تبرزها الدولة في الدعاوى التي تكون طرفاً فيها، وان التفسير الحصري للنص الضريبي يمنع تطبيق الاعفاء على نفقات المحاكمة المترتبة على الدولة عند خسارتها الدعوى، كما تفرضه المادة 541 اصول محاكمات مدنية، بما يوازي نصيب خصمها منها دون ان يتعداه الى القسط الذي أُعفيت منه، فيكون السبب غير مسند"(المدنية، الغرفة الثانية، قرار رقم 2007/68، 28 حزيران 2007).

غني عن البيان، ان من يدعي على الدولة عليه ان يدفع الرسوم القانونية المتوجبة، اما الدولة فعندما تقدم لوائح جوابية فهي معفاة من الرسوم.

يُلاحظ ان إعفاء الدولة من الرسوم القضائية قد تقرر بنص خاص في قانون الرسوم – المادة 81 – بينما ورد النص على إعفاء الأشخاص المعنوية العامة الأخرى بقوانين إنشائها، بالإضافة إلى ان إعفاء الدولة جاء غير مشروط بشروط معينة، كما الحال في الإعفاء للعجز حيث يشترط في طالب الإعفاء او المعونة إحتمال كسب الدعوى.

بيد انه يثور التساؤل ما هو المقصود من لفظ الدولة الوارد في المادة 81 من قانون الرسوم القضائية؟

برأينا ان المقصود بلفظ الدولة في نص المادة 81 هو الحكومة، اي وزارات الدولة المختلفة، بمعنى آخر اي الحكومة بالتفسير الضيق للكلمة، بحيث يخرج عن هذا التفسير الهيئات العامة التي لها الشخصية المعنوية المستقلة وميزانيتها المستقلة.

إن هذا الإعفاء للدولة هو إستثناء، حيث ان الأصل هو في وجوب دفع الرسوم القضائية، ومن ثم فلا يجوز التوسع فيه او القياس عليه، ولا يمتد هذا الإعفاء إلى الدعاوى التي ترفع من الهيئات العامة التي لها شخصيتها الإعتبارية وميزانيتها المستقلة عن الدولة، ويمثلها امام القضاء رئيس مجلس إدارتها، إلا إذا نص صراحة على هذا الإعفاء في القانون الصادر بإنشائها او المتصل بعملها.

إعفاء كل طائفة معترف بها في لبنان والاشخاص المعنويين التابعين لها من ضرائب ورسوم:

نصت المادة الأولى من القانون رقم 210 تاريخ 2000/5/26، على اعفاء كل طائفة معترف بها قانونا وكل شخص معنوي ينتمي اليها بحكم القانون، من جميع الضرائب المباشرة وغير المباشرة والرسوم والعلاوات التي تستفيد منها قانوناً المؤسسات العامة.

و بتاريخ 2003/11/24 صدر عن وزير المالية القرار رقم 1/1719، الذي حدد شروط وأصول ودقائق تطبيق أحكام القانون رقم 2000/210.

وقد نصت المادة الثانية من القرار المذكور، على انه يشترط لكي تعفى الطوائف والأشخاص المعنوية التابعه لها من الضرائب المباشرة وغير المباشرة والرسوم والعلاوات توافر الشروط التالية:

1- ان تكون من الطوائف المعترف بها والمدرجة في الملحق رقم «1» المرفق بالقرار رقم 60/ل.ر. تاريخ 1936/3/13 وتعديلاته (نظام الطوائف الدينية).

2- ان يكون الشخص المعنوي منتمياً الى الطائفة بموجب نص في نظامها الشخصي له قوة القانون، وصادر قبل تاريخ 2000/5/26، ويعترف للشخص المعنوي بحق التملك والمقاضاة وبذمة مالية مستقلة عن الذمة المالية الخاصة بالطائفة.

3- ان تكون الاموال والحقوق المالية التي يشملها الاعفاء مملوكة أو مقتناة من قبل الطائفة او من قبل الشخص المعنوي المنتمي اليها بحكم القانون ومستعملة او معدة للاستعمال من أجل تحقيق الغايات الخاصة للطائفة او للشخص المعنوي دون أية غاية اخرى.

ومن جهة أخرى نص البند السادس من المادة الثالثة من القرار المذكور اعلاه، والمعدلة وفقاً للقرار الصادر عن وزير المالية رقم 1/576 تاريخ 2005/7/8، والقرار رقم 1/839 تاريخ 2005/10/21، على إعفاء كل طائفة معترف بها في لبنان والاشخاص المعنويين التابعين لها من الرسوم القضائية المنصوص عليها بموجب المادة 81 من قانون الرسوم القضائية.

تجدر الإشارة إلى ان الضرائب والرسوم المشمولة باحكام هذا القرار والمسددة قبل صدوره، تعتبر حقاً مكتسباً للخزينة ولا يمكن استردادها (المادة 5 من القرار رقم 1/1719 المذكور أعلاه).

2.2 الإعفاءات الموضوعية

ورد النص على الإعفاءات الموضوعية من الرسوم القضائية؛ في المواد 80 ومن ثم من المادة 83 إلى المادة 86 من قانون الرسوم القضائية، وهي تشمل دعاوى معينة بالنظر لموضوعها، ويمكن تلخيصها على الشكل التالي:

– تعفى من الرسوم القضائية أو من التأمينات، الدعاوى التي لا تتجاوز قيمتها خمسة وعشرين ألف ليرة وجميع قضايا طرق المراجعة التي تقدم بشأنها (المادة 80 من قانون الرسوم القضائية).

– تعفى الدعاوى وجميع المعاملات التي تجري لدى القاضي العقاري من جميع الرسوم القضائية ورسوم الطوابع، إلا ان هذا الإعفاء لا يطال هذه الدعاوى في حالتي الاستئناف والتمييز (المادة 83 من قانون الرسوم القضائية).

نفهم من المادة السابقة؛ انه لا تستوفى الرسوم القضائية عن الدعاوى المقدمة امام القاضي العقاري، اما الإعتراض امام القاضي العقاري الوارد ضمن المهلة والمرفق به المستندات اللازمة، والمقبول شكلاً من القاضي العقاري، فلا تستوفى عنه اي رسوم، لأن الإعتراض قد حصل نتيجةً لخطأ بأعمال التحديد والتحرير إرتكبه المساح، واراد المعترض تصحيحه فلا تدفع عنه اي رسوم قضائية، هذا ما عنته المادة 83 من قانون الرسوم القضائية.

– تعفى قضايا النفقة وأجرة الحضانة وأجرة الرضاع من الرسوم والتأمينات القضائية والطوابع الأميرية في جميع المحاكم العادية(محكمة التمييز المدنية، الغرفة الخامسة، قرار رقم 2005/3، 11 كانون الثاني 2005) والشرعية ودوائر التنفيذ.

أما قضايا مشاكل التنفيذ المثارة من المنفذ عليه، بشأن الأحكام الصادرة بهذه القضايا، فهي غير مشمولة بهذا الإعفاء، فيما يتعلق بالمنفذ عليه ويبقى المنفذ مستفيداً من الإعفاء (المادة 84 من قانون الرسوم القضائية).

مثلاً إذا طالبت زوجة بنفقة، وحكم لها بما طلبت، وأثناء التنفيذ اثار المنفذ عليه – اي الزوج – مشكلة تنفيذية، فلا يمكن لهذا الأخير ان يطلب إعفائه من الرسوم لأن المشترع أعفى الزوجة من الرسوم في دعوى الحضانة او النفقة، لأنها الحلقة الأضعف، ولكن لا يمكن إعفاء الزوج لأنه ليس الطرف الضعيف، بإستثناء بعض الحالات حيث يكون الواقع خلاف ذلك.

لم يميز القانون عندما نص على إعفاء قضايا النفقة من الرسوم بين النفقة، التي تقررها المحاكم اللبنانية وتلك المقررة من المحاكم الأجنبية، وبالتالي إعتبرت محكمة التمييز اللبنانية حديثاً؛ ان الإعفاء يشمل هذه الأخيرة، لأنه مقرر بالنسبة لطبيعة دين النفقة(محكمة التمييز المدنية، 14 تشرن الأول 1964).

– تعفى دعاوى العمل المقدمة إلى المجالس التحكيمية من جميع الرسوم والتأمينات القضائية ومن رسوم التنفيذ (المادة 80 من قانون العمل الصادر في 23 ايلول 1946 والمادة 85 من قانون الرسوم القضائية).

يشمل الإعفاء في هذه الحالة جميع أطراف الدعوى بخلاف دعوى النفقة، وغيرها المذكورين في المادة السابقة.

تطبيقاً لما تقدم، قُضي حديثاً في هذا المجال :" حيث ان المادة 85 من القانون المذكور، قد نصت على اعفاء الدعاوى المقدمة الى المجالس التحكيمية من الرسوم والتأمينات القضائية ومن رسوم التنفيذ، فتكون معفاة ايضاً الغرامة المنبثقة عن الحكم الموضوع بالتنفيذ كونها مرتبطة به ارتباط الفرع بالاصل..."(محكمة التمييز المدنية، الغرفة الخامسة، قرار رقم 2004/76، 11 ايار 2004).

– تعفى القضايا المتعلقة برواتب موظفي الدولة ومعاشات تقاعدهم وتعويضات صرفهم من الخدمة، من جميع الرسوم والتأمينات القضائية (المادة 86 من قانون الرسوم القضائية).

– تعفى من الرسوم والتأمينات الدعاوى التي لا تتجاوز قيمتها 25 ألف ليرة لبنانية، وجميع طرق المراجعة التي تقدم بشأنها (المادة 80 من قانون الرسوم القضائية).

– لا تخضع للرسوم الاستئنافية الدعاوى التي ترسل عفواً لمحكمة الاستئناف بمقتضى أحكام المادة 160 من المرسوم الاشتراعي رقم 241 تاريخ 4 تشرين الثاني سنة 1942 (المادة 60 من قانون الرسوم القضائية).

2.3 مرور الزمن على الرسوم القضائية

بالنسبة لمرور الزمن على الرسوم القضائية، فقد نصت المادة 99 من قانون الرسوم القضائية، على إن الرسوم والنفقات القضائية المحكوم بها لمصلحة الخزينة، تسقط بمرور الزمن المعين للأموال الأميرية عملاً بأحكام المادة 443 من قانون اصول المحاكمات الجزائية(قانون اصول المحاكمات الجزائية الجديد رقم 328 تاريخ 2 آب 2001).

تجدر الملاحظة أنه لم يعد هناك من أموال أميرية، بعد صدور قانون المحاسبة العمومية، وأصبحت الأموال العامة تسقط بمرور خمس سنوات على إستحقاقها.

ويسقط أيضاً في المدة نفسها كل طلب مختص بدفع الرسم، وذلك اعتباراً من التاريخ الذي تقدم فيه أو تم تسليم المستند الذي من أجله وجب الرسم.

ومن ثم تلتها المادة 100 من قانون الرسوم القضائية، فنصت على السقوط بمرور سنتين، كل طلب مختص باسترجاع الرسوم التي يُدَّعى أنها استوفيت بغير حق، والتي يحق استردادها بمقتضى أحكام قانون الرسوم، وذلك من تاريخ صدور الحكم النهائي أو القرار القاضي بفصل الدعوى نهائياً.

3. إسترداد الرسوم القضائية

ورد في المادة 24 من قانون الرسوم القضائية، حالات سُمح فيها بإسترداد الرسم النسبي، إذا كان مقداره يزيد على الرسم المقطوع، وذلك عبر رد الرسم المدفوع مقدماً بعد حسم الرسم المقطوع.

كما منح في حالات اخرى إسترداد الرسم المدفوع مقدماً، حتى لو زاد عن الرسم المتوجب بعد صدور الحكم.

يكون إسترداد فرق الرسم بناء على طلب صاحب العلاقة، فلا تحكم به المحكمة عفواً.

كما يمكن التقدم بطلب الإسترداد خلال مهلة السنتين من تاريخ صدور الحكم النهائي او القرار القاضي بفصل الدعوى نهائياً، وذلك تحت طائلة سقوط الحق بالإستعادة.

3.1 الحالات التي تسترد فيها الرسوم القضائية

قد يدفع احياناً رسم نسبي في قضية ما، وكان يزيد في مقداره عن مقدار الرسم المقطوع حسب كل درجة من درجات المحاكمة امام المحاكم المدنية، عند ذلك يمكن ان يرد هذا الرسم النسبي المدفوع مقدماً، بعد حسم الرسم المقطوع، وذلك في حالات محددة حصراً في المادة 24 من قانون الرسوم القضائية، والتي نصت على أنه:

إذا دفع في قضية ما رسم نسبي وكان مقداره يزيد على الرسم المقطوع، فيرد الرسم المدفوع مقدماً بعد حسم الرسم المقطوع وذلك في الحالات الآتية:

1- إذا قضت المحكمة برد الدعوى في الشكل.

كأن ترد الدعوى شكلاً لعدم وجود محامٍ، وذلك في الدعاوى التي تتطلب وجود محامٍ، لذا يرد ما دفع من الرسم النسبي عند تقديم الدعوى محسوماً منه مبلغ يساوي قيمة الرسم المقطوع، بمقدار قيمته المخصصة لخزينة الدولة ولصندوق تعاضد القضاة.

أما إذا كانت الدعوى خاضعة للرسم المقطوع وردت شكلاً، فلا تثور مسألة إسترداد الرسم المقطوع هنا، إذ لا يمكن إعادة الرسم المقطوع في اي حالة من الحالات.

2 – إذا ردت الدعوى في حالتها المبسوطة.

يتحدث البند الثاني عن حالة رد الدعوى في حالتها المبسوطة، أي في الحالة التي يتبين فيها للمحكمة ان الأدلة في المسألة المعروضة عليها، لا تمكنها من إعطاء حكم نهائي، فتفضل بدل فتح المحاكمة، لأنه قد لا يؤدي إلى فائدة ترجى، رد الدعوى في حالتها المبسوطة.

مثلاً إدعى شخصاً بإسترداد عقاره للضرورة العائلية، فردت المحكمة الدعوى بحالتها المبسوطة، حتى حصول طارىء معين، هو صدور قانون الإيجارات الجديد مثلاً، في هذه الحالة لم تبحث المحكمة بالأساس، لذا نرد له الرسم محسوماً منه مبلغ يساوي قيمة الرسم المقطوع، بمقدار قيمته المخصصة لخزينة الدولة ولصندوق تعاضد القضاة.

أما إذا كانت المحكمة قد بتت بالأساس وردت الدعوى فلا نرجع له الرسم.

3- إذا رفعت المحكمة يدها عنها لعدم الاختصاص أو لسبق الادعاء أو لأي سبب آخر، اما إذا استأنف الحكم فهنا لا نرد له الرسم.

تطبيقاً لما تقدم، قضي بأن :"... البحث بمقدار الرسم الواجب إستيفاؤه يتعلق بالأساس ولا يجوز للمحكمة أن تبحثه فإن فعلت تكون قد إحتفظت لنفسها بصلاحية النظر في نزاع يخرج أصلاً عن صلاحيتها... وحيث أنه من جهة ثانية ان المادة 24 من قانون الرسوم القضائية نصت على أنه... وحيث أن الرسم المدفوع عن الدعوى الحالية هو رسم نسبي فيقتضي حسم مبلغ مساو للرسم المقطوع وإعادة الرصيد إلى من دفعه وينبغي بالتالي رد ما ادلي... لأن رفع يد المحكمة عن الدعوى يمنع البحث في نوع ومقدار الرسم فضلاً عن عدم جدواه"(محكمة التمييز المدنية، قرار رقم 25، تاريخ 20 ايار 1993).

4- إذا أبطلت المعاملات، يتعلق هذا البند بمعاملات معينة، كإبطال الحجز او معاملة تعيين حارس قضائي.

مثلاً إذا كنا بصدد معاملة تنفيذية، وتم إبطالها فنرد له الرسم.

5- إذا قضت المحكمة بقبول رجوع المدعي عن دعواه، أو المستأنف عن استئنافه، قبل صدور الحكم.

وفي هذه الحالة الأخيرة، لا يرد فرق الرسم النسبي إلا عن المرحلة من المحاكمة التي تم فيها الرجوع قبل صدور حكم من المحكمة، اما المرحلة من المحاكمة التي صدر فيها حكم، فلا يرد فرق الرسم عنها. فإذا تم الرجوع عن التمييز، قبل صدور القرار التمييزي، فإن فرق الرسم النسبي لا يرد إلا عن المرحلة التمييزية، اما الرسوم المستوفاة في المرحلتين الإبتدائية والإستئنافية، فتبقى على عاتق من دفعها ولا يرد فرق الرسم عنهما(محكمة إستئناف بيروت، الغرفة الأولى، 11 كانون الثاني 1982).

وكذلك الحال عند رجوع المدعي عن الدعوى والحق معاً وقبل المدعى عليه بذلك.

قُضي في هذا المجال بأنه :" لا يوجد أي تعارض بين المادة 522 من قانون أصول المحاكمات المدنية التي تقضي بتحميل المتنازل عن المحاكمة بنفقات هذه المحاكمة، وبين المادة 24 فقرة 5 من قانون الرسوم القضائية، إذ ان المادة 522 لم تتطرق لا من قريب ولا من بعيد إلى الرسوم القضائية ولا لمبدأ رد جزء منها تبعاً للرجوع عن الدعوى بل تكلمت عن " النفقات بوجه عام محددة من يتحملها، ولا يكون بذي أساس القول بإلغاء ضمني في المادة 552 لنص الفقرة الخامسة من المادة 24 من قانون الرسوم القضائية..."،(محكمة الإستئناف المدنية، قرار رقم 26، تاريخ 25 شباط 1991) كما قضي أيضاً بأن "... فرق الرسم النسبي لا يرد إلا عن مرحلة المحاكمة التي لم تقترن فيها هذه المحاكمة بحكم، أما المرحلة التي تقترن بحكم فإن فرق الرسم النسبي عنها لا يرد. وأنه في القضية الحاضرة لا يرد فرق الرسم النسبي عن مرحلتي المحاكمة البدائية والإستئنافية لأن كلا منهما اقترنت بحكم ولكنه يرد عن المرحلة التمييزية التي يصدر بها حكم نهائي..."(ادوار عيد موسوعة أصول المحاكمات المدنية).

من جهة ثانية، في حال قدمت الدعوى ودفع عنها الرسم النسبي، وقبل صدور الحكم، تقدم المدعي بطلب تدوين رجوعه عن الدعوى مع إعادة فرق الرسم النسبي، فلا يعود للمحكمة رفض إعادة فرق الرسم بحجة ان المادة 522 أصول محاكمات مدنية نصت على انه في حال التنازل عن الدعوى يتحمل المتنازل النفقات، ذلك ان هذه النفقات وإن كانت تشمل الرسوم القضائية، إلا ان تحديد قيمة هذه الرسوم يتم بالإستناد إلى قانون الرسوم القضائية، وبالتالي يكون الرسم المتوجب على المتنازل هو الرسم المقطوع، ويحكم عليه به ضمن الحكم بالنفقات وإعادة ما يزيد على قيمة الرسم المقطوع(محكمة إستئناف بيروت، الغرفة الاولى، قرار رقم 26، 25 شباط 1991).

6- إذا قضت محكمة التمييز بقبول رجوع المميز عن تمييزه قبل صدور الحكم.

7- إذا رد الإستئناف والتمييز شكلاً. يُلاحظ ان هذا البند هو تكرار للبند الأول.

لا يسترد شيئاً من الرسم المدفوع مقدماً إذا حكم بالأساس او في حالة سقوط الدعوى وكان المستوفى يزيد عن الرسم المقطوع ويكتفى عندئذ بالرسم المدفوع مقدماً (المادة 25 من قانون الرسوم القضائية).

في حالة الحكم بجزء من المدعى به يؤخذ الرسم بالنسبة إلى المبلغ المحكوم به.

وإذا كان هذا الرسم أقل من الرسم المدفوع مقدماً فلا يسترد شيء منه (المادة 26 من قانون الرسوم القضائية).

الجدير ذكره انه يسقط بمرور سنتين كل طلب مختص باسترجاع الرسوم التي يدعي أنها استوفيت بغير حق والتي يحق استردادها بمقتضى أحكام هذا القانون وذلك من تاريخ صدور الحكم النهائي أو القرار القاضي بفصل الدعوى نهائياً(المادة 100 من قانون الرسوم القضائية).

3.2 الحالات التي لا تسترد فيها الرسوم القضائية

نصت المادة 25 من قانون الرسوم القضائية على انه لا يسترد شيء من الرسم المدفوع مقدما في حالتين :

1- إذا حكم بالاساس، يستوفى عند تقديم الدعوى ربع رسم النسبي ويدفع الباقي عند إستخراج الحكم على اساس قيمة المحكوم به، بناء على ما تقدم، بمجرد الحكم بالأساس لا يمكن استعادة فرق الرسم حتى لو كان الرسم

المدفوع مقدما يزيد عن قيمة الرسم المفروض على قيمة المحكوم به.

2- في حالة سقوط الدعوى وكان الرسم النسبي المستوفى مقدما يزيد عن قيمة الرسم المقطوع فلا يستعاد فرق الرسم.

3- سقوط الحق بإسترجاع الرسوم بمرور الزمن الثنائي:

نصت المادة 100 من قانون الرسوم القضائية، على أنه :" يسقط بمرور سنتين كل طلب مختص باسترجاع الرسوم التي يدعي أنها استوفيت بغير حق والتي يحق استردادها بمقتضى أحكام هذا القانون وذلك من تاريخ صدور الحكم النهائي أو القرار القاضي بفصل الدعوى نهائياً ".

4- في حالة الحكم بجزء من المدعى به، يؤخذ الرسم النسبي على اساس ما حكم به.

وإذا كان الرسم المدفوع عند تقديم الدعوى، يزيد عن الرسم النسبي المترتب عما حكم به جزئياً فلا يرد شيء مما دفع مقدماً.

لذا لا بد من الإحتراز عند تقديم الدعوى من المبالغة في تقدير الحقوق، لأن المدعي عليه ان يتحمل في النهاية عبء الرسم المدفوع عن المبالغ التي يطالب بها.

3.3 ملاحظات حول المواد 24، 25، 26 من قانون الرسوم القضائية

نرى أنه من المفيد إبداء بعض الملاحظات حول المواد 24، 25، 26 من قانون الرسوم القضائية، لوجود بعض اللبس والغموض حول صياغتها.

3.3.1 ملاحظات حول المادة 24 من قانون الرسوم القضائية

بعد هذا العرض لتطبيقات المادة 24 من قانون الرسوم القضائية، لا بد من إبداء الملاحظات التالية:

1- نص البند الأول على حالة ردّ الدعوى في الشكل، ثم نص البند السابع على حالة رد الإستئناف والتمييز شكلاً.

غني عن القول انه كان بالإمكان الإستغناء كلياً عن البند السابع لأنه مشمول بالبند الأول، ذلك ان كلمة " دعوى " تحمل في طياتها الدعوى في مرحلة البداية والإستئناف والتمييز.

2- ورد في البند الثالث حالات رفع المحكمة يدها عن الدعوى لعدم الإختصاص أو لسبق الإدعاء أو لأي سبب آخر.

من المعلوم ان هذه الحالات تدخل في باب رد الدعوى شكلاً وبالتالي فإن هذا البند الثالث يعد من باب اللغو الذي يفترض بالمشترع أن يكون منزهاً عنه.

أما عبارة " أو لأي سبب آخر " فعلى الرغم من كونها تتضمن معنى الشمول، فإنه يجب أن لا يطال مداها أكثر من الحالات المتعلقة بالشكل والتي ترد الدعوى لأجلها، كحالة التلازم مثلاً، علماً بأن عبارة " إذا رفعت المحكمة يدها عنها " تشير إلى عدم الحكم بالأساس.

من كل ما تقدم حول المادة 24 من قانون الرسوم القضائية، يمكن إقتراح تعديلها لتصبح على الشكل التالي:

المادة 24:" إذا دفع في قضية ما رسم نسبي وكان مقداره يزيد على الرسم المقطوع فيرد الرسم المدفوع مقدماً بعد حسم الرسم المقطوع وذلك في الحالات الآتية:

1- إذا قضت المحكمة برد الدعوى في الشكل.

2- إذا ردت الدعوى في حالتها المبسوطة.

3- إذا أبطلت المعاملات.

4- إذا قضت المحكمة بقبول رجوع المدعي عن دعواه أو المستأنف عن استئنافه أو المميز عن تمييزه قبل صدور الحكم.

3.3.2 ملاحظات حول المادة 25 من قانون الرسوم القضائية

نصت المادة 25 من قانون الرسوم القضائية، على أنه:" لا يسترد شيء من الرسم المدفوع مقدماً إذا حكم بالأساس أو في حالة سقوط الدعوى وكان المستوفى يزيد عن الرسم المقطوع ويكتفى عندئذ بالرسم المدفوع مقدماً ".

لا نرى ان هذه المادة قد أتت بأي حكم جديد، فالمادة التي أتت قبلها أي المادة 24، عددت الحالات التي يمكن فيها إسترداد الرسم النسبي دون أن تذكر حالة الحكم بالأساس أو حالة سقوط الدعوى، وبالتالي فإنه من غير العسير إستنتاج ما أتت به المادة 25 عن طريق قراءة بسيطة للمادة 24 من قانون الرسوم القضائية.

3.3.3 ملاحظات حول المادة 26 من قانون الرسوم القضائية

نصت المادة 26 من قانون الرسوم القضائية، أنه:" في حالة الحكم بجزء من المدعى به يؤخذ الرسم بالنسبة إلى المبلغ المحكوم به، وإذا كان هذا الرسم أقل من الرسم المدفوع مقدماً فلا يسترد شيء منه ".

وردت هذه المادة تحت عنوان " الحالات التي يسترد فيها الرسم النسبي " ولكن يُلاحظ انها لا تنص على اي إسترداد.

تتناول هذه المادة الحالة التي يكون فيها الخصم ولا سيما المستأنف الأصلي، أو المستأنف عليه المتقدم بإستئناف مقابل قد حُكم له بجزء من مطالبه المقدمة، عندها يؤخذ الرسم النسبي، أو يستكمل هذا الرسم بحسب قيمة المبلغ المحكوم به.

مثال على ذلك: إذا كان المستأنف قد طلب بداية مبلغ مئة مليون ليرة لبنانية، فحكمت له محكمة البداية بثلاثين مليون ليرة فقط، فاستأنف الحكم البدائي، طالباً مجدداً من محكمة الإستئناف أن تحكم له بمئة مليون ليرة أي انه يطلب سبعين مليوناً زيادة عما حكمت به محكمة الدرجة الأولى، وبالتالي فإنه سوف يدفع مسبقاً ربع الرسم النسبي محسوباً على أساس أن قيمة المطالب تساوي 70 مليوناً زيادة.

فكيف سوف يتم الإستيفاء الكامل للرسم، وما هي القيمة النهائية لهذا الرسم؟

إن الأمر يتعلق هنا بالحكم الذي سيصدر في القضية إستئنافاً، وبمقدار المبلغ الذي سوف يفصل فيه، فإذا إستجابت المحكمة لطلب المستأنف وحكمت له بالمئة مليون، أي أعطته الزيادة المطالب بها كلها، وهي 70 مليوناً، فإن الرسم يجب ان يكمل وبالتالي يجب دفع ثلاثة أرباع هذا الرسم عند إستخراج الحكم، لأنه تم دفع ربعه عند تقديم الإستئناف.

أما إذا حكمت المحكمة بجزء من القيمة المطالب بها، ولنقل مثلاً أنها حكمت بخمسين مليوناً، أي بزيادة عشرين مليوناً عن الحكم البدائي، ما يعني ان الرسم يجب ان يكمّل على أساس هذه الزيادة.

أما إذا صدقت محكمة الإستئناف حكم محكمة البداية، فلا يتوجب اي رسم نسبي بإستثناء الرسم المقطوع ورسم الصورة.

أما إذا حكمت محكمة الإستئناف لصالح المستأنف عليه بالمبلغ، فيتوجب عندها دفع الرسوم القضائية المتوجبة من جديد.

الجدير ذكره، أنه إذا كان المدّعي قد عجّل ما يزيد على الرسم النسبي المحسوب على أساس المبلغ المحكوم به، فلا يمكنه أن يسترد الفرق ما بين المبلغين سنداً للمادة 26 من قانون الرسوم القضائية، على الرغم من سوء صياغتها.

4. خاتمة:

من خلال دراسة موضوع الإعفاء من الرسوم القضائية واستردادها، يتضح أنّ المشرّع لم يتعامل مع هذه المسألة من منظور مالي بحت، بل من زاوية العدالة الاجتماعية وضمان المساواة في الوصول إلى القضاء. فالرسوم القضائية، رغم كونها مورداً مالياً يهدف إلى تغطية نفقات المرفق القضائي وتعزيز استقلاله، لا يجوز أن تتحوّل إلى عائق أمام حق التقاضي المكفول دستورياً لكل فرد.

لقد أرسى المشرّع مبدأً عاماً يقضي بتحمّل المتقاضي لنفقات الدعوى، إلا أنّه استثنى من ذلك حالات محددة تفرضها اعتبارات إنسانية أو مصلحية، كالدعاوى التي ترفعها الدولة أو بعض المؤسسات العامة أو الجمعيات ذات المنفعة العامة، أو تلك التي تراعي أوضاع المتقاضين المادية. ويُستفاد من الاجتهاد القضائي أنّ الإعفاء يجب أن يفسّر تفسيراً ضيّقاً، باعتباره خروجاً على القاعدة العامة، في حين أنّ الاسترداد لا يُمنح إلا إذا زال سبب الاستيفاء أو ثبت خطأ التحصيل أو صدر حكم نهائي يُنشئ الحق به.

كما أنّ التنظيم الدقيق لآليات الإعفاء والاسترداد يُظهر سعي المشرّع إلى تحقيق توازن دقيق بين متطلبات العدالة والفعالية المالية، فلا يُثقل كاهل الخزينة العامة من جهة، ولا يُحرم المتقاضي من حقّه في الوصول إلى العدالة من جهة أخرى. وقد شكّل الاجتهاد الإداري والمالي رافداً مهماً لتفسير النصوص وتحديد حدود الإعفاء والاسترداد، بما يضمن عدم التوسّع في الاستثناءات حفاظاً على انتظام المرفق العام.

ختاماً، يمكن القول إنّ تطوير النظام القانوني للرسوم القضائية يتطلّب مراجعة دورية للنصوص وتبسيط إجراءات الاسترداد والإعفاء، بما يتلاءم مع متطلبات العدالة الحديثة والمبادئ الدستورية، ولا سيّما مبدأ المساواة أمام القضاء. فالمطلوب هو نظام متوازن يوفّق بين حق الأفراد في التقاضي وحق الدولة في تأمين مواردها، في إطار من الشفافية والإنصاف.

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Famine as a Weapon of War: A Critical Geopolitical and Legal Analysis of Starvation Crimes in Contemporary Armed Conflicts

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Abstract

Objectives: Famine, often seen as a by-product of war, has historically served as a deliberate weapon of domination—from medieval sieges to modern conflicts like the Holodomor, Biafra, and Cambodia. In the twenty-first century, particularly after the Arab Spring, famine has acquired a geopolitical role: it is used to redraw borders and restructure power, all while being justified by doctrinal and legal narratives.

Methods: This article analyzes legal frameworks such as the Geneva Conventions and the Rome Statute, alongside case studies in Syria, Yemen, Tigray, and Gaza. It explores the gap between legal norms and enforcement, highlighting how humanitarian law is undermined by Security Council paralysis and realpolitik.

Results: Famine is not a collateral outcome but a strategic tool within broader systems of domination. International law provides legitimacy in discourse, but in practice, powerful states deploy or excuse famine under the guise of "security." The Global South bears the greatest burden of these political famines.

Conclusions: To address this imbalance, the article calls for a shift from legal prohibition to geopolitical analysis and collective prevention. It proposes international conferences led by NGOs and global intellectual networks to critically map famine as a tool of power and to challenge the structures enabling its continued use.

Keywords: *Accountability; Famine; Geopolitics; International law; Weapon of war*

1. Introduction

The notion of food security was officially proposed in 1974, at the inaugural World Food Conference (WFC). The geopolitical context at the time was very favorable: an agricultural crisis in key exporting countries (most notably the United States and Canada), as well as famines in Bangladesh, Ethiopia, and the Sahel. The fear of a global food shortage led to a narrow understanding of food security, reduced primarily to a question of supply: the priority was to increase production. In this climate of urgency, the specter of Thomas Malthus reemerged—he had argue, as early as 1798, that humanity, like all living species, tends to grow its population beyond what natural resources can sustain(Marc Dufumier, 2008, p.927).

Indian economist Amartya Sen, who won later the Nobel Prize in Economics in 1998, talked about how important fairness and people's access to means of production and resources were as early as the late 1970s(Britannica. The Editors of Encyclopaedia, 2025). Being poor frequently means not being able to make decisions, not being seen as a full citizen with rights, and not having your needs taken into account. So, to make food security better for everyone, we need to give marginalized populations more power to: negotiate the allocation of goods, get access to means of production, manage natural resources, and work(Katre & Raddatz, 2023,p.2).

This understanding is inherently political; it demands public action whenever markets fail. This approach necessitates the official recognition of the right to food, which is part of the larger economic and social rights. The idea is to provide individuals with the ability to feed themselves. It is a key demand for social and grassroots movements. As a human right, this entitlement entails a state obligation to respect, protect, and implement this right.

According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly in 1966, affirms the principle:

“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger […], shall take the necessary measures for the realization of the right to adequate food […], and for improving methods of production, conservation and distribution of foodstuffs […].” (UN, 1966).

Food security is no longer a problem isolated to the Global South. It has become a global issue, and it is at this level that the right to food must be secured. However, in several armed conflicts, famine has demonstrated that it is more than just an outcome of war(Munialo & Mellor, 2024, p.5). It was and is used purposefully as a strategic weapon to destroy civilian resistance, weaken enemies, and redefine territory. Since the beginning of the twenty-first century, particularly following the Arab Spring protests, this weapon has acquired a geopolitical dimension, serving to reshape political maps(Saccone & Vallino, 2025,p.15).

This use of starvation emphasizes the harshness of military power dynamics, and, above all, the limitations of international legal mechanisms designed to protect vulnerable communities. In the current context, symbolized by the return of wars in Ukraine, Syria, Tigray, and, most famously, Gaza, famine has once again become a prominent topic of humanitarian and legal debate(Dapo Akande & Emanuela-Chiara Gillard, 2019,p.4). International institutions, notably the United Nations (UN), the International Criminal Court (ICC), and various non-governmental organizations (NGOs), emphasize that deliberately imposing famine on populations is a serious violation of international humanitarian law (IHL). Despite the

availability of explicit provisions, such as the Additional Protocols to the Geneva Conventions and the Rome Statute, their execution remains unequal and inadequate .

The use of famine as warfare, despite the fact that the practice is steadily being outlawed in line with the stipulations of international humanitarian law, is still being employed with worrying frequency in international and domestic armed conflicts. Famine has in most of the recent events, not been a byproduct to war but a calculated effort to undermine populations, cause displacement, or re-define control over territory. It creates a core contradiction: how could this go on in a legal order that literally outlaws such actions as war crimes? This gap has been filled in the study by analyzing the political, structural, and legal obstacles to preventing and prosecuting famine as a weapon of war.

This article is focused on following the path of famine toward the establishment of an international crime in the military method of warfare. It adopts a qualitative and interdisciplinary methodology to synthesize legal interpretation of the international humanitarian law (Geneva Conventions, Rome Statute, ICESCR), the critical theory of geopolitics, and the historical-comparative case studies of the Holodomor, Biafra, Cambodia, Yemen, Tigray, Ukraine, and Gaza. In order to justify this, we have come up with two maps illustrating famine as a direct consequence of armed conflicts: one in the 20th century, the other in the 21st. Two comparative tables were used to evaluate the way the situation, the legal framework, and the actors participating in it have changed over time. The article ends by stating the constant problem of how to make sure that the use of famine as a weapon can be held accountable and the severe necessity to empower the international prevention, enforcement, and reparative mechanisms.

2. Literature Review and Conceptual Foundations

2.1 Famine, an Ancestral Military Tactic Legitimated

First, we would like to define famine according to Sen where he does not define 'famines' although he refers to various definitions but prefers to use it and the related term 'starvation' "in their most common English sense". What is the difference between famine and starvation? Starvation is then used in the sense of people going without adequate food, and famine as a peculiarly virulent manifestation of it, causing widespread death. From this, it follows that "famines imply starvation, but not vice versa".

Although famine and hunger are used interchangeably in the general discourse, they are used as different realities in either the humanitarian or legal circles. Hunger is a condition that has been present in humans; these people are always short of food to satisfy their basic nutritional needs in nutrition. Structural factors, including poverty, inequality, conflict, poor governance, or a deficiency in access to food systems, are usually responsible. Hunger is long-term, extensive, but not necessarily a life-threatening condition(Weldemichel, 2024,p.3).

Famine, on the other hand, is a severe and sharp expression of hunger, usually characterized by mass starvation, malnutrition, population displacement, and mortality. It is mostly localized, time-constrained, and linked to disastrous food insecurity. Famines can be caused by clustering of events, that is, natural cataclysms, economic shocks, or intentional political and military interventions(Oxfam, 2025).

Notably, famine is controllable, especially in the case of war. It entails not just food shortage but also organized denial of access to food, water and basic resources. Although Hunger is normally structural, famine may be used as a weapon, particularly in cases where

states or armed entities deliberately interfere with food systems or hinder humanitarian efforts(De Waal, 2025).

This difference is crucial to the analysis of law: although starvation can be evidence of state neglect or failure, the use of starvation against civilian populations is a war crime in that it is additionally employed during conflict according to international humanitarian law(Kemmerling et al., 2022,p.5).

The use of famine as a tool of war goes back to Antiquity. Besieging armies quickly understood that depriving a city of food and access to water could be more effective than direct confrontation. Thus, in 146 B.C., the Romans reduced Carthage to famine before destroying it. This strategy, aimed at defeating the enemy without direct battle—survived for generations

Long sieges were a common method of warfare during the Middle Ages. Fortresses were encircled, surrounding farms destroyed, and inhabitants denied of supplies. These techniques show that hunger has long been seen as a psychological weapon as well as a physical one: it destroys morale, weakens resistance, and incites internal revolts that facilitate capitulation. The modern era did not put an end to this tactic. On the contrary, it further institutionalized and industrialized it. During the American Civil War (1861–1865), the Lieber Code, ratified by President Abraham Lincoln in 1863, explicitly authorized the starving of enemy populations, considered a means of control. The Lieber Code, drafted to define for the Union army the limits of hostilities, stipulates that it is “lawful to starve hostile belligerents, armed or unarmed,” and that the army may force fleeing civilians to return to a besieged area “to hasten surrender.” It was only in 2015 that the United States Department of Defense formally abandoned these provisions. This text illustrates how, until the 19th century, famine was legitimized within Western military doctrines.

Nevertheless, this was not merely a conceptual doctrine. The Atlantic powers actively employed mass famine as a weapon of war during the two World Wars through their rigorous naval blockades.

The 20th century marks a dramatic turning point: famine ceases to be a simple collateral effect and becomes a central instrument of state policy. The most striking case remains the Holodomor (1932–1933), the great famine orchestrated by Joseph Stalin in Ukraine. Through massive confiscations of harvests and the prohibition of population movements, the Soviet regime deliberately deprived millions of Ukrainian peasants of food. Historians estimate that this policy caused between 3.5 and 5 million deaths. The Holodomor is today recognized by several countries as a genocide.

Similarly, the Hunger Plan, elaborated by Nazi Germany during the Second World War, aimed to starve millions of Soviets in order to reorganize the living space of Eastern Europe. Between 1941 and 1944, around 4.2 million civilians perished from hunger under the combined effects of blockades, agricultural requisitions, and systematic destruction of infrastructure.

The United States even called its program to surround Japan in 1945 Operation Famine. In the 1950s, similarly, Great Britain referred to the type of mass movement of its people in a British colony, British Malaya, as a response to communist guerrillas. During the drafting of the Geneva Convention, which was among the most important documents governing the laws of war, the United States and Great Britain opposed the idea of clearly banning the use of famine as a war tactic. This ruling was an effective extension of the validity of famine in military conflicts for decades.

Other authoritarian regimes used famine to reshape society toward the end of the twentieth century. Cambodia under Pol Pot (1975–1979) exemplifies this drastic instrumentalization. Within the scope of his "Year Zero" project, which attempted to transform Cambodia into an equitable agrarian society, he forced enormous population displacements and denied people access to food. This approach resulted in the deaths of over 2 million people—nearly one-quarter of the population (Springer, 2010,p.124).

These examples from history demonstrate that famine is rarely a natural disaster; rather, it is frequently the product of political and military decisions. It is thus situated at the crossroads of military strategy, ideology, and social dominance systems.

3. The Evolution of Famine in International Law

3.1 Legal Evolution and International Codification

3.1.1 *The first attempts at regulation*

Until the nineteenth century, famine as a tool of warfare sparked little ethical or legal controversy. The customary law of war regarded civilian people as an essential component of the war effort and so valid targets(Conley & De Waal, 2019,p.702). This is represented by the Lieber Code (1863), which codified the legality of such practices.

During the 20th century world wars, new law and ethics issues appeared. For instance: During World War I, starvation killed hundreds of thousands of German citizens because of the Allied blockades (MARY ELISABETH COX, 2012, p.3). Similarly, during the Second World War, famine was systematically employed both by Nazi Germany and by the Allied powers(Duncan et al., 2021).

Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), introduces the term “right to adequate food”, which is now widely used, refers to one of several binding treaties that give legal force to the principles outlined in the 1948 Universal Declaration of Human Rights (*The Right to Food Guidelines*, 2006).

The ICESCR, along with General Comment 12, adopted by the Committee on Economic, Social, and Cultural Rights provides a positive right to an adequate standard of living, including the progressive realization by states to provide "food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" (*The Right to Food Guidelines*, 2006).

3.1.2 *The Additional Protocols to the Geneva Conventions (1977)*

The world community fully mobilized during the 1970s, following the famines in Biafra (1967-1970) and Bangladesh (1971-1974). In 1977, two Additional Protocols were added to the Geneva Conventions, representing a significant role on the negative right to adequate food

Article 54, Paragraph 2 of Additional Protocol I of the Geneva Convention 1977 explicitly prohibit “using starvation of civilians as a method of warfare,” as well as the destruction, removal, or rendering useless of objects indispensable to their survival, such as foodstuffs, crops, or water installations(ICRC, 1977b).

Similarly, Article 14 of Additional Protocol II of the Geneva Convention 1977, related to non-international armed conflicts, establishes a similar prohibition, emphasizing that the protection of civilians applies regardless of the conflict’s nature(ICRC, 1977a).

These provisions reflect an important evolution: famine is no longer perceived as collateral damage but as an illegitimate and prohibited method of warfare (Geneva Conventions, 1977). These actions demonstrated the need for enhanced legal regulation. However, in order to maintain their military freedom of action, the United States and the United Kingdom rejected the inclusion of an explicit ban on famine as a weapon of war in the 1949 Geneva Conventions.

3.1.3 Criminalization by the International Criminal Court

The Rome Statute, adopted in 1998, established the International Criminal Court (ICC) and integrated famine into the list of war crimes. Article 8(2)(b)(xxv) criminalizes "intentionally using starvation of civilians as a method of warfare, by depriving them of objects indispensable to their survival."(Tom Dannenbaum, 2022). At first, this provision applied only to international armed conflicts.

However, an amendment adopted in 2019 broadened the definition: Article 8(2)(e)(xix) now extends criminalization to famine in non-international armed conflicts(UN, 2021). This evolution is crucial, as the majority of contemporary conflicts fall under this category (e.g., Syria, Yemen, Tigray).

The International Criminal Court defines famine broadly, indicating not only lack of food, but also loss of water, shelter, and medical care(UN, 2021). This approach represents the foundation that human survival depends not only on nourishment but also on a minimal set of fundamental living conditions.

The Rome Statutes also prohibit "willfully impeding relief supplies" to persons harmed by conflict and under undue stress, repeating Additional Protocol 1, Article 70 of the Geneva Conventions. Therefore, in such cases, the failure to facilitate speedy transit of supplies, equipment, and personnel, or unlawful denial of approval for emergency relief, would constitute a war crime. Furthermore, in instances of total or widespread occupation, the occupying military must agree to humanitarian help. In contested territories, the UN Security Council may impose binding measures requiring warring parties to agree to humanitarian relief (ICRC, 2018).

On 24 May 2018, the United Nations Security Council took a historic stand. With the unanimous adoption of Resolution 2417, the international community condemned the deliberate use of starvation as a weapon of war, classifying it as a war crime and calling on all parties in conflict zones to guarantee humanitarian access (UN, 2018). Thus, this led us to the following questions: What are the elements of a war crime of intentional famine of civilians?

The intentional famine war crime is a complex combination of several factors that have to be proven to criminally criticize a person. These aspects are grouped into three, which are contextual, physical (actusreus), and intentional (mens rea).

The contextual factors are that the conduct under consideration had to take place as a part of an armed conflict of an international or non-international nature. Moreover, it should be demonstrated that the defendant had knowledge of the factual situation that formed the existence of that armed conflict. This contextual connection is fundamental to qualify the act as one of the international humanitarian law.cThe physical aspects, actus reus, entail denying the civilians access to items essential to survival (OIS). These are food, water, shelter, and medical attention. The destruction or removal of such essentials is declared in Articles 54 of

the Additional Protocol I and 14 of the Additional Protocol II of the Geneva Conventions that inform the interpretation of OIS. Any act that limits access to OIS by civilians can be considered a deprivation. This can involve the intentional interference with the provision of humanitarian assistance, assault, or the destruction of infrastructure or supplies that are needed to survive, or even omissions, i.e., failing to take the required steps to make sure that civilians may receive these resources. Critically, the determination of this war crime does not imply that the civilians should actually perish because of a lack of food, but the focus is on deliberately depriving the civilian population of resources needed in the indispensable resources(UNHR, 1949).

The voluntary (mens rea) includes the demonstration of the state of mind of the perpetrator during the crime. In particular, it should be demonstrated that the perpetrator had the intent to rob civilians of OIS. This intent could be proved by direct intent, i.e., the intent of the perpetrator was to cause such deprivation, and indirect intent, i.e., the perpetrator should have known that their actions would, in the ordinary course of things, cause such deprivation and that the items withheld were necessary to the survival of civilians. Moreover, the perpetrator should have been aiming to employ famine as a form of warfare; that is, the individual either would have deliberately sought to let famine happen or knew that famine would probably ensue as a consequence of their actions(C o n t e m p o r a r y C r i m i n a l L a w, n.d.).CNotably, the motive of creating famine does not have to be the only aim of the offender. In spite of the possible restricted level of pursuit of famine with other legal or illegal military objectives, the crime is nonetheless proven in case the required intentional elements are shown beyond a reasonable doubt.

3.1.4 International custom and human rights

Beyond treaties, famine as a method of war is now widely recognized as a rule of customary international law. The International Committee of the Red Cross (ICRC) codified this in its database on customary IHL, through Rules 53 and 54, which prohibit both the starvation of civilians and attacks against objects indispensable to their survival(ICRC, 2018).

Moreover, several United Nations bodies have stressed that the deliberate imposition of famine constitutes a serious violation of fundamental human rights—most notably the right to life (Article 6, ICCPR) and the right to food (Article 11, ICESCR)(UNHR, 1966).

Thus, at the normative level, the prohibition of famine as a weapon of war is well-established and robust. However, the persistence of this practice in recent conflicts shows that the problem lies less in the law's existence than in its effective enforcement.

4. Historical and Emblematic Case Studies

4.1 The Holodomor in Ukraine (1932–1933)

The Holodomor—literally translated as "extermination by hunger"—represents one of the most documented cases of political famine in the 20th century. Between 1932 and 1933, several million Ukrainians died as a result of the forced collectivization policies imposed by Joseph Stalin.

The Soviet government carried out massive confiscations of harvests, imposed unattainable quotas, and prohibited movements outside the starving zones. Any attempt to seek food beyond the villages was repressed by force. The famine was therefore not a climatic or

economic accident, but rather a deliberate strategy to crush Ukrainian nationalist aspirations and consolidate the regime's power (Ganson, 2009,p.48).

To this day, several countries and national parliaments recognized the Holodomor as an act of genocide, although debate remains intense within the international community.

4.2 The Nazi Hunger Plan (1941–1944)

During the invasion of the Soviet Union by Nazi Germany in 1941, the high command implemented the Hungerplan, or "plan of hunger"; an ideological and economic project explicitly aimed at starving millions of Soviets in order to facilitate German colonization of Eastern Europe(Weisz, 2021,p.2).

In practice, blockades were imposed, food stocks confiscated, and Soviet cities deliberately deprived of resources. It is estimated that about 4.2 million civilians died of hunger as a direct result of this policy(Duncan Green, 2022).

This plan constitutes a key stage in the history of famine as a weapon of war, for it brought together racial ideology, military strategy, and economic planning into a single, coordinated project.

4.3 Biafra (1967–1970)

The Biafran war in Nigeria (1967-1970) constitutes one of the first contemporary conflicts, in which famine was deliberately employed as a strategic weapon and recognized as such by international opinion(Heerten & Moses, 2014,p.174).

The Nigerian federal government imposed a food and medicine blockade on the secessionist region of Biafra, preventing the delivery of food and medicine. This blockade caused the death of about one to two million people, most of them children, due to starvation and malnutrition(Nweke, 2024,p.191).

The images broadcast by international media showing skeletal children mobilized public opinion and contributed to the emergence of a new humanitarian movement, most notably embodied by the creation of Médecins Sans Frontières.

4.4 Cambodia under Pol Pot (1975–1979)

Under the Khmer Rouge, hunger was not merely a consequence of economic disorganization but a deliberate instrument of social and political engineering**.** By abolishing money, emptying the cities, and brutally collectivizing land, the regime transformed access to food into a tool of total control. Populations reduced to mere survival became entirely dependent on the state apparatus for subsistence(Maartje Weerdesteijn, 2018).

From a critical geopolitical perspective, the Cambodian experience shows how famine can be used as a radical biopolitical project: reshaping an entire society by disciplining bodies through deprivation**.** This case also illustrates the ambivalences of the Global South: a regime born from the anti-colonial struggle but ultimately reproducing internal structures of domination through the militarization of hunger.

4.5 Bangladesh (1971–1974)

The Bangladesh famine reveals another dimension: the role of institutions and political choices in the making of hunger. While floods and natural disasters contributed to the crisis, it was above all speculation, corruption, and poor state management that turned a food crisis into

a nationwide tragedy**.** Amartya Sen's analysis demonstrates that famine is not only a question of availability, but of access and distribution, and thus is deeply tied to power relations(Dowlah, 2006,p.346)**.**

From a critical standpoint, this famine illustrates the structural dependence of a fragile postcolonial state on international institutions and the dynamics of the Cold War. Bangladesh in the 1970s thus became a laboratory: hunger there served both to expose the failures of governance and to justify humanitarian intervention and the imposition of economic reforms that deepened long-term dependency(Akhand Mohammad Akhtar Hossain, 2001,p.30).

5. Famine in Contemporary Geopolitical Conflicts

5.1 Syria: the "modern sieges"

Since the beginning of the Syrian civil war in 2011, famine has been used as an instrument of war and a method of collective punishment**.** Entire cities, such as Aleppo, Homs, Daraa, and Eastern Ghouta, were besieged for months, even years(Berti & Sosnowski, 2022, p.958).

Syrian government forces, but also some armed groups, prevented the delivery of food, water, and medicine, thus reducing entire civilian populations to famine. In 2021, the Independent International Commission of Inquiry on Syria, mandated by the UN, described these practices as **"**modern sieges reminiscent of the Middle Ages**"**(Fox & Watkins, 2022,p.9).

5.2 Yemen: famine as a war of attrition

The war in Yemen, ongoing since 2015, has become one of the most serious humanitarian crises in the world. The coalition of Saudi Arabia and the United Arab Emirates used air and sea blockade which severely limited the inflow of food, fuel and medicine. On their side, the Houthis hindered the distribution of humanitarian aid in areas under their control(Center for Preventive Action, 2025b). The World Food Program, estimates that 17 million Yemenis suffer from acute food insecurity, including 2.2 million children suffering from severe malnutrition. Bombings destroyed agricultural and logistical infrastructures, further worsening the country's heavy dependence on imports(UN, 2022).

This famine is used both as a military weapon, intended to weaken the adversary, and as a political weapon, designed to punish populations associated with the opposing camp.

5.3 Tigray (Ethiopia): a planned famine

Since November 2020, the region of Tigray has been the theater of a violent conflict opposing the Ethiopian government, its Eritrean allies, and the rebels of the Tigray People's Liberation Front. The government imposed an almost total blockade: closure of banks, cutting communications, destroying agricultural infrastructure, and prohibiting the circulation of humanitarian aid. Human Rights Watch denounced this as a strategy of **"**deliberate starvation" — the use of hunger as a weapon of war(Center for Preventive Action, 2025a).

According to the UN, more than 5 million people were plunged into severe food insecurity, and hundreds of thousands of civilians died as a result (United Nations, 2022).

5.4 Gaza: famine as a geopolitical tool to redraw the map of the Middle East

In reaction to the Hamas attack of October 7, Israeli Prime Minister Benjamin Netanyahu, on October 9, 2023, announced his desire to change the Middle East, suggesting a larger-scale geopolitical reorganization in response to what had happened(Reuters, 2023). This

vision was not novel. Netanyahu previously said in his September 2023 speech at the UN general assembly that the Abraham Accords had prepared a New Order in the Middle East. These were their open statements indicating that the military action against the Hamas attack was ingrained in a bigger ideology and political system(*Israeli Prime Minister Benjamin Netanyahu Vows to "change Middle East" as Hamas Threatens to Execute Captive Israelis*, 2023).

After the attack, Israel has placed a complete blockade on the Gaza Strip. Top officials, such as Defense Minister Yoav Gallant, National Security Minister Itamar Ben-Gvir, and Energy Minister Israel Katz, issued direct statements declaring that the civilian population of the Gaza Strip would not have access to food, water, and fuel(Human Right Watch, 2023). These were not mere threats; but they became a reality in organized military interventions that sought to hinder the provision of basic human needs and hamper humanitarian efforts. Human Rights Watch has thus denounced the Israeli government for employing starvation as a war weapon, a practice that is outrightly banned in international humanitarian law. Article 8 of the International Criminal Court Rome Statute proclaims the purposeful starvation of civilians by denying them the objects that they need to live, such as by deliberately blocking the provision of relief(Human Right Watch, 2023).

The level of the problem is seen in first-hand testimonies gathered in southern Gaza among the displaced Palestinians between November and December 2023. A man who escaped the North side of the enclave said: We had no food, no electricity, no Internet, nothing. It is unknown how we managed to survive(*"Hopeless, Starving, and Besieged" Israel's Forced Displacement of Palestinians in Gaza*, 2024). Other people talked about the water shortage, the queues in front of the bakeries bombarded, and the scandalous prices of the remaining food. Humanitarian data support these testimonies. On December 6, 2023, the World Food Programme (WFP) reported that 90 percent of households in the north of Gaza and two-thirds of them in the south had skipped at least one entire day of food. The WFP had already cautioned of an urgent threat of famine days prior, owing to the fact that the food supply system of Gaza was practically destroyed(WFP, 2023). The Norwegian Refugee Council reported disastrous water, sanitation, and hygiene conditions through the closure of desalination and wastewater treatment plants after the shortage of fuel.

These measures are also under the category of collective punishment under international law, which is illegal in Article 33 of the Fourth Geneva Convention. Being an occupying force, Israel has the legal duty to provide food and medical supplies to the civilian population. All these facts lead to a calculated policy of weakening the civilian population by denying it of the most fundamental needs, which is a war crime according to the international legal system(UN, 2023). To these moves, various humanitarian agencies have called on the international community to denounce these acts, as well as to suspend military aid to Israel until these acts are stopped.

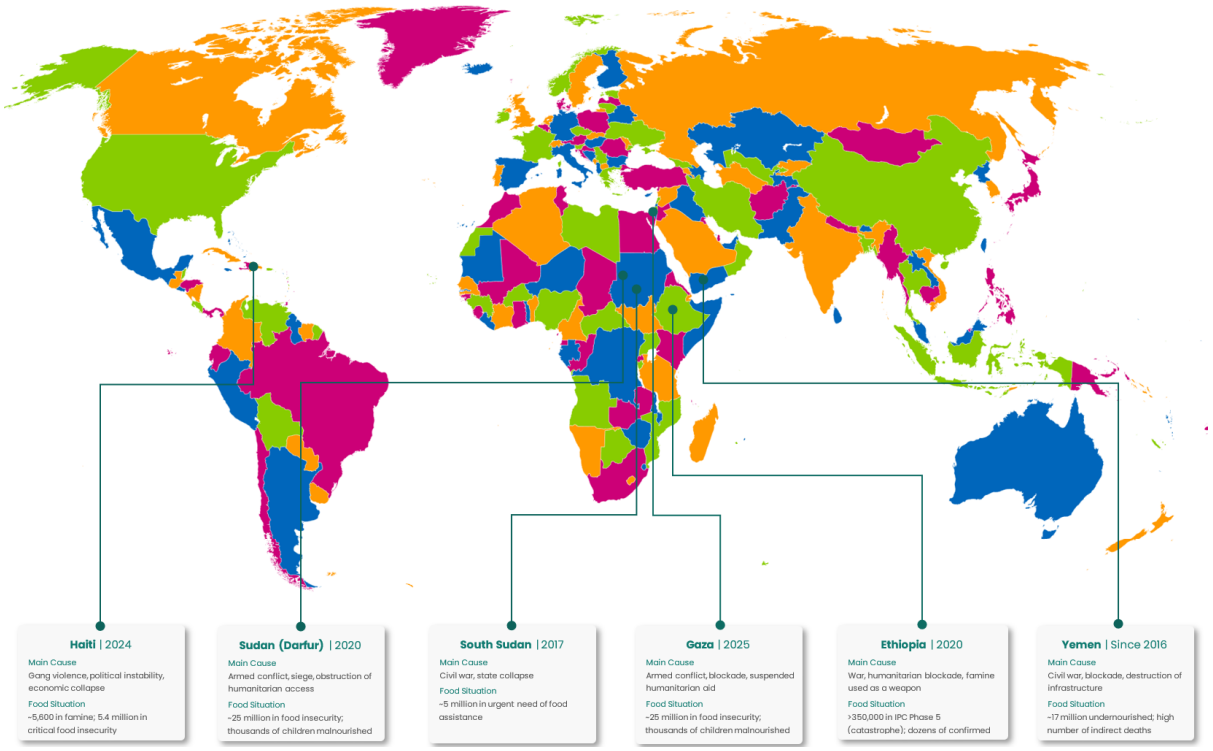
There is also a second geopolitical agenda behind the weapon of war, famine, as it has its own humanitarian consequences as well. This is a larger initiative that may be broken down into three significant elements. First, there is the vision of Greater Israel(Jeremy Bowen, 2025). When Prime Minister Netanyahu spoke on i24NEWS in August 2025, he again affirmed his adherence to the concept of the Greater Israel, including not only the Palestinian Territories and East Jerusalem, but also extending the territory into parts of Jordan, Egypt, Syria, and Lebanon. He identified the vision to be a historical and spiritual mission(UN, 2025).

Secondly is the authorization of the civilian displacement. Recently, Netanyahu made reference to a draft that would enable Gaza civilians to go free, a statement that numerous analysts viewed as a euphemism for the forced displacement of the population. This spoke out against any efforts at ethnic cleansing(*Arab Parliament Condemns Netanyahu's Call to Displace Palestinians*, 2025).

Third is the population transfer proposal, which is in partnership with Donald Trump. In July 2025, Netanyahu and former U.S. President Donald Trump spoke publicly about a plan to repatriate Palestinians of Gaza on a voluntary basis, a contentious plan that has been widely criticized as being an instance of forced transfer being under humanitarian guises (*Arab Parliament Condemns Netanyahu's Call to Displace Palestinians*, 2025).

Such contemporary cases do not stand alone. Famines as a result of armed conflicts, intentional blockades, and political manipulation have occurred numerous times in the history of humanity. The following map and comparative tables put the present crisis in Gaza and other recent cases into perspective by giving a historical view of famines caused by conflicts throughout the 20th and 21 st centuries.

Table 1: Summary of Conflict-Induced Famines in the 20th Century (author's map)

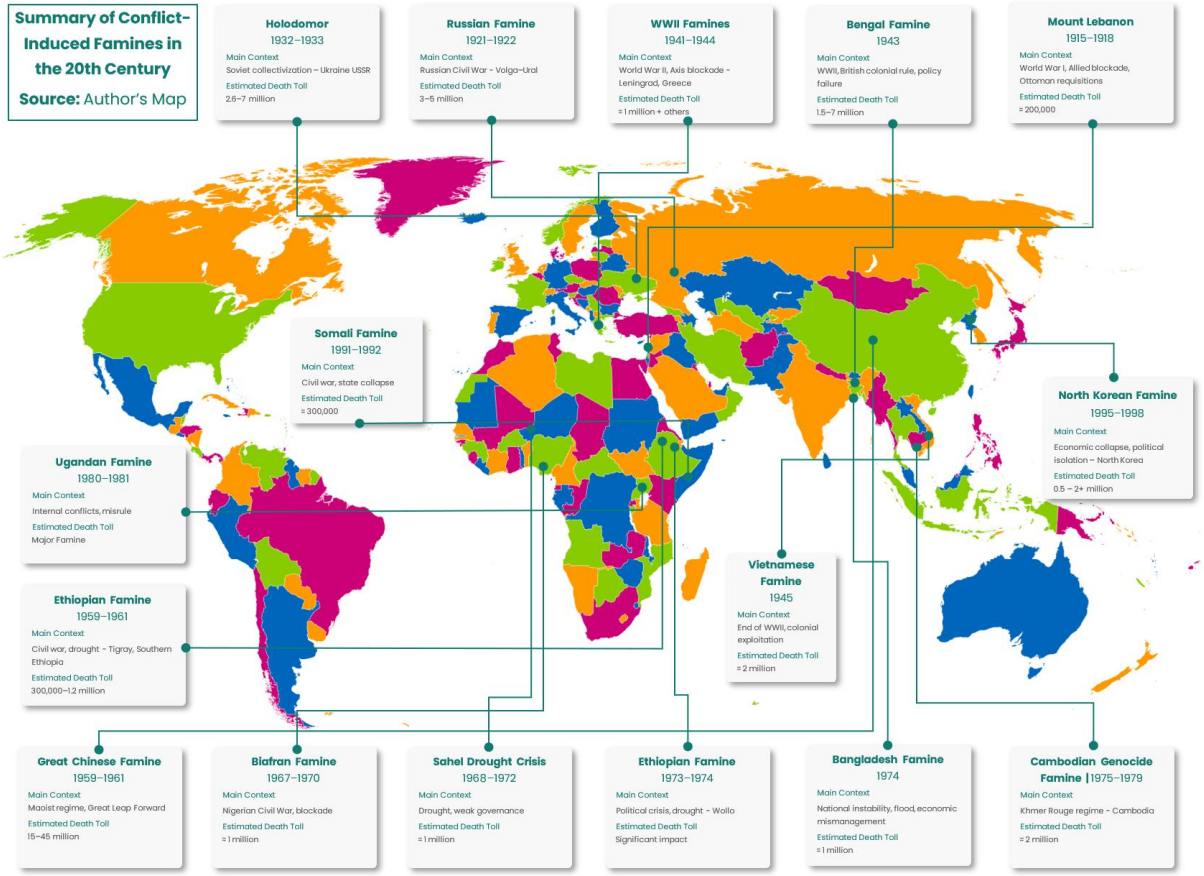


Conflict / Period	Region	Main Context	Estimated Death Toll
Mount Lebanon Famine (1915–1918)	Mount Lebanon	World War I, Allied blockade, Ottoman requisitions	≈ 200,000

Russian Famine (1921–1922)	Volga–Ural	Russian Civil War	3–5 million
Holodomor (1932–1933)	Ukraine (Holodomor), USSR	Soviet collectivization	2.6–7 million
WWII Famines (1941–1944)	Leningrad, Greece	World War II, Axis blockade	≈ 1 million + others
Bengal Famine (1943)	Bengal	WWII, British colonial rule, policy failure	1.5–7 million
Vietnamese Famine (1945)	Vietnam	End of WWII, colonial exploitation	≈ 2 million
Great Chinese Famine (1959–1961)	China	Maoist regime, Great Leap Forward	15–45 million
Biafran Famine (1967–1970)	Biafra (Nigeria)	Nigerian Civil War, blockade	≈ 1 million
Sahel Drought Crisis (1968–1972)	Sahel (Africa)	Drought, weak governance	≈ 1 million
Ethiopian Famine (1973–1974)	Wollo (Ethiopia)	Political crisis, drought	Significant impact
Bangladesh Famine (1974)	Bangladesh	National instability, flood, economic mismanagement	≈ 1 million
Cambodian Genocide Famine (1975–1979)	Cambodia	Khmer Rouge regime	≈ 2 million
Ugandan Famine (1980–1981)	Uganda	Internal conflicts, misrule	Major famine
Ethiopian Famine	Tigray, Southern Ethiopia	Civil war, drought	300,000–1.2 million

(1984–1985)			
Somali Famine (1991–1992)	Somalia	Civil war, state collapse	≈ 300,000
North Korean Famine (1995–1998)	North Korea	Economic collapse, political isolation	0.5–2+ million

Table 2: Summary of Conflict-Induced Famines in the 21st Century (Authors map)



Region	Period	Main Conflict / Cause	Critical Food Situation
Yemen	Since 2016	Civil war, blockade, destruction of infrastructure	~17 million undernourished; high number of indirect deaths
Ethiopia (Tigray)	Since 2020	War, humanitarian blockade, famine used as a weapon	>350,000 in IPC Phase 5 (catastrophe); dozens of confirmed deaths

Sudan (Darfur)	2023–2025	Armed conflict, siege, obstruction of humanitarian access	~25 million in food insecurity; thousands of children malnourished
Gaza	2025	Armed conflict, blockade, suspended humanitarian aid	~500,000 in famine; UN refers to a "man-made famine"
South Sudan	2017	Civil war, state collapse	~5 million in urgent need of food assistance
Haiti	2024	Gang violence, political instability, economic collapse	~5,600 in famine; 5.4 million in critical food insecurity

6. Old and New Challenges of International Justice and Accountability

6.1 Old Challenges

6.1.1 The difficulty of proving criminal intent

One of the main obstacles in prosecuting famine crimes lies in proving intentionality (*mens rea*). For famine to be legally qualified as a war crime, it must be demonstrated that the military or political authorities deliberately and systematically used the deprivation of essential goods as a method of warfare. However, in practice, actors often justify their actions by invoking **"**military necessity" or "national security**,"** which makes the distinction between an indirect consequence and an intentional strategy difficult to establish(*Practice Relating to Rule 129. The Act of Displacement*, n.d.). Despite the normative progress made in codifying the right to food and prohibiting starvation in armed conflict, the enforcement of these legal instruments remains limited. The following table (Table 3) provides a synthesis of key international frameworks that affirm and protect the right to food in both peacetime and wartime contexts.

Table 3: Key international legal instruments protecting the right to food in peacetime and during armed conflict.

Category	Peacetime	Wartime
Legal Domain	International Human Rights Law (IHRL)Provides *positive rights* – the right to something	International Humanitarian Law (IHL)Provides *negative rights* – the right to be free from something
Foundations		
Universal Declaration of Human Rights (1948)	Outlines fundamental rights and freedoms for all individuals, promoting equality,	

	dignity, and justice worldwide.	
		Geneva Conventions (1949)Establishes standards for humanitarian treatment in war, protecting civilians, prisoners, and setting rules to limit brutality.
		Additional Protocol I (1977)Strengthens Geneva protections for civilians in both international and non-international conflicts.• *Article 54(2)*: Prohibits attacking or destroying objects essential for civilian survival (e.g., food, crops, livestock).
Enforcement		
International Covenant on Economic, Social, and Cultural Rights (1966)	Legally binding treaty building on the UDHR.• *Article 11* and *General Comment 12 (1999)*: Obligates states to progressively realize the right to adequate food.	
		Rome Statute (1998)Establishes the ICC and its ability to prosecute war crimes and crimes against humanity.• *Article 8(2)(b)(xxv)*: Criminalizes starvation of civilians as a method of warfare.
UN Security Council		
		Resolution 2417 (2018)Condemns the use of food as a weapon of war.• Requests the UN Secretary-General to report when conflict-induced famine or food insecurity risks emerge.

6.1.2 The limits of the International Criminal Court

The International Criminal Court (ICC) has jurisdiction to try famine crimes, but its action remains severely limited. Its territorial jurisdiction is restricted to State Parties or to cases referred by the UN Security Council. Its investigations are long and costly, and the collection of evidence in war zones is extremely difficult and often incomplete. The ICC is also subject to strong political pressures, which limit its independence in certain sensitive cases(Dr. Ray Murphy, 2025,p.5). As a result, very few prosecutions have been carried out despite the clear normative recognition of the crime.

6.1.3 National and regional initiatives

Some European countries have incorporated into their domestic law the prohibition of famine as a war crime. France, Germany, Norway, and Sweden have even opened investigations into famine crimes committed in Syria and Ukraine. These initiatives rely on the principle of universal jurisdiction, which allows a State to prosecute certain serious crimes (genocide, crimes against humanity, war crimes), even when they are committed outside its own territory(Chase Sova, 2024).

6.2 New Challenges

6.2.1 Geopolitical and geostrategic obstacles

The greatest dilemma occurs when a State, which has been officially charged by international organizations and humanitarian NGOs with using famine as a tool, comes out publicly and officially to declare its commitment to continue using this method to further its geopolitical interests. This project is commonly described as sacrosanct, in which there is ideological or doctrinal justification. What we have in these instances is the danger of increasing the level of geopolitical tensions, which are contrary to the principles of international humanitarian law. In this regard, the concept of famine reveals a certain paradoxical nature of international law(*In Light of Israel's Increasing Starvation Crimes, Famine in Gaza Strip Must Be Officially Declared*, 2024). The legal norms denying the use of starvation as a warfare tool are clearly laid down in international law, but the possibility of their application depends on the political will and collaboration of States. The problem of stalemates in the UN Security Council is far more problematic when dealing with major powers, as with Ukraine or Gaza. This lack of touch provides the insight that has come to be seen in the long standing discrepancy between the legal status of famine as a war crime and the truth on the ground capacity to prosecute those responsible(ICRC, n.d.).

6.2.2 Towards a more global approach: prevention and reparation

The war against the weapon of war of famine should not just be the criminal prosecution but involve a full-scale prevention and restoration approach. This will involve strengthening early warning mechanisms run by such agencies as the FAO, WFP, and the Food Security Information Network (FSIN), which is very important in the detection and mitigation of food crises as they arise. Protection of humanitarian action is also of great importance; the activities should be purely based on humanitarianism rather than military intent to guarantee access and impartiality in war-torn regions(Weldemichel, 2024). Furthermore, restorative justice requires the supporters of the victims of famine to assist them in the reconstruction of agriculture on a long-term basis and provide fair compensation of the respective communities. There is also a part in diplomatic and economic actions, such as the issue of arms embargo or the provision of military aid to those States that actively use famine as a weapon of war (WFP, 2023).

7. Conclusion

The use of famine as a weapon of war illustrates the brutality of modern military strategies and the limits of the international system. Far from being a natural fatality, famine is often the product of deliberate human decisions: blockades, agricultural destruction, and confiscations of food. History – from the Holodomor to the Hungerplan, from Biafra to Cambodia – shows that famine is an ancient weapon, but still current. The recent cases in Yemen, Tigray, Ukraine, and Gaza confirm that this practice remains a tragic and persistent reality. International law has clearly evolved, with the prohibition enshrined in the 1977 Additional Protocols and in the Rome Statute of the ICC. Yet, the gap between the texts and their application remains immense. Prosecutions are rare, and civilian populations continue to bear an exorbitant cost**.**

A complex and decisive action is needed to stop famine as a waging of war. This involves the intensification of accountability measures to help put the perpetrators behind bars in court, the use of better coordination among the international community to protect the lives of the civilian population in the areas of conflict, and most importantly, the establishment of the real political will by the international community to punish the States and actors who purposefully use starvation as a war weapon. Such will be limited to statements of principle but must be concretized through the holding of international conferences, initiated by humanitarian organizations in partnership with bodies composed of intellectual elites of various nationalities. These meetings would aim to collectively develop geopolitical maps of domination and famine practices, in order to produce a reference booklet. This document would constitute a practical basis for reflection and mobilization within an international awareness of the vital issues that threaten populations throughout the world.

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