Special investigation techniques and their role in combating human trafficking offences under Algerian law

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Abstract:

Human trafficking is one of the most serious crimes affecting individuals and societies, with repercussions that transcend national borders and sovereignty. It has become a threat to national and international security and human rights. In order to combat this crime, the Algerian legislature enacted Law 23-04 on the prevention and combating of human trafficking, which provides for the adoption of special procedures, methods and techniques for investigating and detecting this crime.

This research paper aims to define this crime according to Algerian legislation, then it will touch upon the modern

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techniques and methods, as well as the procedures adopted by the Algerian legislator within the framework of the Algerian Code of Criminal Procedure to combat this type of crime. It will then examine their effectiveness and the issues that may arise in this context.

Keywords: special techniques; innovative methods; investigation and inquiry; human trafficking crimes; Algerian legislation

INTRODUCTION

Human trafficking is considered one of the most dangerous crimes known to humanity due to its association with transnational organised crime, which poses a threat to global, regional, and national security alike. It is also linked to other crimes such as illegal immigration, human smuggling, drug trafficking, and cybercrime. On one hand, its danger lies in the degradation of human dignity, reducing individuals to commodities that can be bought, sold, and negotiated, subject to the law of supply and demand. On the other hand, this crime is often committed by organised criminal gangs with an international character, but it is not uncommon for it to be perpetrated by domestic criminal groups as well, leading to the existence of both domestic and international human trafficking crimes.

Criminals committing this type of crime also exploit modern technology to carry out these offences, particularly the internet and various social media platforms. These technologies are used to communicate with clients as well as to display the individuals being

trafficked, especially women and children. Thus, human trafficking is practiced on a wide scale, and all countries are concerned with it, albeit to varying degrees. Many researchers point out that it is impossible to enumerate the forms and manifestations that human trafficking can take. However, they simultaneously affirm the multiplicity of these forms and manifestations and their continuous evolution at an accelerating pace due to technological advancement and the information revolution, In light of the development and promotion of tourism and the increasing reliance of many countries on it in their economies, especially sexual tourism, which many countries either encourage or turn a blind eye to due to its substantial profits given the high demand for it, the United Nations has sounded the alarm and called on countries to take necessary measures to put an end to human trafficking in all its forms. It has also urged the establishment of national mechanisms and the facilitation of international cooperation at all levels to monitor it, through the adoption of the Palermo Protocol of the Convention held on November 15, 2000 , related to the fight against human trafficking, and using it as a reference for this cooperation.

Therefore, it was necessary to keep national legislation in line with the developments in the world of crime fighting. The Algerian legislator sought to update the Algerian criminal law system to align with the new data in this framework by defining and specifying this type of crime and imposing penalties on its perpetrators. Additionally, new procedures and methods for

investigating and enquiring into such modern, complex, and dangerous crimes were introduced.

This was reflected in the procedural framework through the introduction of new procedures in the Algerian Code of Criminal Procedure since 2006 with Law 06-22, which amended and supplemented the Algerian Code of Criminal Procedure. This was further solidified with the issuance of the new version of the Code of Criminal Procedure under Law No. 25-14, issued on August 3, 2025, which includes the Code of Criminal Procedure.

In the substantive context, the Algerian legislator moved to establish a fifth section in the Penal Code titled "Human Trafficking" under Law 09-01, which amends and supplements the Penal Code. This was further detailed by the introduction of an independent law complementing the Penal Code, specifically for the prevention and combat of human trafficking under Law 23-04 dated May 7, 2023.

Our research paper addresses, in its first section, the substantive framework of human trafficking crimes in Algerian law. In the second section, we delve into the procedural framework for preventing and combating these crimes according to the Algerian Code of Criminal Procedure. This is in pursuit of answering the following question: **What are the Algerian legislator's approaches to combating human trafficking, what modern techniques, methods, and procedures has the Algerian legislator adopted in this regard, and how effective are they?**

Section One: The Subjective Framework for Combating Human Trafficking in Algerian Law

In the first section of our study, we address the substantive framework of human trafficking in Algerian legislation. We first discuss the concept of human trafficking, and then we move on to differentiate between human trafficking and similar crimes in concept, such as the crime of smuggling illegal migrants.

First: The concept of human trafficking:

Many national legislations have addressed the definition of human trafficking, as have legal scholars and researchers. It seems that the Palermo Protocol related to combating and preventing human trafficking, especially of women and children, which complements this convention adopted by the United Nations, is the international as well as national basis for combating the crime of human trafficking, particularly concerning international cooperation to contain and eradicate this crime. Given that it crosses borders, it is an international crime, and thus its danger is no longer limited to certain countries. Additionally, to curb the activities of

international and local gangs specialised in this type of crime that violates human rights, it is necessary to first address the protocol's definition of the crime of human trafficking, which defines it as follows: Recruiting, transporting, transferring, harbouring, or receiving persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or exploitation of a vulnerable situation, or by giving or receiving payments or benefits to obtain the consent of a person or to control another person for the purpose of exploitation, which includes at a minimum the exploitation of prostitution, other forms of sexual exploitation, forced labour, or services. Slavery or practices similar to slavery, or servitude or organ removal.[1]

For its part, the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 defined human trafficking in Article 4 as: the recruitment, transportation, transfer, harbouring, or receipt of persons by means of the threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power, or exploitation of a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of

a person, or to control another person for the purpose of exploitation, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.[2]

As we mentioned in the introduction to our study, this type of crime has characteristics that distinguish it from various traditional crimes. One of the most important characteristics of human trafficking is that it is a transnational crime, and its stages of commission and effects extend beyond the borders of a single state. This is considered by legal scholars as a fundamental reason for the internationalisation of criminalising this type of practice. Most legislations have sought to criminalise it either through independent legal texts or by updating the penal code with new legal provisions that criminalise this type of act.

In this regard, we find that the Algerian legislator has adopted this approach by introducing a new section in the Penal Code called human trafficking, which includes the provisions of articles from 303 bis 4 to 303 bis 15, criminalising acts and practices associated with human

trafficking within Law 09-01, amending and supplementing the Penal Code[3]. Furthermore, due to the rapid evolution in the forms, methods, and techniques of committing this type of crime, the Algerian legislator has recently criminalised it and intensified the penalties for its perpetrators by enacting a specific law that criminalises and punishes acts and behaviours considered human trafficking, as reflected in Law No. 23-04 concerning the prevention and combating of human trafficking.[4]

According to Article 2 of the aforementioned law, the Algerian legislator defined human trafficking as: any recruitment, transportation, transfer, harbouring, or reception of one or more persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position, exploitation of a vulnerable situation, or by giving or receiving payments or benefits to obtain the consent of a person in authority over another person for the purpose of exploitation.

Exploitation particularly includes the exploitation of others in prostitution or other forms of sexual exploitation, the exploitation of others in forced labour or

service, slavery, practices similar to slavery, or organ removal.

Human trafficking also includes giving or receiving money or benefits for the sale, delivery or acquisition of a child for any purpose and in any form.

The use of any of the means specified in the first paragraph above is not required for human trafficking to occur with regard to a child, as long as the intention to exploit the child is present.[5]

Based on the above, it can be concluded that human trafficking is based on three elements: the commodity, which is the human being; the intermediary, which is the trafficker; and the market. It takes many forms and shapes, and criminals use various methods to deceive and trap their victims, including exploiting their vulnerability, threats, fraud, etc. Through this crime, victims, who are often women and children, are exploited. The most important feature of this crime is the lack of consent on the part of the victims, unlike some other crimes such as prostitution, organ trafficking, and other crimes in which the victim may consent and contribute to the commission of the crime.[6]

Second: Distinguishing the crime of human trafficking from similar crimes

One of the most closely related crimes to human trafficking is the smuggling of illegal immigrants, as the latter is considered the source and supply of the raw material for the former crime. Most of the victims of human trafficking are illegal immigrants who are smuggled across various borders by various means and methods.

The two crimes are often confused because of the overlap between them, as mentioned above, since illegal immigrants are usually trafficked during their smuggling or when they are delivered to their destination or target countries. The truth is that each crime stands on its own, with different elements, and distinguishing between them allows for the adoption of procedures, mechanisms and measures appropriate to the nature of each, particularly with regard to victim protection measures. Therefore, the most important similarities and differences between the two crimes will be explained as follows:

A- Similarities:

1- In both crimes, i.e. human trafficking and migrant smuggling, human beings are transported from

one place to another with the aim of obtaining financial returns or beneficial slaves. Thus, both crimes are committed against a human being, and not only that, but a living human being. We are not dealing with migrant smuggling or human trafficking unless it involves a living human being.

2- The crime of human trafficking can be considered a type of migration when a person or victims are transported from one country to another.[7] It should be noted that this transport from one country to another or crossing borders does not change the classification of human trafficking as smuggling of persons. Rather, we are dealing here with internal trafficking and international or transnational trafficking.[8] This is because both human trafficking and migrant smuggling are separate offences in terms of their constituent elements, and even if human trafficking involves crossing the borders of more than one country, this does not mean that the offence can be equated with the offence of migrant smuggling, as there are fundamental differences between them.

However, the crime of smuggling migrants can become human trafficking if the smuggled migrants are exploited for trafficking. This requires accurate information about the victim and the circumstances of the crime in order to determine whether it is a crime of smuggling migrants that has become human trafficking or whether it is primarily a crime of trafficking. It can also be argued that the subsequent exploitation of smuggled migrants can be considered an aggravating circumstance and does not change the crime to human trafficking, although the United Nations considers that migrants who have been smuggled and subsequently exploited are considered victims of human trafficking.[9]

According to a United Nations report, human trafficking is usually influenced by migration issues and their consequences, as well as issues related to migrants, who are all people on the move. including refugees and other migrants, especially those who move illegally. Victims of trafficking are not usually trafficked from the

outset, but may become victims of trafficking during their migration journey, upon arrival at their destination or target countries, or even in transit countries. We are often dealing with smuggling of people who wish to migrate, but during the smuggling journey or upon arrival in transit countries or destination countries, they become trafficked persons. This becomes clear when they are exploited in forced labour or prostitution, their rights are completely restricted, and their dignity is violated. In this case, the crime changes from smuggling of migrants to human trafficking.[10] However, this is difficult to enforce because it depends on accurate information provided by the victims, especially smuggled migrants.

3- The two crimes are also similar in that both are international and national crimes and are punishable.[11]

4- There are certain motives, factors and causes, such as poverty, family breakdown, widespread corruption, unemployment and the desire to improve economic conditions, and internal and

international armed conflicts that lead to the commission of both crimes,[12] meaning that there is an overlap between the two crimes due to the unity of the factors leading to them. However, the United Nations considers that migration, whether regular or irregular, contributes to the growth of human trafficking.[13]

5- The two crimes are also similar and are often confused, as trafficked persons and smuggled migrants are victims, which means they are not held criminally accountable. This is at least from the United Nations' point of view, as Article 5 of the Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 Palermo Convention, stipulates that smuggled migrants cannot be criminally prosecuted The same applies to victims of trafficking who are considered victims under the text of Article 6 of the Palermo Protocol against Trafficking in Persons, Especially Women and Children,[14] which the Algerian legislator did not take into account, as it stipulated that victims of human trafficking should not be held accountable.

As for irregular migrants, they are punished under Article 175 bis 1 of the Algerian Penal Code.

B-Differences :

1- The crime of human trafficking does not involve the consent of the victims, i.e. the lack of the element of consent. If there is consent, it is not taken into account or paid attention to, because luring victims of trafficking is done through methods of deception, evasion, kidnapping, the use of force, etc. As for the crime of migrant smuggling, it involves the consent or satisfaction of the migrants, as evidenced by their payment of sums of money to smuggling networks with the aim of transporting them to the targeted or receiving countries Noting that the consent of the person to be smuggled does not necessarily mean that he agrees to the abuse and humiliating treatment that affects the dignity that may befall him during and after the smuggling operation.[15]

2- The crime of human trafficking is divided into two types: an internal crime that takes place within the state's borders, and an international or transnational crime. As for human smuggling, it

cannot be imagined that it would be committed within the state's borders, but rather it is always cross-border in nature.[16]

3- The proceeds of human trafficking come from exploiting victims in prostitution, forced labour, organ sales or other means. In the case of migrant smuggling, the proceeds are the fees paid by the smuggled migrant or their family to the organisers of the smuggling operation to enable them to enter the destination country.[17]

4- The elements of the crime of human trafficking are the material element, which is oppression, coercion, fraud, or kidnapping, and the moral element, which is the exploitation of the trafficked person in a criminal act under the concept of forced labor. As for the smuggling of migrants, the material element is the ability of the person to enter the territory of a country that he is not authorized to enter, or that he is not authorized to enter except by fulfilling specific procedural elements and conditions, without there being subsequent exploitation.[18]

The second Section: The procedural framework for combating the crime of human trafficking in Algerian law

In the second part of our research paper, we address the procedural aspect of combating human trafficking, as the Algerian legislator has dedicated specific methods and techniques for it in the Code of Criminal Procedure, introduced by Law 06-22 dated December 23, 2006, which amends and supplements the Algerian Code of Criminal Procedure.

The Algerian legislator, under the aforementioned law, introduced two new chapters within the second section of the first book of the Code of Criminal Procedure. The fourth chapter was titled "On Interception of Correspondence, Recording of Voices, and Taking Photographs," while the fifth chapter was titled "On Infiltration."

It is also worth noting that under the same law and in accordance with the following articles: 16, 36, 44, 45, 47, 63, 64, the Algerian legislator has respectively expanded the powers of investigation and inquiry for judicial police officers, the powers of prosecution for the public

prosecutor, and the powers of investigation for investigating judges in crimes considered to be of a special nature, including human trafficking.

In this section of our study, we will focus on the most important modern methods and techniques for investigating and enquiring into the crime of human trafficking, which were established by the legislator under Law 06-22 mentioned above and recently endorsed and enshrined by Law 25-04, which includes the new Code of Criminal Procedure.

First: The method of intercepting correspondence, recording sounds and taking pictures:

A - Intercepting correspondence:

Under Algerian law, intercepting correspondence (whether paper, electronic, or telephone) is an important means that judicial authorities can use to combat serious crimes, such as human trafficking. This method has been regulated within the Algerian legal framework in a way that achieves a balance between protecting the rights of individuals (privacy of correspondence) and ensuring the effectiveness of criminal investigations.

1- The legal basis for intercepting correspondence in Algerian law: The method of intercepting

correspondence relies on the following texts: the texts of the Algerian Code of Criminal Procedure (formerly Ordinance No. 66-155, amended and supplemented) and currently Law 25-04, where Articles 114 and the following stipulate the following[19]: "If the necessity of investigation in the crime in flagrante delicto or preliminary investigation in intentional homicide, drugs and psychotropic substances, organised crime across national borders, crimes related to information and communication technology, money laundering and terrorism, crimes related to foreign exchange legislation and the movement of capital to and from abroad, corruption crimes, human trafficking crimes, and kidnapping crimes, the competent public prosecutor may authorise the following:

-Interception of communications conducted through wired and wireless means, ...

This procedure is permitted in serious or urgent cases, provided that there is a justified judicial authorisation. Additionally, resorting to this procedure is only for the purpose of investigation

or inquiry into serious crimes specifically mentioned by the legislator in the above article.

Since the use of intercepting communications in combating human trafficking often occurs through organised networks that use communication means to coordinate their operations (such as luring victims, transportation, threats, etc.), intercepting communications is considered an effective tool in:

• Uncovering criminal plots.

• Identifying the members of the network.

• Collecting technical evidence against the accused.

• Avoid committing or completing crimes.

In order to balance individual rights and freedoms with the public interest of society, the Algerian legislator emphasized respect for the legal guarantees accompanying the use of this method, which are:

• The necessity of a reasoned and temporary judicial authorization.

- Implementation of the objection under direct judicial supervision.
- Do not use information except to the extent that serves the investigation.
- The possibility of challenging the legitimacy of the objection if it takes place outside the legal frameworks.

B - Recording sounds and taking pictures:

Voice recording means recording secret oral conversations, whether in a public or private place, that take place between people suspected of committing crimes or engaging in a serious criminal organization, while taking pictures means taking pictures of a specific individual or individuals on suspicion of committing a serious crime, without their knowledge and without their consent.[20]

In order to record voices and take photographs, the law requires permission from the public prosecutor. This special procedure is used in crimes specified by law and classified as serious, namely those crimes referred to in Article 114 of the aforementioned Code of Criminal Procedure. This is done during the investigation and inquiry stages, and requires the permission of the public

prosecutor, who is responsible for supervising the process, in order to be able to enter premises outside of legal hours and without the knowledge or consent of the owners of these premises. During the investigation stage, permission is granted by the investigating judge and under his direct supervision. and is carried out within a maximum period of four months, which may be renewed as required by the investigation or judicial inquiry. The authorisation allows for the use of any qualified assistant from a public or private service, unit or body responsible for wired and wireless communications to take care of the technical aspects of the operations, as well as a translator to translate calls made in foreign languages. The judicial police officer who granted the authorisation to take this measure shall be required to draw up a report on the operation carried out and on the technical arrangements and the audio or audiovisual recording made. The judicial police officer shall also copy any correspondence, images or recorded conversations that are useful in establishing the truth onto a report to be filed with the case file.[21]

It is noted that these measures can affect individuals' right to privacy, and therefore it is necessary to resort to

them when absolutely necessary, and it is necessary to find mechanisms that balance taking these measures with the right to privacy.[22]

Second: Infiltration method:

Some classify infiltration into two types: normal infiltration and electronic infiltration. Normal or traditional infiltration refers to a police officer or police assistant infiltrating a criminal gang or joining it as an active member or partner in crime, as if he were a member of the criminal organisation, in order to expose the members of the criminal organisation and everything related to their criminal activities and to gather evidence to convict them.[23] The legislator has previously addressed in Articles 56 bis 11 to 56 bis 11 of the Code of Criminal Procedure how this procedure is to be taken in certain crimes, including the crime of human trafficking provided for in Article 36 of Law 23 -04 on the prevention and combating of human trafficking, to use these special and innovative methods in the investigation and detection of human trafficking crimes, including this measure,[24] which was approved and confirmed in the recent text of the Code of Criminal Procedure under Articles 120 to 127, which confirmed

that the same measures should be taken in relation to this crime.

In order for the evidence obtained from the leakage process to be acceptable and legitimate and to be adopted, the Algerian legislator stipulated that permission must be obtained from the competent public prosecutor, so that the process takes place under his supervision and oversight. However, if the case has been referred to the investigating judge and he wants to resort to this mechanism, he must notify the public prosecutor, after which he must grant written permission to the judicial police officer who is responsible for the leakage, provided that his identity is mentioned in it This permission must be written and reasoned, or it must be invalid. That is, the permission must state the crime for which the leak will be committed and the identity of the police officer under whose command or responsibility the operation is being carried out. The duration of the leak must be specified, which the Code of Procedure stipulates does not exceed four months.[25]

The Infiltration procedure can be carried out according to what the investigation or inquiry process requires, provided that it is carried out under the same formal

conditions, and temporality, although this process can be stopped by the judge who authorized it to be carried out at any time, even if the legal period specified for it has not expired, and the license is deposited in the procedures file after the completion of the Infiltration process, and this is what was previously decided by Article 65 bis 15 and Article 124 currently of the Code of Criminal Procedure.

In addition to the normal leak organised by the above-mentioned materials, which can be resorted to by the judicial police officer, Article 23 -04 on the prevention and combating of human trafficking,[26] the possibility of using electronic surveillance in this newspaper by accessing the information system or electronic communications system to monitor those suspected of committing the crime of human trafficking. In order to resort to this procedure, the law requires that certain conditions be met, namely obtaining authorisation from the public prosecutor or the investigating judge after notifying the public prosecutor, and that the judicial police officer conducting the electronic surveillance does not engage in any conduct or behaviour that could incite

the commission of a crime in order to obtain evidence against them, as required by Article 32 of Law 23-04.[27]

What can be noted and adopted as a special opinion about the normal leakage regulated by the Code of Criminal Procedure is that its procedures are somewhat complex and require the selection of experienced, competent elements with a high ability to adapt to criminal gangs and deal with them as if he were a member with them without discovering his secret, and its implementation is also subject to some difficulties, especially with the possibility of the leaking element discovering something that exposes him and his family's life to danger There are also no practical mechanisms to protect the leaked element during the operation in the event that his secret is discovered, as well as to protect his family members. As for the electronic leak, it raises the problem of electronic privacy, which should be guaranteed and protected for individuals.

Conclusion:

It is noted that human trafficking is considered one of the most dangerous crimes because it affects human rights and is often committed by transnational organised crime

syndicates. In fact, it is arguably one of their most prominent activities that yield substantial profits. Given that these syndicates have a well-structured organisation and possess characteristics that make them difficult to infiltrate, and that they exploit modern technology and expertise in various fields to commit their crimes, combating them requires measures that are commensurate with their nature, especially during the investigation phase. This is what the Algerian legislator has taken into account. Through this research, I have reached conclusions summarised in the following points:

- Human trafficking is considered one of the most dangerous crimes that affect the security of nations and human rights. It is a global problem and a continuous crime, divided into two types: domestic human trafficking crimes and international human trafficking crimes.

-The crime of human trafficking differs from the crime of smuggling migrants, or as some researchers call it, the crime of human smuggling. The importance of distinguishing between them lies in developing mechanisms to combat each crime appropriately and establishing victim protection mechanisms that suit each

crime. Additionally, differentiating between the two crimes allows for a better understanding of the nature of each crime.

The Algerian legislator criminalised human trafficking under Law 09-01, which amends and supplements the Penal Code, and reinforced this by enacting Law 23-04 related to the prevention and combating of human trafficking. The Algerian legislator has given importance to the investigation phase of human trafficking crimes, as it stipulated the possibility of resorting to special and innovative techniques in investigation that are appropriate to the nature of the human trafficking crime, which is often committed by organised criminal groups that rely on secrecy and concealment of their crimes, and use force and threats against their victims and even against members of the organisation, as previously mentioned.

- Despite the importance of these technologies, traditional infiltration is particularly difficult to implement in reality as it exposes the infiltrating agent to the risk of being discovered and retaliated against, along with their family, throughout the infiltration period. Therefore, this procedure requires highly experienced

and skilled individuals who can handle the infiltration process professionally to avoid detection, as well as after the infiltration is completed. Additionally, there is a possibility that the infiltrating police officer may integrate with the gangs and become a member, and instead of exposing them, they assist in committing their crimes.

- The procedure of electronic infiltration, call interception, and voice recording raises the issue of privacy, which is protected by law for individuals. Therefore, it necessitates the establishment of regulations to allow the use of this technology without infringing on people's freedom, private lives, and the right to privacy, whether in reality or in the virtual world.

Thus, the most important recommendations we provide in this field are:

-The necessity of qualifying and training the defected elements in a way that enables them to perform this technique while respecting the law, as well as finding Mechanisms to protect the defecting element, especially during the defection.

- Establishing mechanisms and guarantees to protect the right to privacy, whether in reality or in the virtual world,

when resorting to these new procedures.
-The necessity of continuously updating the legal framework related to combating this type of crime, as these crimes are characterised by rapid evolution.

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