

The Combat Strategy against Human Trafficking Crimes under Law No. 23-04 "A Study of Punitive and Preventive Measures "

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Abstract:

This study aims to shed light on the crime of human trafficking, which is considered alien to Algerian society, yet remains one of the most dangerous crimes known to humanity and experienced by Algeria. The Algerian legislator has addressed this issue through a separate law, Law No. 23_04, related to the prevention of and combat of human trafficking. This aligns the legal framework with various relevant international treaties. The study explores the punitive aspect of its combat through both mild and severe penalties, and then addresses the preventive measures, particularly emphasizing the enhancement of the role of the National Committee for the Prevention of Human Trafficking. Ultimately, the study concludes that Law No. 23_04 serves as a deterrent, proactive, and preventive framework.

Key words: *Human trafficking; Organized crime; Penalties; Prevention; Crime*

Introduction:

Human trafficking is considered one of the most serious crimes known to humanity, as it targets individuals suffering from poverty, unemployment, and physical vulnerability, especially women and children¹, who are seen as renewable commodities in this illicit trade. Its negative impacts reverberate through the lives, freedom, and security of the individuals involved, as well as society at large.

Therefore, the Algerian legislator codified it within Article 39 of the 2020² Constitution, and was pioneering in its criminalization within the Penal Code in 2009, specifically from Article 303 bis 4 to 303 bis 15, by virtue of Law No. 01_09.³

However, the gravity of this crime and its transformation into an organized crime that crosses national borders have made it increasingly complex. This complexity prompted the international community to call

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for the necessity of enacting specific legislation that aligns with its unique nature, forms, elements, and strategies for both combating and preventing it.

And this is what Algeria has done; in the context of aligning national legislation with relevant international mechanisms, particularly "Palermo Protocol," ratified in 2003⁴. This Protocol urges member states, including those not directly affected by this phenomenon, to adopt a legal and institutional system in this field. Consequently, the legislator issued Law No. 23_04⁵ related to the prevention of and combat against human trafficking, thereby enhancing protection in the realm of human rights.

Human trafficking, in its material aspect, encompasses several behaviors. In this context, the legislator has defined them pursuant to Article 2 of the first chapter. Perhaps the most significant forms include sexual exploitation, the exploitation of others in forced labor or servitude, slavery, or even practices similar to slavery such as forced marriage⁶

Given the foregoing, it is evident that human trafficking crimes constitute a serious phenomenon. While the Algerian legislator has enacted Law No. 04_23 to align the legal arsenal with various relevant international treaties and conventions, the question arises: Can it be considered as falling within a proactive and preventive framework, in addition to being deterrent?

To address this question, we have adopted a descriptive and analytical approach aimed at covering the different aspects of the research problem in human trafficking crimes and examining the mechanisms for combating them, both deterrent and preventive, under Law No. 04_23.

In order to address the aforementioned issue, we have divided this study into two sections: The first section is dedicated to exploring the deterrent aspect of combating this phenomenon, while the second section focuses on examining the preventive aspect.

The first topic :

Penalties for Human Trafficking Crime

The Algerian legislator criminalizes all forms of human trafficking and prescribes penalties that correspond to the severity of the committed act. These penalties may be basic penalties when not associated with any aggravating circumstances, and may become more severe when associated with one or more such circumstances

First requirement: Basic Penalties

To clarify matters, we preferred to delineate the primary penalties

for felonies and misdemeanors separately, as follows:

First section: Penalties for Human Trafficking Felonies

The Algerian legislator subjects individuals who expose the victim to torture, sexual violence, or cause permanent disability as a result of the crime, or if the act leads to the victim's death, to life imprisonment in accordance with Article 42 of Law 04_23.

Additionally, human trafficking is punishable by temporary imprisonment from ten to twenty years, and a fine ranging from 1,000,000 dz to 2,000,000 dz, if the crime is committed with at least one of the circumstances specified in Article 41 of Law No. 04_23.

Moreover, anyone who incites the commission of the crimes referred to is subject to the penalty prescribed for the committed crime. This is evident from Article 62 of the aforementioned law.

In addition to the primary penalties previously mentioned, the legislator has provided for additional penalties under Articles 55 and 57 of Law No. 04_23. Competent judicial authorities may subject individuals convicted of crimes stipulated in this law to medical or psychological supervision or electronic monitoring for a period not exceeding one year after their release.

Furthermore, in the event of a conviction for a misdemeanor related to human trafficking, the judicial authority is required to order the confiscation of the means used in the commission of the crime and any proceeds obtained from it, in any capacity, taking into consideration the rights of bona fide third parties.

Second section: Penalties for Human Trafficking Misdemeanors

The legislator subjects to a penalty of imprisonment from one to five years, and a fine from 100,000 dz to 500,000 dz, anyone who:

- Knew about the initiation of or actual occurrence of a human trafficking crime and did not immediately report it to the competent authorities. (Article 44)
- Benefited from a service, advantage, or labor provided by a victim of human trafficking while being aware of it. (Article 45 of Law 04_23)
- Any person who discloses any information obtained during the performance of their duties that could reveal the identity of a human trafficking victim, a witness, or an informant. (Article 46 of Law No. 04_23).
- A carrier who does not comply with the legislation and regulations related to entering or leaving the national territory, when such non-compliance results in the commission of any form of human trafficking, is punishable by a fine ranging from 200,000

dz to 500,000 dz.

- *Anyone who engages or participates in any capacity, within or outside the territory of the Republic, in an organized criminal group or agreement with the aim of preparing or committing any of the crimes stipulated in this law is punishable by imprisonment from three to ten years, and a fine ranging from 300,000 dz to 10,000,000 dz*

Furthermore, the legislator punishes the attempt to commit misdemeanors of human trafficking with the same penalty prescribed for the committed misdemeanor, in accordance with Article 60 of the same law.

Second requirement: Aggravated Penalties

Human trafficking crimes, like other crimes, can be associated with aggravating circumstances, which result in more severe penalties for the perpetrator. The aggravating circumstances in human trafficking crimes can be either personal or material.⁷

First Section: Personal Aggravating Circumstances

Firstly: Aggravating Circumstances Related to the Perpetrator

The Algerian legislator stipulates in Article 41 of Law 04_23 that the punishment shall be temporary imprisonment from ten to twenty years, and a fine from 1,000,000 dz to 2,000,000 dz if the perpetrator is:

- *The spouse of the victim or one of their ascendants, descendants, legal guardian, or someone who has authority over them.*
- *A public official whose position facilitated the commission of the crime.*
- *More than one Person.*
- *If the crime was committed by an organized criminal group or had a transnational character or occurred during an armed conflict, the punishment shall be from twenty to thirty years, and a fine from 10,000,000 dz to 20,000,000 dz.*

Secondly: Aggravating Circumstances Related to the Victim

The Algerian legislator stipulates in Article 41 of Law No. 04_23 that the punishment shall be temporary imprisonment from ten to twenty years, and a fine from 1,000,000 dz to 2,000,000 dz if the victim is:

- *A child, legally incapacitated, a person with special needs, or in a vulnerable state.*
- *More than one victim is involved.*
- *The crime was committed against any person or group of persons because of their ethnic or gender affiliation.*
- *If the victim is in a vulnerable state, the penalty shall be imprisonment from one to five years, and a fine from 100,000 dz*

to 500,000 dz, according to Article 45 of Law No. 04_23. A state of vulnerability is defined as "any situation in which a person is forced to submit to exploitation due to their age, gender, disability, physical or mental or psychological incapacity, a situation of need arising from a health condition, social or economic circumstances, or an illegal status." This is stipulated in the third paragraph of Article 2 of Law 04_23.

Moreover, the penalty is imprisonment from two to seven years and a fine from 200,000 dz to 700,000 dz if the crime leads to the disclosure of the identity of a human trafficking victim, witnesses, or informants.

Second Section: Material Aggravating Circumstances

The penalty is increased to imprisonment from ten to twenty years, and a fine from 1,000,000 dz to 2,000,000 dz if the human trafficking crime is committed:

- With the carrying of weapons or the threat of their use.
- If the perpetrator uses narcotics or other mind-altering substances to subdue the victim.
- If the perpetrator confiscates, destroys, or forges the victim's passport or identity document.
- If the crime is committed by threatening to kill or torture.
- If the crime is committed during a health crisis or natural, biological, or technological disaster.
- If the crime is committed using information and communication technology.

Additionally, according to Article 47 of Law No. 04_23, the penalty is increased to imprisonment from five to ten years, and a fine from 500,000 dz to 1,000,000 dz for anyone who resorts to retaliation, intimidation, or threats in any manner or form against the victims, witnesses, experts, informants, their family members, or any closely related persons.

Life imprisonment is also imposed if the victim is subjected to torture or sexual violence, if the crime results in permanent disability, or if the act leads to the death of the victim.

The second topic :

Preventive Measures Against Human Trafficking

In an effort to combat the phenomenon from various angles, the Algerian legislator has dedicated a whole chapter to preventive measures titled "Preventive Measures," involving the intervention of public authorities and the participation of civil society. This also includes strengthening the role of the National Committee for the Prevention of Human Trafficking and its fight against it. This approach indicates a comprehensive strategy aimed at addressing the issue of human

trafficking not only through punitive measures but also by implementing preventive strategies that involve various sectors of society to tackle the root causes and reduce the incidence of human trafficking.

First requirement: Intervention of Public Authorities and Participation of Civil Society

This requirement involves studying the role of the state, local communities, and public institutions on one hand, and the role of civil society on the other.

First section: The Intervention of the State, Local Communities, and Public Institutions

In accordance with Articles 5, 6, and 7 of Law 04_23, the state is responsible for developing a national strategy for the prevention of human trafficking, overseeing its implementation, and allocating the necessary human and material resources for this purpose.

Local communities, in coordination with various bodies charged with crime prevention and combat, are tasked with developing local action plans to implement the national strategy for preventing human trafficking and ensuring their execution.

National bodies involved in the prevention of human trafficking are required to prepare national or sector-specific programs for the prevention of human trafficking, in line with the national strategy.

Second section: Participation of Civil Society

The concept of civil society is not at all new. Its origins can be traced back to ancient Greece, over 2,000 years ago. The famous philosopher Aristotle used the term "koinonía politikè" ("the citizen community"), and later in Latin "societas civilis," to refer to a group without a dominant authoritative structure, composed of individuals who share similar viewpoints. They were known at the time as "polis," meaning the citizen or political community. Male citizens who owned certain properties would decide together and mutually defend their interests within this assembly, without intervention from any governmental authority. Thus, they were supposed to achieve the common good.⁸

Civil society is considered "a domain within society that emerged between governmental, economic, and private spheres - or, in other words, between the state, the market, and the family. This domain is seen as a public space that, in our current day, consists of a large number of assemblies with varying degrees of independence from the state, and heterogeneous organization, including various entities such as initiative groups, clubs, and associations." This conceptualization underscores the role of civil society as a crucial intermediary area where citizens can

engage in public discourse, advocate for their interests, and contribute to the social, cultural, and political life of their communities, all while operating independently from direct governmental control and influence.

It's important to understand that the civil society often discussed does not form a homogeneous assembly that can be represented with a single voice. Furthermore, it does not pertain to a block of isolated citizens representing their interests individually. Instead, individuals freely group according to their interests or personal and professional orientations, within the framework of clubs, associations, and/or social movements, to exchange ideas and work together towards common goals.

In the context of human trafficking, the role of civil society becomes apparent through its participation in the preparation and implementation of the national strategy and local action plans for preventing human trafficking. This is stipulated in Article 8 of Law No. 04_23, highlighting the significant role civil society organizations play in supporting governmental efforts, raising awareness, and providing assistance and protection to victims, thereby contributing to a comprehensive approach to combating human trafficking.

The state, through its various institutions, encourages the participation of civil society at both the national and local levels in preventing human trafficking, especially through:

- Raising awareness of the importance of informing the competent authorities about incidents that may constitute human trafficking.*
- Participating in the creation of educational, pedagogical, and awareness programs about the risks of human trafficking, in collaboration with academic institutions and conducting research and studies in the field of human trafficking.*
- Enabling media and the public to access information on human trafficking, while respecting the confidentiality of investigations and protecting personal data, privacy, the dignity of individuals, and public order requirements.*
- Proposing all measures that could support the activity of civil society in the field of assisting victims of human trafficking..*

Second requirement: The National Committee for the Prevention of Human Trafficki

The Algerian legislator emphasized the tasks of the National Committee for the Prevention of Human Trafficking in Chapter Three of Law No. 04_23, established by Presidential Decree No. 249_16⁹. This decree includes the creation, organization, and operation of the National Committee for the Prevention of Human Trafficking and its combat, particularly its preparation of the national strategy project and the

adoption of a vigilance mechanism, early detection of various forms of human trafficking crime, and coordination with all actors involved in combating human trafficking.

This requirement is dedicated to studying the National Committee for the Prevention of Human Trafficking, established by the Algerian legislator since 2016, through an examination of its composition and competencies.

First section: The Structural Composition of the Committee

The Algerian legislator, in Article 1 of Presidential Decree No. 249_16 dated September 26, 2016, stipulated the establishment of a National Committee for the Prevention of Human Trafficking and its fight at the office of the Prime Minister. This committee serves as the point of contact in the field of prevention and combat against human trafficking.

The committee is comprised of multiple representatives from various sectors, including a representative from the Presidency of the Republic, the Prime Minister's office, the Ministry of National Defense, the Ministry of Foreign Affairs, and the Ministry of Interior and Local Communities. A representative from the Ministry of Justice.

Furthermore, the committee is empowered to enlist the expertise of any natural or legal person who possesses the qualifications to contribute to its work and benefit it accordingly

Second section: Functions of the Committee

In accordance with Article 3 of the Presidential Decree and Article 11 of Law 04_23, the National Committee enjoys extensive powers. It is responsible for formulating a national policy and action plan in the field of prevention and combating of trafficking in persons, as well as protecting victims. In this capacity, it assumes the following responsibilities:

_Taking necessary measures to prevent trafficking in persons, particularly through:

_Drafting the national strategy and action plan in the field of prevention of trafficking in persons and presenting it to the government, and ensuring its implementation in coordination with all stakeholders in this field.

_Consulting, cooperating, and exchanging information with associations, national, and international bodies active in this field.

_Ensuring the exchange of information and coordination of efforts among various agencies and entities involved in the prevention of this crime.

_Adopting mechanisms for surveillance and management, as well as

early detection of human trafficking crimes.

_Monitoring and evaluating various mechanisms for the prevention of human trafficking, and proposing necessary measures to enhance their effectiveness.

Assisting in the development of national and international reports concerning the state's efforts to counter human trafficking, in collaboration with pertinent entities...

_Studying international, regional, and local reports related to human trafficking, and taking necessary actions and measures regarding them.

_Coordinating with relevant authorities and entities to ensure protection and support for victims of human trafficking, including the preparation of care and rehabilitation programs to assist victims in their social reintegration.

_Preparation of awareness, educational, and pedagogical programs and activities to introduce human trafficking, its risks, and preventive measures.

_Encouraging collaboration with institutions of higher education and scientific research to conduct research, expertise, and studies in the field of human trafficking, while enhancing national expertise in this area.

_Proposing the review of relevant legislation to ensure its alignment with international commitments arising from ratified agreements.

_Establishment of a committee website for the purpose of disseminating information, studies, and relevant research.

_Compilation of an annual report on the status of human trafficking to be submitted to the President of the Republic.

Conclusion:

In conclusion, it can be stated that Law 04_23 concerning the prevention and combating of human trafficking has been enacted to align Algeria's legal framework with various relevant international treaties and agreements. It falls within a proactive and preventive framework, considering this phenomenon as foreign to our authentic society, thereby strengthening the legal system in this area. The study has yielded several key findings, including:

- 1. The law includes not only simple and severe penalties but also a range of preventive measures, acknowledging the phenomenon as foreign and alien to society.*
- 2. The law enhances the role of the National Committee for the Prevention and Combating of Human Trafficking by developing a national strategy for preventing this phenomenon, presenting it to the government, and ensuring its implementation in coordination*

with all stakeholders in this field.

- 3. Involving civil society in the preparation and implementation of the strategy, raising awareness about the seriousness of this phenomenon, and developing educational programs in coordination with qualified academic institutions.*

Among the recommendations that can be included in this regard:

- 1. The necessity to improve social conditions to prevent the emergence of groups susceptible to trafficking, especially women and children.*
- 2. Organizing national and international conferences to raise awareness about the dangers of this phenomenon.*

Bibliography List:

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2 Article 39 of the Constitution states, "The state guarantees the inviolability of human dignity...Human trafficking is punishable by law..."

3 Law No. 01_09, dated February 25, 2009, amends and supplements Order No. 156_66, which includes the Penal Code, as published in Official Gazette No. 15, dated March 8, 2009.

4 Presidential Decree No. 417_03, dated November 2003, includes the ratification with reservations of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations in November 2000, Official Gazette No. 69, dated November 12, 2000.

5" This definition is identical to the one provided in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

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