

Economic crime between the specificity of the concept; follow-up; and punishment

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Abstract:

Economic crimes have known a wide spread, and its risks and damages are great at the economic and social level, locally and internationally, as economic crime has become an economic and political impact and a source of real threat to economic security by riding the accelerating technology, and from it we aim through this study to clarify the specificity of the concept of economic crime and how to follow up, research and investigate In addition to determining the type of punishment imposed on the perpetrators.

Key words: Economic crimes; Economic Security; conception; follow-up; punishment.

1-Introduction:

Crime is an ancient human and social phenomenon associated with the presence of human beings on the globe in such a way as to make it inherent in human life. But it has graded and evolved in parallel with the evolution of man's activities through the frequent times and successive civilizations, Where the evolution of human beings and their conflicts of interest have contributed to the emergence of new patterns of criminality in an impossible manner to eliminate this phenomenon crime ", because perpetrators have become so organized as to benefit from all developments in life in order to continue their criminal activities, particularly economic crime.

The latter, which had been under interest since the nineteenth century, had begun to find a place in States' criminal legislation, and had subsequently given rise to the idea of economic penal law. legislation, which was promulgated independently or provided for in the Penal Code¹, Economic crimes have been known since the age before and after the advent of Islam and it has been stated that the old laws provided for punishment of exceeding the prescribed limit and evasion of the payment of tax and embezzlement of state funds, while changing the concept of the state and social conditions.

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¹ Féram Fatima Al-Zahra, Lectures in Economic and Financial Criminality, website: <http://elearning.univ-djelfa.dz>, 29/01/2023

Since the stability of society depends on the soundness of the economic foundations to ensure its sustainability, the importance of economic life must be reflected in people's behaviour and activities. This reflection is positive in that it elaborates the underlying incentives of these people, aimed at improving technical progress and improving living conditions, it is also of a negative nature, reflected in some people's attempt to reach the same end and in twisted ways that in fact conceal criminal acts against individuals and society, especially in relation to the economic crime committed against international financial systems. It prevents the collection of the necessary treasury fees and the citizen loses confidence in the public institutions of the State and the national currency².

The objective of the study appears through consideration the Economic and financial crimes have become an imminent threat to global security at all levels; Politically, economically and socially, after the world's transformations, especially at the end of the second millennium, when the Soviet Union collapsed and ended with the State's absolute stewardship of the economy, globalization sweeping all spheres of human life, especially the economy and finance, all these changes have been an enabling environment for growing economic and financial crime at the international and national levels and the market economy system has become imperative³, which means further liberalization of trade, opening of borders and opening of capital markets to capital and significant scientific leap and development in ICT The aim of this study is to shed light on economic crime and to control its aspects and to know its specificity.

Therefore, we pose the following; **how did the specificity of an economic crime be in terms of follow-up and punishment, and did the criminal policy of an economic crime be considered to put an end to it?**

To answer this problem, we have relied on the **descriptive** approach to describe economic crime in terms of its characteristics and its underlying elements, and on the **analytical** approach to arrive at the most important results aimed at clarifying the crime's specificity in terms of follow-up and punishment

We have divided the study into three themes;

- The specificity of the concept of economic crime
- Follow-up privacy in economic crime
- Privacy of punishment in economic crime

We will therefore try to elaborate on this subject as follows:

2- The specificity of the concept of economic crime

This type of crime has been known to be highly widespread and its risks and damage have been promised at the economic and social level domestically and internationally, together with the consequences of money-laundering, financial corruption and other forms of financial and economic crime, and it is difficult to claim that there is agreement on a single concept of economic and financial crime, especially if we know that this concept is complex and overlapping between economic and financial matters; The association between this type of crime and white-collar crimes (business crimes) and transnational organized crimes, from which we will try to control their concepts and familiarize ourselves with their characteristics;

2.1- Definition of economic crime

The offence is a language derived from the substance of the offence and the offence in the sense of guilt **God says** O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do⁴.

² Mahmoud Daoud Yacoub, Economic and Financial Crime in Algerian Law, website <https://maitremahmoudyacoub.blogspot.com/> Date of Establishment 29/01/2015

³ Nessma Maasudan, Economic Crime, Journal of Legal and Social Sciences, Algeria, vol. 03, No. 01, 2018 (415-426), p. 415.

⁴ EL.MAIDA Verse No. 08.

- The term "offence", as defined in the Act, is any conduct contrary to the Criminal Code, which is punishable for the infringement of a right, whether by the individual or by society, Therefore, the jurists of the Criminal Code defined the crime as an act or omission leading to damage to others and punishable by law, but with regard to economic crime, several definitions have emerged since ordinary crimes have economic effects such as theft, bribery, embezzlement, rigging, fraud, tax evasion and illegal speculation, all delays in repayment of indebtedness, whereby economic crime is such conduct contrary to the laws governing economic conduct, which is prescribed by law with a specific penalty⁵.

- Economic crime is defined as "contravention of the laws and regulations in force in a country and is intended to protect the national economy in its broadest sense or any act or omission which in turn affects the country's economic entity, and is also defined as: "Any wrongful act harmful to the national economy if it is criminalized in the Penal Code or in the laws on economic development plans issued by the competent authority"⁶, and the concept of economic crime varies from country to country according to its political system and whether it is a capitalist or a socialist system where it is considered an economic crime in a country that is legitimate in another country. Economic crimes are wider in scope in socialist and developing States than in developed and capitalist States, the socialist and developing countries rely on the policy of guiding and focusing the economy in their development plans so that they need a legal fence that protects them from economic crime. This fence is provided by punitive economic legislation, in the light of new changes in modern times and the emergence of patterns of behaviour that represent a departure from the natural dictionary of life, societies have sought to criminalize these patterns and impose penalties on them. This has been more evident in the economic sphere and economic crimes have emerged⁷.

- This type of crime has been widely known, and its risks and damage are significant at the economic and social level domestically and internationally, as well as the consequences of money-laundering, financial corruption and other forms of financial and economic crime, and it is difficult to claim that there is agreement on a single concept of economic and financial crime, especially if we know that this concept is complex and overlapping between economic and financial matters; The association between this type of crime and white collar crimes (business crimes) and transnational organized crimes.

- There are scholars who use the term "Criminal Code of Business" and consider it to include offences under economic law, tax law, labour law, reconstruction laws and the environment. Examples of such offences include: Fiscal fraud, customs fraud, financial fraud, breach of trust, corruption, media offences, stock exchange offences, money-laundering.

- The definition and concept of economic crime varies from State to State based on the interest taken by law and is careful to protect it. This is of course different based on the policies and ideologies of each system. The jurist Bayer has argued that the meaning of this crime is limited to the research and investigation of acts and refrain from acts that would prejudice the foundations of the protection of the economic system, Economic crime constitutes an attack on the economic system it has established in pursuit of its economic policy. and, moreover, opinions were disseminated in the jurisprudence in determining the scope of the Economic Penal Code as a result of the lack of a specific and clear definition of economic crime, Opinions differed within this law, as did ZLATARIC's view that economic crime represents any conduct committed by a natural or legal person that causes danger or causes harm. The social or economic policy of the State, or it is any act

⁵Nessma Maasudan; op. cit, p. 418.

⁶ Mohammed Ahmed al-Mashhadani, Economic Crimes of Their Types and Ways of Combating and Preventing Them, article from the website: <https://jols.uobaghdad.edu.iq/> Date of Establishment 09/02/2020, Date of view 26/01/2023

⁷ Mohamed Ahmed Mashhadani, website: <https://jols.uobaghdad.edu.iq/>, ibid.

or omission that is contrary to the established rules to regulate or protect the economic policy of the State⁸

- Algerian law promulgated Ordinance No. 66-180 of 21 June 1966, entitled: The establishment of special judicial councils for the suppression of economic crime. Title I of the Ordinance defines offences that are considered economic offences. Algerian legislation defines economic offences as follows: "This order aims to suppress crimes against national wealth, the public treasury and the national economy committed by officials and agents of all levels of the State, public institutions, local groups, public groups and a national company.

2.2- Characteristics and elements of economic crime

Economic crime is the object of the rules of the Penal Code on methods and methods of economic dealing, which are the result of legislative and organizational interference in the economic relations arising between them or economic relations between private and administrative. The legislator in the context of economic crime may have endeavoured to strike a balance between the parameters of the substantive and procedural rules of traditional penal law and the requirements of the economic policy envisaged by the State.

However, this attempt appears to have not been achieved with a view to demonstrating that economic crime is characterized by many characteristics. No doubt, economic crime in terms of its general structure in terms of substantive rules and procedural rules corresponds to the rules and provisions of general criminal law, as well as the special penal code. This correspondence shows the uniqueness of economic crime with many characteristics that are outside the basic principles of criminal law⁹.

2.2.1 The legal elements of the crime in general are three: the first is the legal element. (**Principle of legality**) No crime, no punishment or measure of security except with a previous legal existence. The second is the material element, which is punishable only by the existence of the criminal offence under the law, which consists of three elements: criminal conduct; The outcome and causal link between the criminal conduct and the criminal outcome. The third element is the moral element of the link between the material of the offence and the perpetrator's psychology. As regards economic crime, the first and second elements, although they must be available in all offences in criminal law, are characterized here by specificity in their content, where we find a change in the features of the legal element and ambiguity in the material element.

2.2.2 The moral element of economic crime no longer maintains its fundamentalist standards but has become weak. The legislator has tended to prevail over the notion of economic viability over individual freedoms. This is reflected in the legislator's settlement between intentional and negligent, i.e. the settlement between intentional and unintentional wrongdoing.¹⁰

3- Privacy of follow-up and punishment for economic crime

We have previously seen that Economic crime, also known as financial crime, refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The principal motive in such crimes is economic gain.

3.1- Follow-up privacy in economic crime

Established in contemporary procedural regulations, the Public Prosecutor's Office has a detailed function, an excellent procedural status in penal follow-up and has full authority to direct and terminate such follow-up, although of this public origin, that authority may be limited and narrowed, depending on the nature of the facts in question; Because of the interference of other organs and

⁸ Adel Amran, Ben Tahir Amina, Mechanisms to Fight Economic Crime, Memorandum for Master's Degree, Al Arabi University Ben Mohaidi, Umm Al-Baqi, Faculty of Law and Political Science, Algeria, University Year 2013-2014, p. 6

⁹ Thab al-Russan, Characteristics of Economic Crime, Study in Conception and Arkan, Journal of the Books of Politics and Law, Algeria, vol. 04, No. 07, 2012, (73-118), p. 73.

¹⁰ Amina Omar, Economic Crime, Political Encyclopedia, Article taken from website: <https://political-encyclopedia.org/>, Date of establishment: 28/06/2020, Date of view: 26/01/2023

bodies, to be a partner and competitor of the Public Prosecutor's Office in their powers, especially when these facts affect the financial and economic interests of the State and are of a technical nature, the judiciary and the quasi-judiciary cannot, in a general sense, investigate their facts and appreciate the seriousness of the acts affecting and affecting those interests; The purpose of this work is to assess the Public Prosecutor's procedural status in the pursuit of economic and financial crimes and to assess its powers towards them, with a new legislative orientation towards the creation of a criminal pole with national competence to monitor and suppress economic and financial crimes¹¹.

- Since the judicial organ in general and the public prosecutor's office in particular are at the forefront of the State organs responsible for combating crimes, it is normal for the legislature to provide it with the appropriate legal framework to do so; The Public Prosecutor's Office, with its powers and powers, is the body originally responsible for detecting and following up crimes. On the one hand, it manages the judicial police, and on the other hand it receives complaints and notifications and take what it deems appropriate, which has led some to be the sensitive centre for detecting illegal acts. The fight against economic crimes has received the attention of Algerian legislators in the face of the terrible development of crime. and the emergence of new and emerging forms that depend on very sophisticated means that have serious repercussions on national security and economy, this has led to the establishment of a judicial body competent to deal with the most serious economic and financial crimes which it deems more complex under Order No. 20-04 amending Order No. 155-66 of the Code of Criminal Procedure, as well as other penal poles with expanded jurisdiction¹².

- The Algerian legislature, through amendments to the Code of Criminal Procedure, is endeavouring to activate its judicial system in a successive manner in keeping with the development of the criminal phenomenon; which exploited the rapid development of informatics and the emergence of digital space to renew its criminal activity Through the creation of a legal mechanism to cope effectively with this development, In addition to implementing its international obligations as a result of its accession to the United Nations Convention against Organized Crime of 2000, which called for the specialization of criminal justice The legislature reflected this trend in its domestic laws by introducing the economic and financial penal pole under Order No. 20/04¹³.

- Article 16 of Act No. 06/22 of 20 December 2006 provides that: "The question of the competence of the judicial officer to investigate and investigate various offences shall be extended to the domestic jurisdiction of the judicial officer, the procurator of the Republic and the investigating judge; Governed by local jurisdiction controls over the extent to which they exercise their normal functions within the Court's territorial scope However, domestic jurisdiction may be extended in case of urgency, or in case of specific offences of drug and transnational organized crime, offences against automated data-processing systems, offences of money-laundering and terrorism, and offences relating to disbursement legislation to the entire national territory offences defined in article 211, with the exception of smuggling and corruption offences not mentioned by the legislator, which made him liable to criticism of the exclusion of such offences in this case, as being no less serious than the previous offences, often related to the State's public finances, As it constitutes the most important economic offence, this lack of legal action has been remedied by the Anti-Corruption Act, as amended by Ordinance No. 10/05. Article 24 stipulates that the offences of corruption are subject to the jurisdiction of judicial bodies with expanded jurisdiction in accordance with the Code of Criminal Procedure.

- It also stipulated that the judicial police officers of the Office exercise their functions in accordance with the provisions of the Code of Criminal Procedure and the Anti-Corruption Act and,

¹¹ Ala Karim, Privacy of Follow-up in Economic and Financial Crimes, Academy Journal of Legal Research, Algeria, vol. 11, No. 04, 2020, (28-40), p. 28.

¹² Asia Ben Bouziz, Proceedings before the Economic and Financial Penal Pole, Government and Economic Law Algeria, vol. 01, No. 01, 2021, (07- 15), p. 07.

¹³ Shahrzad Deraji, Nur-Eddin Ben-Sheikh, Updated Economic and Financial Penal Pole: Read in Order No. 20/04 of 30/08/2020, Journal of Legal and Economic Studies, Algeria, vol. 05, No. 02, 2022, (813-830), p. 813.

as a result, their domestic jurisdiction extends to the entire national territory, in accordance with the regulations set out in the Code of Criminal Procedure as special procedures to expand jurisdiction Law No. 20/04 extended jurisdiction over the entire national territory is governed by article 211 bis 2, which is a distinctive provision in the fight against these crimes of the Penal Code. which the legislator appears to have introduced in terms of follow-up action in the Corruption Offences Chamber, In particular, it is an offence linked to a public official, and refers to the definition of his or her concept in accordance with the Corruption Prevention and Control law¹⁴

3.2- Special punishment for economic crime in Algerian legislation

Since economic crime is any act or omission criminalized in a law on economic crimes, in the Penal Code or in other laws governing economic life, based on each State's policy of economic criminalization, not to mention its characteristics in terms of its duplication of nature, which is characterized by rapid performance and rapid development.

- In addition, they are mostly responsible for the dangerous act, although they create a danger and need to be carefully planned. Algerian legislation has put in place legal mechanisms to combat the crime in order to ensure that the competent Algerian courts, as well as national laws, legislation and decrees that criminalize and punish economic crime, are included.¹⁵

- Economic crimes are numerous and varied according to the diversity of economic activities and their multifaceted areas s economic policy requirements in order to protect its economic components and its resources in the service of members of society, Given the uniqueness of economic crime with many characteristics and advantages from other crimes, punishment in this aspect is governed by certain characteristics that make it outside the framework of the general principles of traditional criminal law. The aim of the legislature is to ensure a better effectiveness of the punishment in the suppression of this type of crime, such as the violation of the principle of the personality of the penalty and the principle of the judiciary of the penalty. It has also endeavoured to give priority to financial penalties and to intensify them without other penalties for the deprivation of liberty¹⁶.

- The punitive policy has been characterized by a kind of specificity in the assessment of the penalty and its nature per se, which shows that the quality of the penalties prevails at the expense of another offences ", where financial and in-kind penalties occupy an important place at the expense of other penalties with a correctional and rehabilitative function of deprivation of liberty for purposes required by the nature of the economic offence. In view of the seriousness of these offences, the penalty in economic offences is characterized by a tendency of the legislator to aggravate the gravity of the offence¹⁷.

- Among the crimes known as "traditional economic crimes", trade and price fraud, illegal competition, embezzlement of money, tax evasion, etc., but against these crimes we find the emerging economic crimes, which emerged in this era when globalization was used in all its aspects as an appropriate environment to increase its activity and scale, which shows the gravity of this type of crime¹⁸.

- Since the offender in the economic field is seeking financial profit even in illegal ways the Algerian legislature had to confer a certain specificity on the punishment imposed on the perpetrators, the economic legislator had abandoned the idea of rehabilitation and reform. Prison punishment alone was no longer useful in combating such crimes. Economic crimes require penalties that protect the immediate interests of economic institutions and ensure proper

¹⁴ Amara Amara, New Measures to Suppress Economic and Financial Crime, Algerian Journal of Business Law, Algeria, vol. 01, No. 01, 2020, (09-37), pp. 12-13

¹⁵ Adel Amran, Ben Tahir Amina, op. cit., p. 02.

¹⁶ Ahmed Hussein, Characteristics of Punishment in Economic Crime in Algerian Legislation, Sawtt El Kanoon Journal, Algeria, vol. 07, No. 01, 2020 (827-840), p. 827.

¹⁷ Ibid., p. 727.

¹⁸ Mohamed Belkasem, Emerging Economic Crimes, Journal of Legal and Political Research and Studies, Algeria, vol. 03, No. 01, 2013, (133-141), p. 133.

implementation of economic policy requirements. Supplementary penalties play an important role in the context of economic crime.

- Therefore, the legislator has given priority to financial penalties for imprisonment, combining the penalty of fine with confiscation, with the penalty of payment of interest received in favour of the public treasury for public damage. For example, anyone who commits the offence of ordinary money-laundering or the use of facilities granted by a professional activity or by a criminal group shall be liable to 10 years' imprisonment. (10) years to 20 (20) years and a fine from 4.000.000 DZD to 8.000.000 DZD¹⁹

- As for the offence of tax evasion when the amount of evasive rights does not exceed 100,000 DZD, the penalty is a fine of 50,000 DZD to 100,000 DZD, When the amount of rights is greater than 100,000 DZD and not more than 1.000,000 DZD, the penalty shall be two to six months' imprisonment and a fine of 1000,000 to 500,000 DZD or one of these penalties. The penalty is six months' to two years' imprisonment and a fine of 500,000 to 2,000,000 DZ or one of these penalties; The Algerian legislature further acknowledged that when the amount of the rights eluded by it exceeds 5.000.000 DZD and does not exceed 10.000.000 DZD, the penalty shall be two to five years' imprisonment and a fine of 2.000.000 to 5.000.000 DZD or one of these penalties. imprisonment ", and lastly, where the amount of the rights eluded exceeds 10.000.000 DZD, the penalty shall be five to 10 years' imprisonment and a fine of 5.000.000 to 10.000.000 DZD or one of these penalties²⁰.

The offences of money-laundering and tax evasion are among the most significant constraints to States' economic development, as they result in a reduction in their incomes and resources, and thus their inability to achieve their overall political objectives in various sectors²¹.

4-Conclusion:

When we present the topic of economic crime, not only to know it or to know its adverse impact on the economies of States, but also to mean the ultimate goal of stimulating determination and ideas, through a new system to confront a new species that does not stand at a certain level of crimes, it is constantly evolving with sophisticated, unconventional criminal minds. state-of-the-art cultural advances in science and technology and their use for their own purposes in the world of crime, this calls for a strategic plan to combat this type of crime, among other findings;

- The easiest way to confront this type of crime is to define a national criminal policy based on the principles of international cooperation Criminal legislation appropriate to and effective response to the activity of criminal networks associated with this type of crime, Creating administrative and financial systems and bodies for their prevention, and finally establishing specialized and effective security and judicial structures composed of professionals and operating in accordance with a robust system that guarantees flexibility and is subject only to the law; Using sophisticated and modern means, advanced technology in the field of detecting and tracking the activity of criminals as well as internal coordination and cooperation between various departments, the judiciary and security interests.

- Algerian legislature has been keen to update its policy of criminalization and punishment of crimes of an economic nature Economic and financial crime ", the aim of which was to modernize this type of provision in order to bring it into line with the special nature of economic and financial crime, The need to derogate from all the classical rules of general provisions was imposed so that the legislator's policy in this area would be to establish rules that would be more compatible with the specificity of the economic sphere and the special nature of the forms of criminality.

¹⁹ Article 52 amending 389 of Act No. 06/23 of 20 December 2006 amending and supplementing the Penal Code, published in Official - Journal No. 84 of 2 December 2006, p 26.

²⁰ Article 30 of Act No. 11-16, dated 28-12-2011, containing the Financial Law of 2012, Official journal No. 72, p 10.

²¹ Khidel Ahmed, Casey Zahira, Offence of Tax Evasion, Oasis Journal of Research and Studies, vol. 14, issue 01, 2021 (1050-1080), p. 1050.

- Public money is of great importance in stabilizing the State's social economy and therefore received special attention by the legislator in order to value his feasibility and protect him from various violations and abuses in the light of the growing phenomenon of corruption, which threatens the national economy and destabilizes social stability, recognizing the seriousness of corruption over the public money caused by high-ranking officials, Intervenes in an arsenal of penal and procedural laws to reduce corruption offences as well as other economic and financial crimes that have enriched the national economy; It provides for the establishment of a micro-economic and financial pole that considers complex economic and financial crimes litigation privileges for certain senior State officials "

We propose the following:

- ✓ The concept of economic crime should be more legally regulated.
- ✓ The establishment of special legislation establishing procedures for the follow-up of this type of crime and identifying those responsible for follow-up action.
- ✓ Formation of financial experts to work alongside police institutions charged with the suppression of economic and financial crimes, as certain crimes such as waste of funds and inflation of invoices require financial specialists to detect them.

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