

Crimes affecting national economy; "smuggling as an example" which condition under the creation of institutions trusted with safety and fight?
الجريمة الاقتصادية الماسة بالإقتصاد الوطني؛ "جريمة التهريب نموذجاً". أيّ وضعية في ظل استحداث هيئات وقاية ومكافحة؟

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Abstract :

Smuggling is a crime that affects national economy because of intricate impact upon all domains, like a disease that gnaws the state's entity and retards it economically, though countries attempts continuously to fight and eradicate such a crime putting up national strategies , or at least restrain in the face of developing means. and though these countries put national strategies in order to suppress such crime.

In the same context, the lawmaker created anti-smuggling institutions to fight such serious and complex financial crimes that may hazard economic balances.

Keywords: national economy, economic crimes, smuggling, anti-smuggling institutions.

ملخص:

يعد التهريب من بين الجرائم الاقتصادية الماسة بالإقتصاد الوطني لأثاره المتشعبة على كافة المجالات، فهو بمثابة الداء الذي يعرقل كيان الدولة الاقتصادي رغم السعي المستمر للدول للقضاء عليها أو الحد منها أمام تطور الأساليب المستعملة في التهريب، ورغم رصد الدول لإستراتيجيات وطنية الغاية منها قمع مثل هذه الجرائم. وفي ذات السياق أسس المشرع الجزائري هيئات تهدف إلى مكافحة الجرائم الخطيرة والمعقدة وذات الطابع الإقتصادي والمالي، التي تهدد التوازنات الاقتصادية.

كلمات مفتاحية: التهريب، الجرائم الاقتصادية، الإقتصاد الوطني، هيئات مكافحة التهريب.

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I- Introduction:

One of the effects of economic openness is the speed and diversity of transactions, commercial exchanges accompanied by the endless desire for profit with the constant striving of some of those involved in these businesses to evade the various regulators and rules imposed by competition law, and search for shortcuts to practice commercial activities by using indirect methods that take several forms and figures, most notably smuggling.

Smuggling is one of the most widespread economic crimes that affect countries economies, especially the weak ones, due to damage it causes facing efforts made by these countries to protect their productive businesses, especially small and medium ones, which are often emerging institutions that need legal protection expressed by law in fair competition.

Smuggling is their enemy number one .This leads the lawmaker, like others, to create an institutional framework to fight and curb this phenomenon, and protect the national economy. The lawmaker issued legal texts in this field, including the Anti-Smuggling Law No. 05/06, amended and supplemented by Law No. 06/09 of July 15th, 2006, as well as Law No. 79/07 of July 27th 1979 related to law, amended by Law No. 98/10 dated on August 22nd 1998, and delegated, the task of safety and suppression to some institutions created in national areas, primarily the National Anti-Smuggling office and the Economic and Financial Pole, as these laws and institutions undertake.

On this basis, and for the purpose of crime definition and the most important institutions in charge of fight, we pose the following questions:

So as an economic crime, what is meant by smuggling, and what are the most important institutions trusted with fight and safety in order to protect the national economy?

To answer the question, we followed the descriptive one, in line with the nature of the topic, besides the analytical approach, dividing the topic into two main axes, where we devoted the first to study the concept as an economic crime with reference to cause and effect, and the second is assigned to the National Anti-Smuggling office and the Economic and Financial Criminal Pole as institutions in charge of safety and fight.

II - Cognitive basics of smuggling as an economic crime

In this axis, we clarify the most important characteristic that distinguishes the smuggling crime from other ordinary ones, in that it is an economic crime, and therefore we first define it as the framework to which it belongs. Then we define the crime, its types, causes and effects.

II.1. Smuggling as an economic crime:

The phenomenon of smuggling is considered as a crime because it affects the economic balance, and this prompts us to define it and clarify the difference between it and other ordinary ones.

II.1.1. Definition of economic crime:

An economic crime is defined as: "Any act or abstinence in violation of rules made to regulate or protect the state's economic policy, as incriminated offence in this law, or in specific laws: "It is any breach of interest related to the state economy or one of its members, or its proper policy, as for this act is a legal text violation , or any rule provided in law, and whoever breaks what is fixed as an economic crime ,deserves punishment . **(Abdel Hamid, 2009, p. 13)**

The definition of an economic crime in Algerian legislation is mentioned in the first article of Ordinance 66/180 **(Law No 66/180, 1966, p. 54)** , which stipulates: "This ordinance aims to suppress crimes that affect the national wealth, the public treasury and the national economy committed by officials and agents of all titles of ranks subordinate to public institutions, local authorities, public groups, national companies and joint businesses or any private institution that runs a public business or public funds ." **(Louni , 2022, p. 35)**

The French lawmaker considered offences that affect or cause tort to private institutions and individuals funds as economic offences, taking into account their broad social concept.

As for the elements of economic crimes, like others, are like others; material and moral, considering that the crime is the fruit of these two entities, and if one of these is not fulfilled, the crime is dropped **(Filali & Hazzab, 2017, p. 270)**. But due to specific nature of these crimes, they are characterised by specific provisions regarding the material element, which, consequently, means infringing rules fixed in Penal Code.

The difference between economic crime and others is that most of them are included in the category known as formal crimes whose material element does not require the reaching of the intended result from the very beginning of the crime. Formal crimes do not need a result to be achieved; the attempt is equal to full crime. These are known as hazardous crimes, for which case of risk concerning the right or interest subject to criminal protection, is enough. **(Ben Klela , 1997, p. 111)**

II.1.2. Smuggling offence

Different laws have incriminated smuggling due to its negative effects on the national economy. What is meant by smuggling linguistically and idiomatically and how is it defined by law?

A- Smuggling linguistically and idiomatically

Smuggling is originally the source of the verb smuggle, from making him smuggle forbidden things, transporting them secretly from one country to another or from one place to another.

As for the term smuggling, it means bringing goods into the country clandestinely, either because they are prohibited, or to evade tax payment. **(Gomes , 2024)**

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B- Smuggling, Jurisprudentially and legally

B-1- Jurisprudential definition of smuggling:

Many lawyers have reservations on giving a definition to this crime. It is timeless, as is the case with ordinary ones, such as those against persons, property or public morals, for two reasons; the first is that the violation of the state's economic policy is not considered a crime at all times unless the lawmaker names it so, and fixed a penalty, as most violations of economic regulations result only in civil or administrative responsibility in which the breaker is bound to pay a sum of money unlike fees and penalties. **(Ben Tibi , 2011, p. 121)**

And the second consist in that violating the state's economic policy, and the latter varies from one system to another, and may even differ in two countries that adopt the same system.

According to Professor Abdel Hamid Al-Shawarbi, smuggling is "the introduction of goods into or out of the national territory in violation of law, where it consist in goods that are everything that can be traded, whether they are taxable or taboo products, or they are not submitted to terms of value». **(Bahia , p. 36)**

B-2- Legal Definition

According to the World Customs Organisation, customs smuggling is defined as a customs offence related to the illegal cross-border passing of goods to evade public treasury. **(Abdelrahim , p. 56)**

Meanwhile the French lawmaker defined smuggling in Article 417 of Customs law as "the import and export of goods outside customs offices, as well as any violation of legal or regulatory provisions relating to the possession or transport of goods outside the customs territory".

Our lawmaker did not define smuggling in Ordinance 05/06, **(Order, 2005)**

on fighting smuggling, unlike ordinance in Customs law no 79/07, dated on July 21st ,1979 as amended and supplemented, which defined smuggling in Article 324 as follows: "to carry out the repressive provisions, customs smuggling means the following:

- Importing or exporting goods outside the customs offices
- Breaking the statutory provisions mentioned in Articles 25, 51, 60, 64, 221, 222, 223, 225, 225, 225 bis and 226 of this law.
- discharging and shipping goods fraudulently.

- diminishing goods placed under the transit system.

As for Smuggling Law No 05/06, Article 2 stipulates:" The acts described as smuggling in the customs legislation and regulations in force as well as in this Ordinance."

It is noticeable that the lawmaker did not give a definition to customs smuggling, but defined the physical act of the offence. This is on one hand .on the other, we can record an observation related to the text of Article 324 of the Customs law, in terms of content, as it appears that the wording of the article in its second section is linguistically incorrect because the use of the conjunction (and) does not make sens intended by the lawmaker, as this section in its current wording means that all the above-mentioned articles are violated together in order to commit the offence of customs smuggling, while the lawmaker should have used the conjunction (or) to separate the articles instead of the conjunction (and) . **(Ali Hachem Yousfat, 2014, p. 193)**

As for goods that may be subject to smuggling, Article 02 (c) of Ordinance 05/06 set forth in its definition of the term goods that all commercial or non-commercial products and objects, and in general all things that can be traded and owned, which is the same definition provided in article 05 of Customs Law, which indicates that everything outside the circle of commercial dealing is not considered goods, which is the same path adopted by the Supreme Court where drugs, cattle, jewellery and means of transport **(Court & Supreme)** , are considered goods and no matter how few or not they are.

Any goods within the meaning of Customs law in which is the violation is considered smuggling, in addition to the goods listed in Ordinance 05/06, including:

Hydrocarbons and fuels, grains, flour and milled materials, foodstuffs, livestock, marine products, alcohol and tobacco, pharmaceuticals, commercial fertilisers, antiques, artefacts, explosives, weapons. according to Article 10 and 14 of Ordinance 05/06.

With reference to some Arab legislations, we see that they have adopted the same principle as the lawmaker by not defining smuggling as an economic crime in itself and stipulating only the cases and acts that constitute a violation.

of customs law, in line with some legislations such as the Unified Gulf Law, where Article (142) defines smuggling as "the introduction or attempt to introduce goods into or out of the country in violation of legislation in force without paying customs taxes in whole or in part, or in violation of the prohibition or restriction provisions provided in this system "law», and other regulations. **(Council & Gulf Cooperation)**

II.2. Forms and Types of Smuggling

Smuggling as a violation of customs legislation takes several forms and types:

II.2.1. Forms of smuggling:

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A- factual smuggling:

It means any importation of any goods within the meaning of customs law or exporting them outside the customs office.

B- Smuggling by the force of law:

is a set of situations and acts that the lawmaker considers smuggling according to law, such as taboo products seized within the customs area - whether absolute or partial prohibition - or goods subject to restrictions at customs for commercial purposes without justification by documents.

or high duty goods. The purpose of smuggling is to violate the absolute or partial prohibition imposed by law (**Raad Mohammed , 2015, p. 43**) . Smuggling may take two forms: mass or individual:

C- Mass smuggling:

It involves large quantities of goods, often specific types of goods, and is usually done by organized gangs.

D-Individual smuggling:

It is the act of a single person or separate persons, whether seafarers, ship and aircraft workers, travellers, etc. It usually applies to all goods without distinction and takes place at all borders and by all possible means and is less serious than mass smuggling.

The importance of distinguishing between these two types seems to be based on the fact that there may be evidence of intent to traffic in the case of mass smuggling, as it is proven that this intent consists of a set of elements such as the quantity, type and goods value. (**without & author, 2010**)

II.2.2. Types of smuggling

Smuggling activities can be practiced in the customs territory as well as in the customs zone. (**Abdelrahim & Nadia, p. 58**) The customs zone refers to a special surveillance area along the maritime and land borders. (**law & 05/06.**)

According to Article 29 of Customs Law, the customs zone consists of the following:

A- The maritime zone:

It consists of the territorial waters defined as 14 miles calculated from the shore and the area lying near the territorial waters, which is an area beyond the territorial sea of 12 miles from the margins of the territorial Sea towards the open sea.

B- Land zone:

It extends from the maritime borders from the coast to a line drawn at 30 kilometres and on the land borders from the customs territory boundary to a line drawn at 30 kilometres, but Article 29 of Customs Law in its second section extended the depth of the customs area to 60 kilometres and extended the distance to 400 kilometres in Adrar, Tindouf and Tamanrasset, considering that they are border areas where smuggling is very active.

C- Cross-border smuggling:

It is one of the most common types of smuggling, as it is done by crossing or entering the territory of a foreign country without authorisation, usually between the borders of common countries without any border separations, whether natural or artificial.

D- Smuggling through ports, airports and customs stations:

This type is classified as lesser than cross-border smuggling, as the smuggler adopts the method of hiding unauthorised items that require certain procedures in order to make entering or exiting them, such as those that exceed a certain amount, as is the case with foreign currencies, and are often discovered by customs personnel Finally, with the introduction of X-ray detectors, this phenomenon has receded somewhat, as the fines recorded in Algeria within the framework of change violations and the movement of capital through airports to and from abroad, decreased of 24% in 2020, with a value of more than 42 billion AD compared to 52.3 billion AD in 2019 (**Algerian customs statistics, 2024**).

II.3. The reality of smuggling in Algeria:

Algeria's geographical location and vastness, in addition to its openness to the sea, have helped to spread this phenomenon, especially in border areas, which are either mountains, forests and valleys, or desert areas with dense sand dunes where it is easy to hide, in addition to affecting the work of anti-smuggling officers and their opportunities for control, as it opens the way for smugglers to seize great opportunities to survive with their contraband goods. (**website., s.d.**)

According to recent statements (statistics) of the National Gendarmerie, smuggling has been growing over the last ten years in maghnia, and while the two phenomena have been known for the last three decades, they have taken an exponential turn over the last nine years, as maghnia region has come to absorb, due to its specificity as a region lying near to the Algerian-Moroccan border, an estimated amount of materials of tens of billions smuggled annually outside the country.

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It also attracts thousands of Africans, Asians and Europeans amid rugged paths and a close-knit urban fabric, which many consider to be a pivot point and extraordinary circumstances for smuggling and migration groups.

The inhabitants of border areas, especially mountains, forests and valleys, and because they are familiar with the ways and roads leading to borders of neighbouring countries, usually participate and cooperate in all matters of life. Due to the importance of this aspect, the population exchanges goods through smuggling, intentionally or unintentionally.

Smugglers often operate at night to escape control by switching off vehicles lights and taking advantage of all the circumstances due to the changes in climate, weather, seasons, and relief that can affect Smuggling movements are more likely to be tracked whenever there is volatility and difficulty in nature, and vice versa.

The statistics, revealed on the occasion of the World Customs Day in Algiers, showed an increase in the number of smuggling cases from 3594 cases in 2019 to 4693 cases in 2020, i.e an increase of 30 per cent.

While change violations decreased from 661 in 2019 to 504 in 2020, due to imported goods decrease on the one hand. And customs unduly severe surveillance on the other. **(APS, s.d.)**

II.4. Smuggling phenomenon: Causes and effects

Before addressing the most important reasons that lead people to engage in smuggling, either individually or by joining specialized groups, usually professional, we thought we would briefly refer to the reality of smuggling in Algeria.

II.4.1. Causes of smuggling:

investigating causes and motives of smuggling draws the researcher to talk about many overlapping and interrelated motives, some of which are social, some are economic, and some are political, that we will point out the most important reasons that are often reasons that often motivate this crime:

- making easy profit.
- Unemployment and lack of a source of livelihood in light of high costs and the absence of solutions.
- connivance and cover-up by some customs workers or border guards.
- Desire of some countries to affect other economies.

- The absence of the role of civil society in fighting crime via cases reporting and sensibilising on how well it is hazardous for economy.
- High rates of customs duties compared to neighbouring countries, especially those with which we have customs agreements.
- Lack of transparency, simplification and clarity of procedures
- Absence of economic factor in Customs work Department, which is predominantly of characterised by taxes, despite that policy is a purely economic, additionally a tool for creating treasury resources.
- The low wages and low allowances (grants) for customs officers, make the temptation towards corruption irresistible.

II.4.2. Effects of Smuggling

The effects of customs smuggling are most evident in the two vital spheres of the state, namely financial and economic. Smuggling plays the role of wasting rights and resources of public treasury, contributing to disrupting foreign trade as well as impeding the state's productive system, and creating imbalances in monetary mass, as also runsdries public treasury resources, affects covering state's expenses, and fullfiling its obligations.

This depletion may even extend to compromising the various roles played by the state in the social welfare of its citizens through subsidies contributions, which necessarily leads to deprivation of individuals from services provided because of smuggling crime. (**Hussein Awadallah, 1998, p. 188**)

States also work to protect their emerging industry by preventing smuggling and restricting foreign goods and products incoming, given that industry is to cost and must be protected and safeguarded without tort. (**Mahmoud Ahmed & Jaber Elsayed, 2020, p. 18**)

Smuggling often spoils the state plans to protect the national product, by introducing goods and merchandise into the territory without paying legally customs duties. They will then be sold at low prices, albeit slightly lower than goods of national origin, which makes the consumer buy it and prefer it with conviction of its quality, which negatively affects and harms the manufacturing enterprises and may end up in bankruptcy. In the same context, we indicate the role of the consumer's conviction that everything coming from overseas is qualitative, which makes matters worse.

Besides the financial and economic aspect, we find that smuggling contributes directly to harming health, i.e. public health, through incoming goods, especially foodstuffs that do not fit for purpose and are not taxable.

Consequently, these goods and foodstuffs may often not conform to standard specifications, without forgetting medicines, medical drugs, cosmetics and others that are introduced through

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smuggling because they are not registered by the Ministry of Health, which cause many epidemic diseases for humans, animals or plants. (website, 2023)

The lawmaker has taken safety measures to forbid smuggling offences, starting with the definition of the customs zone in Article 2 of ordinance 05/06 on fighting smuggling, similar to Article 28 of Customs law, and the full powers granted for the customs administration within this zone and even outside it in some cases in order to prevent customs offences, mainly smuggling.

III. Organizations in charge of fighting smuggling

The lawmaker has put up a national strategy based on fighting everything that affects the integrity of the national economy through the creation of institutions that seek to prevent and suppress all forms of smuggling, the most important of which are the National Anti-Smuggling office and the Economic and Financial Criminal Division.

III.1. The National Anti-Smuggling office

The National Anti-Smuggling office was created as a public institution of an administrative nature with legal personality and financial autonomy according to Article 06 of Ordinance 05/06 on suppressing smuggling.

As for the custodial authority to which it is subject, it was initially under the authority of the Prime Minister, but after the amendment of Ordinance 05/06 by ordinance No. 06/09 of July 15th 2006, it was assigned to a custodial authority, until the issuing of the Executive Decree No. 06/286 dated on August 26th 2006 defining the organization and functioning of the National Anti-Smuggling office, which clarified that its custodianship is under the authority of the Minister of Justice, bearer of the Seals, according to Article 02/02, and its headquarters are located in Algiers.

Its main mandate is to prepare a national action programme to suppress and prevent smuggling, ensure the coordination and follow-up of the activities of the various intervening actors in the field of safety and control of smuggling, and propose measures to promote and develop international cooperation.

The Office also briefs annually the Minister of Justice, bearer of the Seals about the activities and measures taken, as well as the shortcomings identified and propose appropriate recommendations.

III.2. Economic and Financial Criminal Division

Article 211 bis of the amendment to the Criminal Proceedings law by Decree No. 20/04 (**ordinance & 20/04, 2020**) stipulates: "A national criminal pole specialized in fighting economic and financial crime shall be created and located In the capital where in law court."

The most complex economic and financial crimes refer to crimes that, due to the multiple actors or partners involved, the geographical extent of the crime, the serious damage caused, the organized or transnational nature of the crime, or the use of information and communication technologies in its committing, require the use of special investigative techniques, specialized technical expertise or international judicial cooperation. (**Ordinance & 20/04**)

The Economic and Financial Criminal Division (**Ordinance & 20/04**) is trusted with researching, investigating and adjudicating economic, financial and related crimes. The last section of Article 211 bis 02 mentions a number of articles from Ordinance 05/06 on fighting smuggling, which includes a number of offences that fall within the specific jurisdiction of the Economic and Financial Criminal Division.

The law grants the Public Prosecutor at the E. F. C. D, as well as the examining magistrate and the President of the Division, the right to use their powers and authorities under jurisdiction in terms of fighting economic and financial crimes.

This is due to the seriousness and nature of these crimes, and what present as a dangerous threat to the national economic security, according to Article 221 bis 01 of Ordinance 20/04.

Accordingly, the Financial Criminal Division is a judicial mechanism that exercises territorial jurisdiction at a comprehensive local level and deals qualitatively with financial and economic cases of a serious and complex nature (**Hamel & Yousfi , 2021, p. 882**)

IV. Conclusion:

The lawmaker has incriminated smuggling through Customs law and ordinance No. 05/06, and has worked through various institutions to control and fight smuggling in all its forms and types, although it did not explicitly define it and what constitutes as a threat to the national product. However, the customs policy is mainly based on protecting the national economy by providing necessary mechanisms for institutions and products and ensuring its development. On this basis, a national strategy based on the prevention and suppression of everything that may constitute criminal offences, has been developed. nevertheless, this strategy, though its positive aspects, still remain some shortcomings, such as the legal duality in the suppression of this offence, which is defined in the Customs law and punished in another text, i.e Smuggling Law (05/06), raising many questions from the legal point of view and from carrying out provisions.

As the circumstances suggest, it is absolutely necessary to:

- sensibilibize and make aware of smuggling hazards and appropriating legal tools and mechanisms to face it.

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- rouse civil society to fight smuggling via cases reporting.
- Be bound to continuous and intensive surveillance to face smuggling, particularly in border areas.
- combine efforts to contribute to providing comprehensive economic development and creating jobs for the unemployed as anti-smuggling mechanisms.

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