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Changing The Features Of The Legal And Moral Elements Of Economic Crimes

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Abstract:

Economic crime, like any other crime, is based only on the availability of its constituent elements, including a legal, physical, and moral pillar. However, the difficulty in examining the constituent elements of an economic crime lies in the nature of this type of crime. Thus, in order to protect the national economy, the legislator deviated from general principles.

key words:

Economic crime - Legislative mandate - Formal crimes - Physical crimes - Criminal intent presumption.

introduction:

Human societies have witnessed many developments in various fields, particularly in the economic field, and economic activity has become the most effective activity in the Community's life. In the face of all these changes and developments, the state could no longer stand idly by, so states were quick to intervene significantly in economic life to protect economic activities and ensure the proper implementation of their development plans, which were aimed at achieving both

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economic and social well-being. Technological advances in the last decade of the previous century, which have developed rapidly and steadily since the beginning of this century, have made the world a small cosmic village. Mankind has witnessed a dramatic rise in the volume and quality of dealings and trade (goods and services) between different countries, as well as the free flow of capital and the universal use of modern technologies on the one hand. On the other hand, the changes that have taken place in Algeria are the radical changes in the economic field[1] in response to the demands of the current period for a market economy and the need for new changes and mechanisms in various economic sectors.

However, as a result of the economic orientation accompanied by the withdrawal of the state from the economic field, freedom of trade and industry was recognized in article 37 of 1996[2] Constitution, allowing for investment. These conditions and developments have led to the emergence of a group of businessmen who seek rapid and exorbitant wealth, invested in all the facilities provided by the State to encourage investment and investors. Thus, many illegal and unfair violations and practices have emerged[3], corrupting the business climate. This situation has forced the Algerian legislature to intervene

1 Algeria, like the other newly independent states, followed the socialist system's policy on the eve of independence because it wanted to break with the colonizer while also having control over the organization of its affairs.

2 To establish this principle, Article 37 was amended by Article 43 stating that: "Freedom of investment and trade is recognized and exercised within the framework of the law. The state works to improve the business climate and encourage the prosperity of enterprises without discrimination in the service of national economic development. The state ensures market control and the law protects consumers' rights. The law prohibits monopoly and unfair competition." Amended and supplemented.

3 Among the most important illegal business practices, there are economic and financial crimes, including money-related and trade-related crimes, such as commercial fraud, bribery, tax evasion, technology crimes, etc., and other economic crimes that negatively affect the national economy.

in order to establish the necessary borders and restrictions and protect interests that are closely linked to the movement of trade and the economy, particularly the general economy, by providing for their protection and criminalizing violations on them as an interest that it considers worthy of legislative protection.[1] The legislature has also enabled the competent authorities to maintain control over all the activities of the actors involved in the investment field.

The constitutional establishment of freedom of trade as the main pillar of the economy, the emergence of economic globalization, the opening up of the national market, and the attraction of foreign investment have given rise to major challenges, in which the legislator ignored some and quickly addressed some to fill the legal vacuum or the so-called "shock legislations" in order to keep pace with the transformation imposed by economic developments.

One of the policies adopted by the legislature in order to protect the national economy from economic and financial crimes committed by businessmen or so-called white collars[2] is its deviation from the

1 Considering that business life is an area that generally does not have legal limitations and all legislators and businessmen want to have many fundamental freedoms that encourage competitiveness and investment, including free trade, free competition, and freedom of contract.

2 The jurisprudence differed in determining the relationship between economic crime and business crime because of the significant development of economic and financial criminality and its differences from place to place, as well as the difficulties and ambiguity of the debate on business crime. The debate about economic and financial crime has increased in exchange for talking about white-collar criminality. The term "business crime" is a broad concept, not only of offences established in the Penal Code and applicable in the area of business but also of misdemeanors under economic law that are criminalized. The concept of business covers a range of financial, economic, commercial, distribution, and consumption activities that are related to the enterprise and require special features in the perpetrator. The Criminal Law of Business is therefore based on two criteria: the enterprise and the status of the perpetrator, where at first glance it seems that there is a correlation between the Criminal Law of Business and the white collar crime. The latter did not appear in the field of research until the 20th century with Sutherland, who used the term "white collar crime" when he intervened before the American Sociological Association, which he chaired in 1939. The association deals

with a series of offences of an economic, financial, commercial, and professional nature committed by persons of a high socio-economic level on the occasion of their activities. Some scholars have emphasized that economic crime has exceeded the previous criteria (enterprise, perpetrator feature), which has facilitated the existence of an economic penal code dealing with all types and forms of economic and financial crime. Economic crime according to jurists can be committed outside any organized framework and by persons not belonging to the business category if we compare it to the crime of business or the crime of white collar. some believe that, while the term crime of business is supposed to arise in societies that have attained a high degree of economic and social progress and advancement, the term economic criminality, which is studied under the Economic Penal Code, can be raised in all societies regardless of the degree of their development and the direction of their economic policy because it is a branch linked to the natural relationship of the law to the economy.

There is no doubt that all economic and financial criminality, in addition to business criminality are aimed at achieving the same interest, namely, illegal profit by using all means, whether legitimate or illegitimate, based on the rule that the purpose justifies the means. The business violator works first and foremost to achieve his personal interests without paying attention to the public interest, especially the economic interest of society, where he uses all means, some of which are state-owned, in order to achieve his goals. However, due to the reality created by economic globalization, a distinction between economic and financial criminality and business criminality began to become more apparent in the era of economic globalization, when new types of economic and financial criminality emerged that went beyond white-collar criminality. The physical element overcame the moral and social values of the city's society, and the scope of economic exchange expanded, leading to a marked increase in crimes against the trust.

The manifestations of economic globalization have contributed to the elimination of barriers to the movement of trade and exchange by ensuring the flow of capital and the prevalence of transnational economic activity, making the crime market globalized, especially economic crime, which benefits from developments in the field of private technology and communications in general. The majority of these crimes have become electronic, and the cause has always been the transformation of social and economic structures into global and electronic informatics. Among the scientific conferences held on economic crimes was the 5th UN Crime Prevention Conference held in Geneva from September 1 to 12, 1975. This Conference examined the new forms and dimensions of economic crime at the local, regional, and international levels and gave special attention to economic crimes and related ones, such as organized crime, white collar crime, bribery at the level of large corporations, exploitation of influence, crimes related to art theft, terrorism and drug crimes. The Conference paid particular attention to the methods and means of countering criminal phenomena and deviations related to the economic system, its economic

general principles of the crime. Compared to the crime of the general right, the features of the legitimate aspect of economic crime have changed, in which its physical element became ambiguous and the moral element[1] has weakened. This is what we will try to answer through this research.

Section I: Changing the features of the legal aspect in the economic crime

The principle of legality states that an act that is not expressly criminalized by law may not be criminalized, and the offender may not be arrested in any other way than that which is legally prescribed. In other words, the provision of criminalization becomes necessary for the establishment of the crime, in which article 1 of the Algerian Penal Code[2] stipulates: "No crime, no punishment or security measures without a law." The Constitution of 1996, amended and supplemented, confirms this by article 58: "No conviction except under the law issued before the criminal act is committed."

We conclude from all this that the legality provided for in the Penal Code has risen from a legal to a constitutional principle and benefits from all the guarantees granted by the Constitution to its principles.[3] Therefore, the legality rule of crimes and sanctions is one of the most important guarantees of individual liberty and is an

policy, its forms of containment, treatment, and prevention, especially as new data emerged as a result of the development of forms of criminality.

The 1975 Geneva Conference considered the white collar crime to be one of the crimes arising from economic crimes. According to sociologists, that businessmen controlled economic activity. Studies and statistics have shown that a large percentage of white-collar people violate economic, financial, commercial, and professional laws and regulations and perform punishable acts.

1 For scientific integrity, I participated in a national forum at the University Centre of Maghnia, entitled "The Ambiguity of the Physical Element in Economic Crimes."

2 Article 1 of Ordinance No. 66-156 of June 8, 1966, which includes the Amended and Completed Penal Code, official newspaper, issued in 1966, Issue 47.

3 Ben Gella Leila, Economic Crime in Algerian Legislation and Justice, Master's Memoir, Institute of Law and Administrative Sciences, Tlemcen, Algeria, 1996, p. 68.

important guarantee against imposing sentences on the convicted person without control.[1] Thus, we'll talk about the principle of legality in the scope of economic crimes and then we'll address the application of economic criminalization provisions in terms of time and space.

A) The principle of legality in economic crimes:

The only source of the Penal Code is the written text. In contrast to the civil judge, if there is no provision criminalizing the act committed, the penal judge must pronounce an acquittal regardless of the gravity of the act committed.[2]

Although all laws uphold the principle of legality within the scope of crimes and sanctions, the state may face emergency crises or exceptional circumstances that can only be met through legislative mandate. Therefore, the principle of legality in the scope of economic crimes requires addressing two very important matters: legislative mandate (01) and Interpretation of the Economic Penal Code (02).

1- Legislative mandate

The general rule states that the legislative[3] power has the inherent competence to enact laws and therefore the executive power may not interfere in the work of the legislature in respect of the principle of separation of powers. However, as it is known, this act is not absolute, since there is a cooperative relationship between the authorities of the state to achieve the public interest, especially if they are in exceptional or emergency circumstances and the parliament does not exist. Moreover, the legislative mandate has been dedicated in normal circumstances when the public interest of the state requires it, taking into account several rules, including that the mandate should

1 Mohammed Suleiman Hussein Al-Mhasna, Reconciliation and Its Impact on Economic Crime, 1st Ed, Wael Publishing House, Jordan, 2011, p.38.

2 Article 1 of Ordinance No. 75-58 of September 26, 1975, containing the Civil Code, official newspaper. Issued in 1975, Issue 78.

3 It is intended to entrust the legislature with some of its powers to the executive authority within the limits set by the Constitution

be specific to its scope and time and does not impair personal freedom.

In the area of economic crimes, the legislative mandate is extended in contrast to the general rule of the Penal Code, in which case the legislative mandate is considered necessary, especially in the absence of the expertise required by the legislature and thus granted to the executive power to deal with the economic emergency conditions in order to achieve and protect the general economic policy of the state.[1]

One of the images of the legislative mandate is the open mandate that was created by the Germans. This rule is due to the fact that the element of criminalization is not precisely defined but rather is established by the legislator in the form of general principles, leaving it to the competent authority[2] to set the constituent elements of the crime in accordance with the requirements of the economic arena. The expansion of the legislative mandate technique is prominent in various economic penal laws. For example, in Algerian legislation, the administrative authority is required to consider certain economic crimes and punish the perpetrators. For instance, the Competition Council was recognized the power to regulate the market in article 34 of Ordinance No. 03-03 as "The Competition Council shall have the power to make decisions and propose on its own initiative or whenever requested to do so in any matter or measure that would ensure the good conduct of competition." In addition to other laws that indicate how some of its articles are applied, such as Law 04-02 on rules applicable to commercial practices, especially article 10 and 11.

1 Mohammed Suleiman Hussein Al-Mhasna, op. cit., pp. 41-43

2 I mean, the competent authority is the authority of the administration to criminalize economic crimes, which is to say, leaving (the legislator) the competent administrative authorities to determine what crimes they consider worthy of punitive sanctions because they have acquired a very wide field. For more information look at Samir Alia and Haytham Alia, Penal Code of Business, 1st Ed, Majd University Foundation for Studies, Publishing and Distribution, Lebanon, 2012, p. 99.

This technique also has a broad application in exchange and customs regulation crimes. This is evident in the fact that some ministries, governors, and customs administrations are given legislative leeway in terms of defining customs scope, identifying goods subject to a high fee, and identifying sensitive items and substances requiring a movement permit. The Law provided for such matters but left their identification to the executive power.

As an example of the above, article 29 of the Customs Code in its last paragraph empowered ministers in charge of finance, national defense and the interior to intervene through a ministerial decision to extend the depth of the land area from the customs area.[1] Article 226 gives the Minister in charge of finance and the Minister in charge of trade the right to issue a joint ministerial decision defining the list of sensitive goods.

2- Interpretation of legal provisions on economic crimes

The general rule in penal legislation is that the legal text should be clear, explicit, and precisely define the elements of the crime and the sanction for it. However, this rule is not always implemented. The economic legal rule may be ambiguous and inaccurate in its formulation, as it is being developed in haste to deal with the emergency economic conditions and crises facing the state. It would be then necessary to resort to the interpretation of the legal text in order to determine the will of the legislator, in which the interpretation is either jurisprudential, judicial, or legislative. Since the provisions of economic regulations have been developed urgently to deal with emergency circumstances and crises, it becomes imperative to give the

1 It is an area defined by the legislator within the borders of the state and may be maritime and may be land-based. The maritime range consists of territorial waters, the adjacent area and inland waters. A land area expands over the maritime border from the coast to a drawn line within 30 km away to facilitate the suppression of fraud. If necessary, the depth of the land area can be extended from 30 km to 60 km, but this distance can be extended to 400 km in the states of Tindouf, Adrar, Tamanrasset and Illizy.

penal judge broad authority in interpreting the economic legal texts[1] in order to clarify the ambiguity and find out the true will of the legislator without qualitative interpretation or exceeding the limits of the text.[2] Most scholars of the Criminal Code support the use of a broad interpretation of the penal provision. They argue that the penal judge when interpreting the text broadly aims to achieve the legislator's goal of protecting economic policy, implementing development plans, and preserving the state's integrity and viability.

Article 3 of Ordinance No. 66-180 stipulates that "the Algerian legislature considers it one the act that harms national wealth and seriously impairs the interests of the public treasury and the good functioning of the national economy and its institutions." By using "considers it one the act," the legislator, for example, gave the judge broad authority to interpret acts that would harm the national economy.

B) Application of economic criminalization provisions in terms of time and space:

The penal rule is not eternal. It has a moment when it is born and a moment when its life ends. The penal provisions apply immediately and directly and only retroactively if they are more favorable to the accused. The question that arises here is whether these provisions are the same as those applied within the scope of economic crimes or do these crimes have a certain specificity that distinguishes them from other crimes?

To answer this question, we should first discuss the application of the Economic Penal Code provisions in terms of time, followed by the application of the Economic Penal Code provisions in terms of space.

1- Economic Penal Code provisions in terms of time

1 Mahmoud Mahmoud Mustafa, Economic Crimes in Comparative Law, General Provisions, Part 1, Cairo University Press, Egypt, 1979, p. 29.
2 Mohammed Suleiman Hussein al-Mhasna, op. cit., p. 45.

The law itself is a reflection of people's lives in all financial, economic, social and political spheres. The general rule in this regard is that the penal provisions apply with immediate and direct effect only to acts occurring after the date of their integration. From that moment on, the new law imposes its authority on all crimes committed after that date.[1] This is expressed in the language of jurisprudence as "non-retroactivity of the penal text", which is reflected in Article 2 of the Penal Code: "The Penal Code does not apply to the past. However, in the same article, we find an exception, in which the new law will apply to the past if it is more favorable to the accused, as the second part of the same article suggests "except what was less severe."[2]

We go back to the question raised earlier: Are these same provisions applicable to economic crimes?

To answer this question, we say that economic crimes, due to their seriousness on the economic security of the state, the legislator did not adhere to the principle of retroactivity of the criminal text that is favorable to the accused, but rather the text that was in force at the time of the crime is the first to apply to protect economic policy and prevent any loophole that can be accessed and manipulated.

The Algerian legislator has explicitly recognized in articles 34 and 39 of Ordinance No. 66-180 the non-retroactivity of the penal provision that is more favorable to the accused in economic crimes, but because of its abolition and in the absence of an explicit provision, reference must be made to the general rules of the Penal Code.

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1 Mohamed Zaki Abu Amer, Penal Code, General Section, 1st Ed, University Publications House, Egypt, 1986, p. 64.

2 Article 39 of Ordinance No. 66-180 of 21 June 1966 establishing special courts for the suppression of economic crimes provides that: "Notwithstanding all the provisions in question, this order shall also apply to crimes committed before its publication except for crimes which have been referred to the competent court."

However, some jurisprudence on the sentencing of certain economic crimes, such as some customs crimes, was marked by a reluctance to apply the principle of the most favorable to the accused. This is due, according to some, to the legislative vacuum that existed at that time in the customs field concerning the Supreme Council's decision of 14/04/1987, which undermined the decision of the Algiers Court, which rejected, in turn, the decision to confiscate transport means used in smuggling due to the interference of a new law that is considered to be less severe, building its opposition on the reparatory nature of the confiscation that would take it outside the scope of Article II of the Penal Code. In this decision, the Supreme Council referred to the text of article 259, paragraph 4 of the old Customs Code. However, the text referred to changed after it did not compensate customs fines, which was subsequently amended to include seizures.[1] The Supreme Council has proceeded in a direction contrary to general principles by giving retroactive effect to the text of article 259, paragraph 4, of the Customs Code, resulting in the exclusion of the less severe law.

It is, therefore, not legally acceptable to disable such an important principle as the principle of applying the less severe law explicitly enshrined in the law, but rather in higher-ranking texts, as stipulated in article 15 of the International Covenant on Civil and Political Rights, which Algeria ratified.

2- Economic Penal Code provisions in terms of space

The law extends its authority within the territory of the State to the crimes committed in it, whether the offender is a citizen or a foreigner or whether the victim is a citizen or a foreigner, and whether the perpetrator threatens the interests of the state itself or the interests of other States. Any crime committed on a state's territory is an act

1 Karima Berni, Effective Criminal Sanction in Business, doctoral thesis, Faculty of Law and Political Sciences, Abou Bakr Belkaid University, Tlemcen, Algeria, 2010, p. 48.

against its sovereignty that is not tolerated and is punishable in order to deter the offender, as explicitly stated in article 3 of the Algerian Penal Code. Moreover, article 586 of the Criminal Procedure Code stipulates that a crime is committed on the basis of the principle of territoriality. In accordance with general rules, this principle is also applicable to economic crimes committed in the territory of the Algerian State and against its economic and political interests.[1]

Modern legislation has begun to apply Penal Code provisions to economic crimes committed outside the territory of the state, whether committed by a national or a foreigner, and whether or not they are punishable in the country in which they were committed[2], particularly crimes that violate Exchange Act. The reason behind this is the seriousness of this type of crime to the general economic interest of the state, as adopted by the Algerian legislator in article 588[3] of the Criminal Procedure Code as an exception to economic crimes, which is known as the "protective principle of the incriminating text."

Section II: Weak moral element of economic crime

It is not enough for the perpetrator to engage in punishable criminal conduct for criminal liability to emerge. The criminal liability of the offender must be based on a moral element, which is carried out

1 "Every crime of which one of the constituent elements is an act took place in Algeria is considered to be committed in Algerian territory."

2 Mohamed Suleiman Hussein Al-Mhasna, op. cit., p. 54.

3 Article 588 of the Criminal Procedure Code, amended and supplemented by Ordinance No. 15-02 of 23-07-2015, Official Newspaper, issue 41. "Any foreigner who, in accordance with Algerian law, commits outside Algerian territory an act as the main actor or as an accomplice to a felony or misdemeanor against the security of the Algerian state, its fundamental interests, Algerian diplomatic and consular premises, or its associates, or falsifies national money or bank papers legally in circulation in Algeria or any felony or misdemeanor that causes damage to an Algerian national may be prosecuted."

with a view to committing criminal conduct, knowing that the act is punishable by law.[1]

In the context of economic crimes, however, criminal intent is not required, since many of these crimes occur simply by omission or reluctance, and many are based on the notion of physical crimes.[2]

To address these ideas, we first tackled the idea of reducing the moral element in economic crime, and then we dealt with the applications for the idea of excluding the moral element in economic crime.

A) Reducing the moral element:

Part of the jurisprudence considers that liability in economic crimes is based solely on the commission of the physical act, with no regard to the criminal intent of the perpetrator. Therefore, the legislator equates the intent, that is, the intentional crime with the error to consider the act an economic crime because the policy of economic criminalization tends to determine the sanction when the economic rules are violated, whether committed intentionally or negligently.[3]

The idea of excluding the moral pillar and retaining the physical pillar of economic crime arose at the beginning of the nineteenth century. This idea was made by the French Court of Cassation, which adopted the idea that economic crimes merely involve criminal conduct and the result regardless of the presence of criminal intent,

1 Ridha Faraj, Commentary to the Algerian Penal Code, General Provisions of Crime, 2nd Ed, National Publishing and Distribution Company, Algeria, 1976, p. 339.

2 Mohamed Ali Swillem, Economic Criminal Law, 1st Ed, University Publications House, Egypt, 2015 p. 21.

3 Abd el Hamid Al-Shawarbi, Financial and Commercial Crimes, 1st Ed, Knowledge Establishment, Egypt, 1996, p. 19.

thereby impeding the prosecution from the duty to prove any type of error and merely to prove criminal conduct.

Following this jurisprudence, several jurisprudential theories[1] have emerged that support the direction of the French Court of Cassation. Dean Hauriou considers that economic crimes are limited to the causal link between the physical conduct of the perpetrator and the violation of the law. He, therefore, sees the removal of the psychological element that is based on will and awareness, and he believes that excuses and motives are irrelevant.[2] There is also one aspect of jurisprudence that justifies the idea of reducing the moral pillar of economic crimes on the basis of the street's concern to maintain the conditions required for the organization of society on the one hand and the importance of the general economic interest that should be protected on the other.

1- Presumption of criminal intent in economic law

Traditional penal liability is based on a fundamental pillar, namely the fact that its provisions are based on reality and developed from the presumption, but the need to adapt the Economic Penal Code to the nature of the economic law that protects it requires sometimes breaking those traditional rules and enshrining new rules. However, this break does not affect the substance of criminal intent; it is merely an amendment to the rules to which it is subject in proof, where the burden of proof is transferred from the public prosecutor's office to the accused to demonstrate the absence of his criminal intent.

The difficulty of proving the criminal intent can be a real obstacle to the imposition of penal sanctions, especially since the adoption of the intent element is heavily dependent on the importance

1 For more details on these theories and the physical crime: Abd el Adim Morsi, Presumption of Error as a Basis for Penal Liability, Dar Al-Nahda Al-Arabiya, Egypt, 1988, p. 45.

2 See Anwar Sidki Al-Msaada, Criminal Liability for Economic Crimes, 1st Ed, Culture Publishing and Distribution House, Jordan, 2010, p. 253.

of the interest to be protected and the gravity of the crime committed. Some crimes and the gravity of their consequences for the economy and economic policy of the state have led the legislator to consider certain acts and behaviors as evidence of their commission.[1]

From here, we rise the following questions: How far is awareness assumed in the economic crime?

Awareness and will occupy an important place in economic crimes as economic laws regulate daily commercial and financial relationships. On the one hand, these relationships change constantly and rapidly, and the irregularities committed concerning them may not be against morality and values on the other. The provisions governing this relationship should therefore be taken up, as stipulated in the third recommendation of the Sixth International Conference on Penal Law "The frequent amendments of the codes of conduct contained in regulation which protect the economic interests of the public need most precise edition and an efficient distribution even outside official publicity…"

With regard to the element of will, jurisprudence has neglected the role of will in creating criminal conduct in economic crimes and did not address the element of awareness as if such crimes are just acts whether or not the will accepted the outcome. Although this statement is relevant, it has been widely criticized, since it cannot be said in any way that criminal liability in economic crimes is based solely on awareness because the will and awareness are linked. It is inconceivable that a crime is based solely on the element of awareness without the will of the perpetrator to commit criminal conduct. The origin is that the human person does not carry out any act unless it is of free will. Therefore, the Public Prosecutor's Office is not mandated

1 See Mahmoud Dawood Yacob, Liability in Economic Penal Law, Halabi Rights Publications, Lebanon, 2008, pp. 77-78

to prove such will but it is a simple presumption that can prove otherwise.[1]

One of the legislative examples of reducing the element of will in the context of economic crimes is what the Algerian legislator stipulated in the crime of money laundering provided for and punishable under article 389 (bis) of the Penal Code, where money laundering was defined as any transfer of funds[2] with the perpetrator's knowledge that they are criminal proceeds.... etc.

2- Concluding the intentional error in economic crimes

For many crimes, the legislator requires general or private intent and does not punish when such intent is not available, even if it involves gross negligence or lack of insight on the part of the offender. Concerning the nature of the crime or the provisions of the law in this particular type of criminal act (which the moral element should be severe), the intent for the rise of criminal liability cannot be replaced by the moral element.[3] The legislator disregards the moral element, and it is not clear from the text whether the conduct requires intent or negligence. Rather, it is understood that in both cases the conduct is treated as a crime punishable by the same sanction, regardless of whether the subconscious is intent or negligence. This is what the French Court of Cassation went to in one of its decisions when it asserted that those who withdraw a check without verifying that there is sufficient balance have bad intent in neglecting this verification.[4]

1 Anwar Sidki Al-Msaada, op. cit., pp. 227-222

2 Ordinance No. 12-02 of 13, February 2012 on preventing and combating money-laundering and the financing of terrorism, official newspaper, Released on February 15, 2012.

3 The Algerian legislator has replaced the term property with the term money because the term property relates to the concept of property right contained in the provisions of the Civil Code, which makes it difficult to apply the criminalization provision to the rights concerning money-laundering crime.

4 Cass, crim,19/01/1960,B.N24

The activity of the criminal in the context of economic crimes is primarily aimed at generating illegal profits. In the preparation of some economic laws, the legislator has, therefore, envisaged the need for criminal intent (general or private) due to the nature of the interests protected in the Economic Penal Code, which may be either general economic interests such as economic crimes against public money or private economic interests such as those committed in the field of commercial companies. The crime of vandalism of industrial enterprises owned by third parties, provided for and punishable under Article 406 of the Penal Code, and embezzlement or unlawful use of the property by a public official, provided for and punishable under Article 29 of Act No. 06- 01[1] on Prevention and Control of Corruption are two examples of intentional economic crimes that require criminal intent. The above-mentioned articles clearly show that economic crimes are punishable as intentional crimes, that is, the requirement of a public or private criminal intent, but this remains an exception because the majority of economic crimes require a criminal intent, which remains presumed. Moreover, the legislator's criminalization policy has extended to the criminalization of behaviors per se, regardless of intent or negligence.

B) Applications of the idea of excluding the moral element in the economic crime:

The reduced role of the moral element in economic crimes is mainly due to the importance of the interest protected behind economic criminalization in order to achieve the economic policy objectives adopted by the state.[2]

Some legislations explicitly provide for the exclusion of the moral element from certain economic crimes; the crime is carried out

1 Law No. 06-01 of February 20, 2006, on prevention and control of corruption, official newspaper of 2006, issue 14, amended and supplemented by ordinance No. 10-05 dated 26 Aug. 2010, official newspaper for 2010, Issue 50.
2 Anwar Sidki Al-Msaada, op. cit., p.258

solely through the commission of conduct (a formality crime) or the occurrence of the constituent elements of the crime's physical element, considering that the crime is physical.

1- Legislative exclusion of the moral element

Concerning the penal provisions governing various economic relations, we find that many legislations have assumed bad faith or completely eliminated the moral element. Examples of this presumption or exclusion include, for example, article 208 of the Algerian Customs Code. With regard to the comparative legislation which assumed the criminal intent in its penal provisions, we would like to refer, for example, to article 392 of the French Customs Code, which provides as follows: "A person in possession of smuggled goods in a manner inconsistent with the law and regulations is deemed liable for the offence, even if he is not personally involved in smuggling."

Under Egyptian legislation, article 19 of the Egyptian Weight and Measurement Act provides that: "Anyone who knowingly has possessed or used false, incorrect, or illegal devices or instruments of weight and measurement shall be punished…"

Through previous legislative texts, the legislator has assumed that there is a moral element when committing many economic crimes, which suggests a strong desire on the part of the legislator that no one escape criminal liability.[1]

2- Judicial exclusion of the moral element

A penal judge is no longer just a tool for managing criminal justice, but he applies legal texts after interpreting them and understanding their words. Based on the perception of the judge's task, the judge plays a significant role in adapting criminal provisions, thereby contributing to the combat of criminal phenomena that have been created but always within the framework of criminal law. One of

1 Mahmoud Dawood Yacob, op. cit., p. 82

the manifestations of this adaptation is that the penal judge has sometimes become more dependent on physical evidence than on the psyche of the offender, encouraged by the fact that the legislator himself has adopted the technique of presumption.[1]

However important practical considerations may be, this does preclude wasting basic concepts of the law. Sadly, the judiciary should turn towards a regrettable distortion of the moral element by turning intentional crime into mere negligence or violation.[2]

Conclusion

The topic of economic crime and despite the complexities that are presented in its concept, the jurisprudence agrees that the ideal concept of economic crime requires or must be based on a set of controls and foundations, most notably identifying the objectives of the economic policy of the state and guaranteeing the efficiency of the means to achieve it. The latter is done by highlighting the interest that the Criminal Law seeks to protect since economic criminalization is only one of the economic policy instruments adopted by the state in the financial and market spheres to protect its economic entity because of the negative impact of such crimes on the national economy. The economic field is characterized by dynamism, which required the legislator to allow for trespassing its authority by incorporating the policy of legislative mandate. Further, the principle of criminal legality deviated from its original function and has an updated function, mainly by adapting the penal provision to protect economic policy. Accordingly, the features of the principle of legality have changed, and the physical element has been brought into line with the field of business. We also see a reduction in the moral element, which is due to the importance of the protected interest in the business.

Recommendations:

1 Mahmoud Dawood Yacob, op. cit., pp. 82-83.

2 Malhem Haroun Karam, Economic Crimes in Lebanese Law, Analytical Legal Study, Halabi Law Publications, Lebanon, 1999, p. 231.

The fight against economic crime in all of its forms has been reviewed by the criminal policy. Indeed, since the mid-twentieth century, the criminal policy has sought to maximize its effectiveness in combating crime. This policy has taken two approaches: one is objective, as represented by the decriminalization and punishment reduction policies. The other is procedural, and it is represented by potential methods of conducting criminal proceedings or alternatives to the criminal justice crisis. However, we believe that the Penal Code is capable of protecting economic policy. Although it eliminates individual initiative, it remains a necessary means of protecting the general economic interest. We, therefore, believe that the legislator must intervene by enacting a comprehensive and complete law that would contain provisions specific to recent developments and legal legislation in the field of business.

- We believe that it is necessary to establish specialized business judges and economic courts to adjudicate cases, thereby saving time and effort and helping to preserve fundamental economic interests by punishing those who violate those interests, and hence encouraging domestic investment and attracting foreign investment, while also promoting the economic development of the state.

- Economic policy can be achieved only if the laws governing it are supported by administrative and disciplinary sanctions in a way that brings legal stability, assures economic actors, and attracts foreign investment.

- Activating the system of reconciliation in the field of business to achieve economic feasibility and unify the procedures and give them objectivity.

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