

## Confronting the crime of illegal speculation in the Algerian law

التصدي لجريمة المضاربة غير المشروعة في القانون الجزائري

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### Abstract:

The crime of illegal speculation is among the most serious economic crimes that have escalated terribly in recent times, which negatively affected the national economy and its stability on the one hand, and the confidence of dealers on the other hand, which necessitated the intervention of the Algerian legislator to combat this crime. This study aims to clarify the adequacy of the mechanisms put in place by the Algerian legislator in combating and limiting illegal speculation by following the analytical approach based on the analysis of legal texts. As a conclusion, the Algerian legislator did not only criminalize illegal speculation, but it also monitored several mechanisms to confront it including legislative mechanisms, central mechanisms, and procedural mechanisms.

**Keywords:** illegal speculation. algerian law. confronting.

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## Introduction

“The principle of free trade is considered one of the most important economic principles guaranteed constitutionally. It is among the general rights and freedoms that can be affected by a sudden event, emergency or force majeure which happened, like the emergence of the Corona virus (Covid 19), which affected all countries of the world, including Algeria.”

The spread of this virus has led to the emergence of many negative phenomena that disturb the economic balance, the most prominent of which is illegal speculation.

In order to control the market and preserve the national economy, a number of precautionary, preventive and control measures have been taken which embody the state’s intervention in fixing prices and combating illegal speculation by issuing Law No.21-15 on the 28th of December 2021 related to combating illegal speculation.

The problem that we will try to address through this study is: to what extent the legal mechanisms imposed by the Algerian legislator through Law No. 21-15 in addressing and combating illegal speculation and thus preserving the national economy are adequate ?

In order to answer this problem, we divided the study into two sections, as follows:

The first topic: what is the crime of illegal speculation

The second topic: mechanisms to combat the crime of illegal speculation.

### **Firstly: What is the crime of illegal speculation**

Although free trade and industry is considered a constitutionally guaranteed principle, it should be practiced within the framework of the law. Hence, the intervention of the legislator seems necessary to ensure the principle of competition and its organization as it considered as a means to achieve progress and economic recovery<sup>1</sup>. If there are no legal rules used to regulate it, the behavior of those involved in economic activity can lead to the formation of monopolistic markets, and the market can destroy itself if the public authority does not provide it with the legal framework<sup>2</sup>.

### **The Concept of the Crime of Illegal Speculation**

The consumer needs protection, whatever the economic system adopted by the State, but the need for this protection is more needed in the free economy system and commercial freedom<sup>3</sup>, which is a wide area that may embrace many anti-competitive practices, which requires the intervention of the State in regulating markets. This is done through the legislator controlling the legal framework regulating illegal speculation in Law No. 21-15.

#### **1.1 Definition of the Crime of Illegal Speculation**

Doctrine defines illegal speculation in general as: “fraudulent operations which aim at causing unnatural fluctuations in the market in order to take advantage of these new or emerging conditions and achieve self-profits”<sup>4</sup>.

Others define it as: “the risk of buying and selling based on the prediction of price fluctuations, in order to obtain the price difference, and in the case of a false prediction, this may lead to paying the price differences instead of taking them<sup>5</sup>.”

It was also defined as: "Acts of manipulation in lowering and raising prices, which leads to abnormal fluctuations in the market in order to take advantage of the new conditions and achieve profits and self-interest."<sup>6</sup>

As for the Algerian legislator, he defined illegal speculation in Article 2 of Law No.21-15 of December 28, 2021 related to combating illegal speculation<sup>7</sup>, as: “Every storage or concealment of goods or merchandise with the aim of causing scarcity in the market and disturbance in supply, and every increase or decrease in the prices of commodities, goods, or securities, directly or indirectly, or through an intermediary, or using electronic means or any other fraudulent method or means.

From this text, we can conclude that speculation is a behavior done on purpose to control or influence the market and manipulate its rules by the use of many techniques to influence supply and demand, such as publishing false or misleading information<sup>8</sup> to create a false or misleading image<sup>9</sup>.

The crime of illegal speculation is related to the crime of price manipulation, through any action that would affect prices or impede the normal function of the market, or work to mislead others<sup>10</sup>, by using fraudulent methods to raise or attempt to raise or lower unreal prices for funds or services of public or private facilities<sup>11</sup>. Speculation, then, is considered a fraudulent commercial practice that aims to cause unnatural fluctuations in the market to benefit from the emerging conditions and achieve self-profits, and it is the result of the scarcity of the offered goods, especially those of wide usage, and thus their prices rise, as it is either between producers or importers or any active economic operator in the competitive market<sup>12</sup>.

It should be noted that one of the most important features of this crime is that it is characterized by diversity and innovation because these methods are committed by professional persons who make it difficult to establish evidence against their committed actions, as they often carry out these acts by forming organized criminal gangs that work by dividing roles among them to facilitate their commission, and they always seek to resort to these methods to avoid falling under the law<sup>13</sup>.

In the money market, speculation is defined as: “taking illegal means to influence the price of a security in order for it to be traded at a price higher or lower than the price that results in supply and demand in normal circumstances.” The speculator buys stocks and real estate in the hope of making a quick profit from them in a short time, instead of being satisfied with a normal profit, such as that achieved through long-term investment<sup>14</sup>.

## **1.2 Distinguishing Illegal Speculation from Legitimate Speculation**

Speculation is a buying or selling process that is carried out by experienced people in the market to benefit from price differences, and there are two types of speculation: legal or illegal.

Legitimate speculation is a process of buying and selling goods and money bills in order to benefit from what happens in the fluctuations in their prices in the market or the stock exchange, as it represents the spirit of competition on which the market is based<sup>15</sup>.

Legitimate speculation is the main reason for market activity, and without it the market remains stagnant. It is based on risk because it predicts future events and works to encourage trading in large quantities of goods and money bills thus increasing the movement of trading in the market and thus reconciling supply and demand<sup>16</sup>.

In this case, the speculator does not proceed to conclude the disposal except after deliberation and foresight, seeking to achieve profit and benefit from price fluctuations by examining information from reliable sources to enable them to decide to conclude the disposal on time to minimize risks and maximize profit.<sup>17</sup>

Concerning illegal speculation, it means the false guidance of prices by influencing prices so that goods and commodities are sold or bought at a price lower or higher than their real price, where price manipulators seek to obtain quick profits or avoid losses through illegal actions and practices. Price manipulation is based on illegal actions and practices that rely on deception and fraud to make others fall in error, which harms the market in general by creating made up price differences and creating false and unreal price guidance to influence them<sup>18</sup> with the aim of benefiting from these new or emerging conditions and achieving self-profits<sup>19</sup>.

### **1. The Elements of the Crime of Illegal Speculation**

In order for the crime of unlawful speculation to be established, several elements must be present, starting from the legal pillar, which is that the criminal act is subject to a legal text that criminalizes and punishes it, which is stipulated in this crime in Article 2 of Law 21-15 related to combating illegal speculation, as well as, Articles 12 and 23 from it. In addition, the material and moral pillars must be available.

#### **2.1 The Material Element of Illegal Speculation**

The material element is the performance of any criminal act or activity that affects the normal functioning of the market, and these acts are enumerated by the Algerian legislator, for example, but not exclusively, through Article 2 of Law No. 21-15, which gives the judge wide authority in whether or not to consider the behavior a crime depending on the rules of competition and the market system<sup>20</sup>, which are as follows:

##### **2.1.1 Any Storage or Concealment of Commodities or Merchandise**

This is the most widespread form in the market, where merchants usually resort to committing it by buying many goods and commodities with the aim of monopolizing them in the market and storing them in secret warehouses that are not covered by censorship, when those goods are cut off, these merchants take them out and sell them at high prices taking advantage of their scarcity in the markets, which they caused by monopolizing these commodities<sup>21</sup>.

##### **2.1.2 A Made-Up Increase or Decrease in Prices**

Every voluntary intervention at the level of prices would affect the natural mechanisms of prices of goods and services or even money bills under the law of supply and demand, whether by raising or lowering these prices and by any means.

The simple form of the law of supply and demand is setting prices according to the criteria of supply, which is availability in the market, and demand, which is the demand for purchase. Whenever the demand for a commodity increases, the supply decreases and its price increases, and whenever the demand for a commodity decreases, the supply increases and its price decreases<sup>22</sup>.

It should be noted that the illegal speculation that takes this form is not only through actions and deeds that lead to raising prices, but is also achieved by lowering prices through maneuvers to harm other competitors from the economic dealers to take over the market and sell alone, and then raising prices after that<sup>23</sup>.

### **2.1.3 Promoting False or Biased News or Information among the Public**

This image is achieved by concealing the truth and replacing it with false rumors, by promoting false news and news about the scarcity of consumables and their unavailability in the market, which is an image that has been widely widespread in light of the Covid 19 pandemic, as the national market has suffered from an acute shortage of some consumables like flour and oil, after the wide purchases that were made by consumers due to the spread of rumors that the national stockpile of these two materials had been depleted<sup>24</sup>.

These practices can be in the form of agreements when institutions agree to promote false and malicious news in the market about a competitor's commodity in order to exclude it. It may also be the result of arbitrary exploitation of a dominant position by the dominant institution publishing false news in order to increase the prices of its products<sup>25</sup>.

### **2.1.4 Introducing Offers in the Market for the Purpose of Causing Price Disturbances or Legally Defined Profit Margins**

The law prohibits the practice of low prices for the sale of consumables in a manner that may threaten the interest of the consumer, due to the possibility of merchants exploiting these low prices to lure consumers and sell spoiled or expired consumables, especially in light of the lack of control in the national markets and the scarcity of some consumables<sup>26</sup>.

In this case, the perpetrator floods the market with a substance which leads to the collapse of its price, which results in a disturbance in the legally defined profit margins. This case applies to commodities for which the law determines the profit margin in a percentage, such as commodities with regulated prices (bread, milk, etc.)<sup>27</sup>.

### **2.1.5 Presenting Offers at Higher Prices than those that were usually Applied by Sellers**

This situation is achieved as soon as the merchant offers to buy consumables at a price higher than their real price in the market, in order to seize the largest possible

quantity of them with the aim of monopolizing them in the market and selling them at the price he wants<sup>28</sup>, then the State resorts to pricing if it is fair, it guarantees a suitable profit for the seller, and it guarantees the buyer the commodity without monopoly or exploitation<sup>29</sup>.

### **2.1.6 Carrying out, Individually or Collectively, or Based on Agreements, an Operation in the Market for the Purpose of Obtaining a Profit that does not Result from the Normal Application of Supply and Demand.**

This was confirmed by Article 06 of Ordinance No. 03-03 of July 19, 2003 related to competition amended and supplemented<sup>30</sup>, which stipulated a set of prohibited agreements based on the adoption of a joint plan between two institutions that aim to disturb competition within the market of goods and services by any means, such as agreeing, for example, to sell at a unified price or to reduce prices in order to exclude competitors who do not have the ability to keep up with this reduction. In this regard, it should be noted that resorting to economic groupings is considered an essential element in the dynamism and movement of the economy in order to enable it to face foreign competition<sup>31</sup>.

Among the most prominent examples in this regard is the recent agreement of merchants that accompanied the Corona outbreak crisis to exploit the prevailing situation and raise the prices of many consumable and pharmaceutical materials like the increase in the prices of flour, masks which would prejudice the legally protected interest of consumers<sup>32</sup>.

### **2.1.7 Using Maneuvers that Aim to Raise or Lower the Value of Securities**

The crime of unlawful speculation in money bills prices is defined as a process aimed at violating the rule of supply and demand, which is based on commitment, respect for fair competition, fairness in setting prices, and transparency in dealing, by carrying out illegal practices that take several forms involving fraud, deception, and misleading dealers in securities regarding the real price<sup>33</sup>.

Speculation in securities is achieved by using maneuvers by buying stocks and real estate to make a quick profit from them in a short time, instead of being satisfied with a normal profit such as that achieved through long-term investment<sup>34</sup>.

## **2.2 The Moral Element of Illegal Speculation**

The crime of illegal speculation is one of the intentional crimes because a general criminal intent as well as a special criminal intent are required for its occurrence.

### **2.2.1 General Criminal Intent**

The general criminal intent is established by the existence of knowledge and will in the offender and that he is aware that his false and misleading dealings are likely to influence the market, and that his will tends to obstruct freedom of competition and the law of supply and demand, especially his will in raising or lowering the prices of commodities, or creating a false and misleading impression of the market's effectiveness<sup>35</sup>.

### **2.2.2 Special Criminal Intent**

It is represented in the direction of the offender's will to cause disturbances in the market, which would lead to an unjustified rise in the prices of consumed goods, with the aim of making a profit that is not resulting from the normal and correct application of the laws of supply and demand, or merely initiating it<sup>36</sup>.

### **Secondly: Mechanisms to Combat the Crime of Illegal Speculation**

Consumer protection mechanisms from the crime of unlawful speculation vary, including administrative practiced by advisory bodies and judicial ones practiced by courts, in addition to legislative protection.

#### **1. The Legislative Confrontation of the Crime of Illegal Speculation**

It is necessary to point out that the Algerian legislator has made great strides in combating the crime of illegal speculation through his intervention and issuance of several laws, including Law No. 03-03 of July 19, 2003 related to competition, amended and supplemented, which considered freedom of competition as a principle on which competition is based, but this does not mean that it is absolute, as the State may interfere in restricting it in order to eliminate illegal speculation and protect the consumer.

In addition to Law No. 04-02 of June 23, 2004 defining the rules applicable to commercial practices, as amended and supplemented, as well as Law No. 04-08 of August 14, 2004 related to terms of doing business, amended and supplemented.

As a result of the rapid developments witnessed by economic life and the successive crises witnessed by the entire world due to the outbreak of Covid 19 disease, which resulted in the spread of the illegal speculative crime in a terrible way, which led to the scarcity of many widely consumed commodities and commodities such as flour, oil... etc. This is on the one hand and on the other hand, the greed of merchants and high prices, and because the legislator's goal is to maintain the stability of the national market and preserve the purchasing power of the citizen, he issued Law No. 21-15 of December 28, 2021 related to combating illegal speculation, as this law contains 25 articles through which the Algerian legislator sought to confront illegal speculation. .

Despite the Algerian legislator's keenness to preserve the interest of the consumer by criminalizing illegal speculation, these attempts remain simple and require more legislative confrontation to limit them.

#### **2. Administrative and Judicial Protection**

There are two types of protection approved by the Algerian legislator in the context of combating the crime of illegal speculation. The first is administrative protection that is carried out by central (state) and local bodies (local authorities). The second is procedural protection embodied by courts after judicial follow-up.

##### **2.1 Administrative Protection**

There are two types of administrative protection in this regard according to the Unlawful Speculation Law. It may be central or local.

### 2.1.1 Central Protection

The country is considered constitutionally responsible for consumer protection under Article 62 of the 2020 Constitution, which states: “Public authorities work to protect consumers in a way that guarantees them security, safety, health, and their economic rights.”<sup>37</sup>

According to Article 3 of the Anti-Unlawful Speculation Law, the State undertakes to prepare a national strategy to ensure balance at the market level, by working to stabilize prices and limit illegal speculation in order to preserve the purchasing power of the citizen and prevent the exploitation of circumstances for the purpose of unjustified increase in prices, especially necessary materials or widely consumed items.

In order to confront the crime of illegal speculation, the State shall take the necessary measures to reduce this crime, in particular<sup>38</sup>:

- Ensuring the availability of necessary commodities and merchandise in the markets.
- Adopting vigilance mechanisms to take appropriate measures in order to reduce the effects of scarcity.
- Encouraging rational consumption, i.e. rationalizing consumption.
- Take the necessary measures to refute the spread of any rumors that are being circulated with the aim of causing turmoil in the market and raising prices in a random and surprising manner.
- Preventing any unjustified storage or withdrawal of commodities and merchandise to create a state of scarcity for the purpose of raising prices.

### 2.1.2 Local Protection

Local communities have the right to contribute to combating illegal speculation through, the following<sup>39</sup>:

- Allocating points for selling essential or widely consumed materials, at prices suitable for people with low-income, especially during holidays, seasons and exceptional cases that usually see a rise in prices. This measure includes a spatial circumstance by adopting a neighborhood policy with regard to goods with wide consumption, which are usually supported by allocating points of sale that allow them to be brought closer to the consumer on the one hand and simplify censorship, on the other hand, it also includes a time circumstance, in times when cases of scarcity and high prices are known, such as holidays and events<sup>40</sup>.

- Early detection of all forms of scarcity in goods and commodities at the local level, especially essential materials or materials of wide consumption.

- Studying and analyzing the local market situation and analyzing prices. This measure aims at finding out the data related to the local market constantly and continuously with the aim of analyzing and exploiting it in determining its needs for goods and commodities before the occurrence of scarcity on the one hand, and standing on the other hand on prices and the factors affecting them in order to eliminate them, which makes the goal of controlling the market within reach<sup>41</sup>.

Finally, civil society and the media must contribute to the promotion of consumer culture and revitalize the process of rationalizing awareness with the aim of rationalizing consumption and not violating the rule of supply and demand, especially in holidays, seasons, exceptional cases, and those resulting from an emergency health crisis, an epidemic outbreak, or a disaster, and this is what Article 06 of the Law of Unlawful Speculation. emphasized on.

## **2.2 Procedural Protection**

The procedures related to the follow-up of the perpetrators of the crime of illegal speculation are subject to the general rules of procedures, taking into account their specificity, which were stipulated by the Algerian legislator in the law of illegal speculation, represented in:

### **2.2.1 Up procedures and Initiating the Public Lawsuit**

Criminal prosecution of perpetrators of crimes of illegal speculation is carried out in accordance with the general rules for the follow-up of any accused with some specificities, which reflect the will of the Algerian legislator to involve all related actors in the fight against illegal speculation crimes<sup>42</sup>, involvement confirmed by Article 07 of the law on illegal speculation, which stipulates the followig “In addition to the officers and agents of the judicial police, others are qualified to examine the crimes stipulated in this law:

- Qualified agents specialized in control from the administration in charge of trade.

-Qualified agents of the tax administration.

National associations active in the field of consumer protection or any affected person may file a complaint before the judicial authorities and establish themselves as a civil party<sup>43</sup>.

It should also be noted that residential premises may be searched for the crime of illegal speculation, based on a prior permission from the public prosecutor or the competent investigating judge, at every hour of the day or night, with the aim of investigating this crime<sup>44</sup>.

For the proper functioning and efficacy of research and investigation procedures in this crime, the legislator approved the possibility of extending the original period of detention for consideration, with a written permission from the competent public prosecutor, for two times<sup>45</sup>.

### **2.2.2 Punitive Measures**

The penalties prescribed in the field of combating illegal speculation can be original or complementary penalties.

#### **A. Original Penalties:**

According to Articles 12, 13, 14 and 15 of the Unlawful Speculation Law, illegal speculation is punishable by imprisonment from three (03) years to ten (10) years and a fine from 1,000,000 Algerian dinars to 2,000,000 Algerian dinars.

And if the subject of the crime is grains and their derivatives, dry legumes, milk, vegetables, fruits, oil, sugar, milk, fuel materials or pharmaceuticals, then the penalty

is imprisonment from ten (10) years to twenty (20) years and a fine from 2,000,000 to 10,000,000 Algerian dinars.

In the event that these acts are committed during exceptional cases, health crisis, the outbreak of an epidemic, or the occurrence of a disaster, the penalty shall be temporary imprisonment from twenty (20) years to thirty (30) years and a fine from 10,000,000 Algerian dinars to 20,000,000 Algerian dinars. By an organized criminal group, the penalty is life imprisonment.

### **B. Complementary Penalties:**

According to Articles 16, 17 and 18 of the Unlawful Speculation Law, in the event of a conviction for one of the crimes of unlawful speculation, the perpetrator may be punished by banning him from residing from two (02) to five (05) years, and the judge may rule to prevent him from exercising one or more rights from the rights mentioned in Article 09 bis 01 of the Penal Code and related to the deprivation of the exercise of national, civil and political rights.

The judge must also order the publication of his judgment and its suspension in accordance with the provisions of Article 18 of the Penal Code.

In the event of a conviction for one of the crimes of unlawful speculation, the judicial authority may rule to strike off the commercial register of the perpetrator and prevent him from practicing the commercial activity, in accordance with the provisions stipulated in the Penal Code, and it may order the expedited enforcement of this penalty.

It may also order the closure of the commercial store used to commit the crime and prevent its exploitation for a maximum period of one (01) year without prejudice to other's rights. In the event of a conviction, the judicial authority may order the confiscation of the scene of the crime, the means used in its commission, and the funds obtained from it.

From our point of view, the Algerian legislator has succeeded in the gradual increase in penalties in view of the nature of the subject matter and the circumstances surrounding it, and whether it was committed in exceptional circumstances or by criminal groups.

### **Conclusion**

Due to the significant rise in illegal speculation in recent times, especially in light of the spread and exacerbation of the Corona pandemic, which caused the scarcity of consumer goods and their high prices on the one hand, and on the other hand, the citizen's purchasing power collapsed and his inability to acquire them.

In order to ensure legal protection for the consumer and the national economy alike, and to limit the spread of this crime, the Algerian legislator issued Law No. 21-15 related to combating illegal speculation, in order to protect both the consumer and the national economy.

Through this study, we reached a number of results, which are:

- The Algerian legislator regulated the concept of illegal speculation in Law No. 21-15 related to illegal speculation.

-The legislator has mentioned the facts that might constitute the crime of illegal speculation, by way of example, thus leaving a broad appreciation to the judge, with the aim of ensuring the greatest legal protection of the consumer.

- Setting mechanisms to combat illegal speculation, whether at the central or local level, with a focus on the role of civil society and the media in combating crime.

- Expansion of the category of workers in the field of combating the crime of illegal speculation, by recognizing the qualified agents specialized in control from the administration in charge of trade and the qualified agents of the interests of the tax administration, as well as the officers and agents of the judicial police.

Among the most important recommendations that we can make in this regard are:

- The need to activate the necessary administrative control to ensure the application and implementation of mechanisms to combat illegal speculation.

- Enhancing the role of civil society and the media on the need to raise awareness and cultivate a culture of rationalization of consumption in the minds of citizens, as well as the need to educate them on the importance of reporting speculators, with the aim of assisting the authorities charged with combating the crime of illegal speculation in performing their tasks.

- Establishing a national digital platform whose role is to receive consumer reports about speculators.

- Organizing more forums, study days and awareness campaigns to explain the provisions of the law on combating illegal speculation.

## Margins:

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