

## Exchange crimes and methods of following them up in Algerian legislation



Received: 01/04/2024; Accepted: 27/04/2024

Elkahina ZOUAOUI \*

University of Constantine 1, Algeria; [elkahina.zouaoui@umc.edu.dz](mailto:elkahina.zouaoui@umc.edu.dz)

### Abstract

The offences of exchange in Algerian legislation are among the most important offences in the light of the fact that they affect an important part of the State ' s financial economy.

The Algerian legislature has therefore dealt with this type of crime by enacting various provisions in the field of cash and loans, on the one hand, and the movement of capital from and to abroad, on the other hand, after repealing the provisions of the Penal Code in this area. In addition, it has given great prominence to the regulations of the Bank of Algeria in regulating the area of exchange and cash in the legal system in Algeria.

The legislature has also designated offences of exchange with a special regime different from that of offences in the Penal Code.

### Keywords

Exchange crimes;  
State economy;  
Economic crime;  
Exchange;  
Follow-up;

### الكلمات المفتاحية

جرائم الصرف؛  
اقتصاد الدولة؛  
جريمة اقتصادية؛  
الصرف؛  
المتابعة؛

### جرائم الصرف وطرق متابعتها في التشريع الجزائري

#### ملخص

تعتبر جرائم الصرف في التشريع الجزائري من أهم الجرائم من منطلق مساسها بشق هام من الاقتصاد المتمثل في مالية الدولة فالمساس بهذه الأخيرة هو المساس بالاقتصاد الوطني لذلك نجد أن المشرع الجزائري تصدى لهذا النوع من الإجرام بسننه لأحكام مختلفة في عدة نصوص خاصة تتعلق بمجال النقد و القرض من جهة و أخرى تتعلق بحركة رؤوس الأموال من و إلى الخارج من جهة أخرى، بعد أن ألغى أحكام قانون العقوبات الصادرة في هذا المجال، إضافة إلى ذلك أعطى مكانة كبيرة لأنظمة البنك الجزائر في تنظيم مجال الصرف و النقد في المنظومة القانونية في الجزائر.

كما خص المشرع جرائم الصرف بنظام خاص يختلف عن نظام الجرائم في قانون العقوبات.

\* Corresponding author. E-mail: [elkahina.zouaoui@umc.edu.dz](mailto:elkahina.zouaoui@umc.edu.dz).

Doi:

## I- Introduction :

Exchange crimes are considered one of the most important crimes affecting the state's economic policy in that they affect the national currency and its economic value. Therefore, they are considered the most serious economic crimes.

Algeria has been interested in exchange policy since independence, especially after the crises it faced with the rapid transformations that accompany this policy. We notice this interest through the arsenal of legislation related to this field and the amendments contained therein, especially after the date of 1988, which is the date of the first crisis in Algeria that changed the foundations. Its economic and political.

Therefore, the exchange crime currently occupies a large position within the scope of national and international legal legislation, and what has strengthened this position is the rapid development witnessed by the economic field in its aspect related to exchange and cash, whether in Algeria or abroad, in light of economic globalization and the modern technological revolution and its developments in various fields. This led to the development of economic legislation in a way that is compatible with the development of the times, to ensure the preservation of the economic entity of countries. The Algerian legislator did not content himself with setting general rules in the penal code to regulate these economic topics, but rather allocated independent laws and a legal system for them that distinguishes them from other crimes, in particular With regard to the field of crime prosecution, as well as the reconciliation procedure that puts an end to the prosecution.

From here we will try to research this topic through the following main problem:

To what extent has the Algerian legislator been able to reach adequate solutions for exchange crimes, through procedures specific to this type of crime?

We will answer this problem through two axes:

- The first axis: The nature of exchange crimes**
- The second axis: Special procedures for prosecuting the crime in Algerian law**
- Third axis: Penalties resulting from committing exchange crimes**

### **The first axis: The specifics of the elements of the exchange crime**

The development of foreign trade and the increase in international investments helped the free movement of capital across the world By facilitating the transfer of goods and capital, At the same time Governments must

Adjust The movement of capital to and from abroad, whether in the form of money or values or Bonds, precious metals, or precious stones, so it is the responsibility of the state to impose protective measures Self a stamp penal On the movement of capital at He wants it Or export it.

Exchange crimes are known as: all Violating or attempting to violate the legislation and regulation pertaining to disbursement and capital movement And Abroad (96/22, No 43, Of July 10, 996,).

Referring to the general principles of committing a crime, a crime does not occur unless the material and moral elements are present, and pure crimes do not constitute an exception to it, except that the material element and the moral element are characterized by specificities.

#### **First: Définition of exchange crimes:**

A- Definition of exchange: Exchange He is the one who is attributed to the knowledge of morphology or the one who knows it. And he Selling gold for silver It is called pure Because he disposes of it from one essence to another, including spending money, i.e. exchanging it for money, and so on the meaning Brothers, came Use of a contract RF "In law" means exchanging cash for cash and for this reason Contract The word morphological is attributed (Al-Mansouri, 2012, p. 19).

B- Definition of exchange rate: determined in it value the currency Nationalism equivalent in the country's currency Foreign According to a certain price (Bouhantala Amal, 2018, , Issue 03, p. 203).

C- Definition of exchange control: a set of regulations and laws promulgated by the State with a view to subjecting the transactions of individuals and bodies with foreign countries to a policy which they consider to protect the public interest, including financial interference through regulation of foreign exchange operations by banks or the

formulation of a policy aimed at providing foreign exchange through the obstruction of imports or the payment of exports by means established by the authorities. This means that controls are carried out through exchange and the movement of capital with foreign trade resulting from foreign trade operations and are designed to preserve the value of cash (ARABI, 2000).

secondly: The material element of exchange crimes: The offence of exchange is characterized by the fact that it does not appear in a single form but can take several external manifestations, all of which are different images of the offence.

Order No. 96/22 amended and supplemented by Order No. 03-01 (03/01, No 12, Of February 19, 2003,) In Article 01, there are five forms of the crime of exchange if the subject of the crime is money or valuables, while the same order in its Article 02 distinguishes between three forms of the crime of exchange if it involves precious stones or precious metals, and thus it is also clear that determining the material element of the crime of exchange, Depending on its forms, it is also linked to the nature of the crime scene.

From the above it becomes clear that the material element of exchange crimes is divided into two parts:

The location of the crime and the physical activity of the crime

A- The location of the crime:

- Money, which may be coins, banknotes, or bank money such as commercial papers.
- Values are securities of any type, whether nominative or bearer shares, and various government or other bonds
- Metals mean gold, silver, and platinum, and they can take several forms. Gold, for example, may be in the form of gold coins, bullion, medals, and artifacts.
- Precious stones such as diamonds

B- The material activity criminalized in the exchange crime: Activity The material criminal in the pure crime, may adopt positive behavior by committing The culprit An act prohibited by law, such as a false statement, or negative behavior by refraining from performing a duty text According to the law, such as failure to comply with the duty to obtain...Cheap Conditional (ArwaFayez Al-Faouri, 2012, p. 09).

According to the text of Article 1 of Order 96-22, any violation or attempt to violate the legislation and regulation related to disbursement And movement Capital to and from abroad, as a means what Come:

- False statement
- Failure to comply with permit obligations.
- No refund to the country.
- Failure to observe stipulated procedures or required formalities.
- Failure to obtain the required licenses or failure to respect the conditions associated with them.
- While Article 2 of the same order as amended by Order 03-01 (03/01, No 12, Of February 19, 2003,) On it: The following acts, which are carried out without regard for the legislation and regulations in force, are also considered to be in contravention of the legislation and regulations of the party and the movement of capital from and outside the country:
- Purchase, sale, export and import of any means of payment, movable value or foreign currency bond.
- Export And import Bullion Golden And the pieces Cash Golden And the stones And minerals Mental.

### **Second: Determine the moral element For exchange crime and capital movement:**

By referring to Algerian legislation, we conclude that the moral element in pure crimes has a special feature that distinguishes the pure crime from the rest of the crimes. The moral element may change the nature of the crime from an intentional crime to a purely physical crime depending on whether the legislator requires the presence of criminal intent to establish it or not, as the The legislator made a distinction between exchange crimes in which money or values were involved, and those in which precious metals or precious stones were involved, so he exempted the former from the presence of criminal intent in the case In the second case, there must be a criminal intent for doing so.

Specific criminal intent is based on the same elements as general intent. Therefore, it is not possible to imagine a private existence without the presence of a general intention. The specific intention is considered a logical extension of the general intention.

The specific intention is the will to commit the crime and the direction of this will towards the result, as it is the goal of the actor in his action. As for the reasons behind this will, it is the motive, that is, the motive that drives this will.

This motive varies depending on the people and what they seek, while the general intent is the same in every crime, as it is the will to commit it (**Yacoub, 2001**).

A- The moral element of the exchange crime involving money and valuables: The offence of exchange at this stage was provided for in articles 222 to 220 bis of the Penal Code and was subject to the general provisions of the Penal Code concerning mental element as a general asset. However, when the offence of exchange was at the same time a customs offence, it was subject to the provisions of the Customs Code concerning the mental element of the difference between the general rules contained therein.

Article 281 of the Customs Code, before repealing it by virtue of Act No. 98-10, stipulates that "infringements may not be publicly forgiven in the field of customs offences." Thus, responsibility in the area of customs would be unwittingly wrong or otherwise sufficient for the commission of the crime merely to the effect that the material act in breach of the law had occurred without the need to search for or prove intent. According to article 281, the judge could not have benefited the person in breach of mitigating circumstances, even if he had, let alone declared his innocence, for lack of bad faith.

This rule has two consequences:

- Exempt the Public Prosecutor's Office from proving the offender's bad faith.
- To prevent the perpetrator of the offence from invoking in good faith impunity.

B- The moral element of the exchange crime involving precious stones and precious metals:

The acts of the legislator in article 02 did not require a criminal intent and therefore the error of commission of the offence was sufficient. The provisions of Ordinance No. 96-22 are as follows:

Before repealing the Penal Code, there is no indication of the mental element in the second paragraph of the article.

It provided for the criminalization of participation in the offence of exchange, which is 4 of the above-mentioned order. It's made of counterfeit money, whether the partner knows it or not, because it's legally established. The fact that participation is required to have a moral element.

In other words, the offence of exchange at this stage, in the absence of an express provision, requires that the offender's bad faith and the provisions of the legislation and regulations on the exchange and movement of heads be followed.

Funds from and abroad shall be exempted from the prosecution's criminal intent to commit an offence. At the same time, there is nothing to prevent the accused from demonstrating good faith and thus denying the moral element and could benefit from the circumstances of the investigation.

### **The second axis: The Special procedures for following up exchange crimes**

The special nature of the offence of exchange has given the legislator a special legal regime unique to other common-law offences, particularly in the area of the suppression of the offence, which includes the examination and follow-up of the offence, as well as the conciliation procedures that put an end to the follow-up.

#### **Firstly: Preview of exchange crime**

The criminal dispute is essentially based on the rules of criminal evidence from its inception, from initiating the criminal case until it is settled by a final ruling. The purpose of the criminal ruling is for the judge to establish the truth, and in order for this truth to be consistent with reality, it must be based on a firm foundation of reality and the law. For this reason, we find that the criminal adversary procedures as a whole tend to show all the elements necessary to reach the truth regarding the accusation made. To a person as a perpetrator or accomplice in the crime being proven.

The scope of proof is not limited only to the incident under accusation, but rather includes all related legal or auxiliary facts that facilitate the judge's formation of his conviction. This means that proof includes the formative

elements of the incident to ascertain the extent of its conformity with the legal model of a crime and the extent to which it is attributed to a specific person. .

As for the means of proof, they are every activity directed towards revealing a situation, fact, person or thing that is useful in proving the truth, and we can call them proof procedures.

As for the elements of proof, they are the evidence, which is represented by facts, objects, or other things, which are revealed by the evidentiary procedures and transferred to the field of the case, and through which the crime is proven.

From this, we can define forensic evidence«It is the means used by the judge in forming his judicial conviction to reach the truth through his sound assessment of it».

By evaluating the criminal evidence that is subject to his assessment, the judge arrives at the truth, and what is meant by the truth is everything that is related to the facts presented to him for the purposes of the law's ruling on them.

For inspection, the Algerian legislature has singled out certain categories whose competence has been determined and distributed.

### **Second: Follow up on the crime:**

Referring to Algerian legislation, we find that it has suspended the criminal prosecution of exchange crimes on the condition of submitting a complaint from someone who has legal jurisdiction. It has also empowered the same persons with the right to withdraw it, thus putting an end to the prosecution unless a final ruling is issued. As for initiating the lawsuit, it remains within the jurisdiction of the prosecution with the appropriate authority it has in doing so (**Obaid, 1979, 5th ed, p. 157**).

With reference to Algerian legislation, article 9 of Ordinance No. 96-22 provides that criminal prosecution for exchange offences shall be suspended. The Minister of Finance or one of his authorized representatives must complain, but it has been amended in accordance with article 12 of Ordinance No. 03-01 in order to include the Minister of Finance and the Governor of the Bank of Algeria or one of their representatives qualified for that purpose. This amendment was in the context of an effort to rehabilitate the Bank of Algeria as a monetary authority that issues regulations and sponsors its implementation in the area of surveillance and regulation of its market (**Bousaia, 2007, 4th**).

In practical terms, we believe that this amendment has been made. The Bank of Algeria, in general terms, has the appropriate and adequate machinery and powers to control the exchange and movement of capital from and out of Algeria and to detect any violations of the law or operations which are ambiguous and subject to investigation. The legislature has also not established a specific form in which the complaint must be cleared.

As for the position of the Minister in charge of finance and the Governor of the Bank of Algeria in litigation, neither the Minister of Finance nor the Governor of the Bank of Algeria had any role to play in litigation.

### **Third: Reconciliation in exchange crimes:**

The principle is that the criminal case ends with a final ruling after a fair trial. Whether it is a matter of initiating or filing a criminal case, the Public Prosecution cannot waive its right to do so by reconciling with the accused. This prohibition imposed on the Prosecution is derived from the principle that the criminal case cannot be waived. .

However, there are exceptions to this principle, including the possibility of ending criminal prosecution in some crimes in which prosecution was suspended by a complaint from the victim. Crimes of a financial and economic nature are considered among the pioneering crimes that have known the application of the conciliation system because of their specificity on the one hand and the advantages achieved by conciliation on the other. Other (**Ahsan Bousaia, 2001, p. 12**).

In this regard, the legislator permitted reconciliation in exchange crimes in their various forms in Article 09 of Order No. 96-22 as long as the violator was not a recidivist (Article 10), then amended and supplemented by Article 9 bis of Order No. 03-01, which made reconciliation also permissible in the case of recidivism. M. 9/3 regarding the reconciliation procedure was referred to the organization, which specified the conditions and methods for conducting it.

Reconciliation includes the formal procedures to which it is subject, including: the form of the request, the deadlines for submitting it, and the entities qualified to consider the request, The competent authorities to receive and

study the request differ, depending on the value of the misdemeanor or the relationship of the misdemeanor to a foreign trade operation. According to Article 9 bis of Order 03-01, there are two reconciliation committees, a national reconciliation committee and a local reconciliation committee.

(Explaining the text of Article 9, the last and penultimate paragraph of Order 03-01) Reconciliation can be granted at any stage of the case until a final judicial ruling is issued, and reconciliation puts an end to the prosecution accordingly. If the reconciliation occurs before or after the prosecution or after the issuance of a judicial ruling, unless it becomes final, the public lawsuit will lapse.

### **Third axis: Penalties resulting from committing exchange crimes**

And we distinguish here between Penalties decided on the person Natural And penalties decided on the person moral, and that in two branches Independents.

#### **First: penalties decided on the person Natural:**

##### **1- Original penalties applicable to a natural person :**

##### **A- The penalty of imprisonment:**

In view of the nature of this penalty, it is applied only to natural persons. Article 01 bis of Ordinance No. 03-01 of 2 to 7 years ' imprisonment, from three months to five years ' imprisonment in Ordinance No. 96-22, which shows the legislature ' s intention to tighten the penalties for exchange offences by amending 2003 and to maintain the description of such offences as misdemeanours (**Obaid, 1979, 5th ed, p. 167**).

##### **B- the fine:**

In comparison with a natural person, the law imposes a fine on a person who is a moral person.

A.01 bis of Ordinance No. 03.01 states that, for a natural person, a fine cannot be less than twice as much as the amount of the offence or attempt to commit the offence. Thus, we note that the legislature has suspended the amount of the fine on the value of the offence and has avoided specifying a certain amount for the offence. Moreover, it has limited itself to setting its minimum limit, which may not be waived, leaving the judge ' s discretionary power of judgement in excess of that value without setting any ceiling at which the judge would cease.

In any event, the amount of the fine is ultimately credited to the State Treasury in the manner regulated by Instruction No. 30 of the Ministry of Finance dated 17/08/1998 on accounting rules for exchange offences.

##### **C- Confiscation**

For example, confiscation of unauthorised hard currency in front of customs officials during entry into the national territory and confiscation of the vehicle that transported and concealed the hard currency, the penalty has been introduced in the area of exchange offences since the issuance of order 96/22.

With regard to the confiscation of the offence, although the legislature did not specify exactly what was meant by the offence, this is not a problem, since the judiciary is responsible for carrying out this task, which is at the very heart of its work (**Ahsan Bousqaia, 2001, p. 17**).

In the event that confiscation cannot be applied in kind, the competent judicial authority shall impose a financial penalty in the place of confiscation equal to the value of such items (**03/01, No 12, Of February 19, 2003,, p. article 05**).

##### **1- Supplementary penalties prescribed for a natural person :**

2- They include, in accordance with the requirements of article 03 of Ordinance 96-22 as amended and supplemented:

A- Prevent The culprit For a period Maximum(05)Years from date Breasts Judgment ultimate from:

-Prohibition from practicing Operations commerce External.

-Prevention of the exercise of brokering functions in exchange operations or assistance in exchange.

- Prevention of being elected, elected in chambers of commerce or assisted by the judiciary.

B- An order for the publication of the conviction shall be issued by the judicial authority in the file, whether it may be published in full or by an extract thereof, at the expense of the convicted person in one or more newspapers designated by him.

## **Second: Penalties decided on the person Moral:**

The penalties shall also apply to a person who is a legal person - as to a natural person - if the criminal liability is established, whether the penalties are genuinely financial or supplementary, as provided in article 05 of Ordinance No. 03-01.

### . 1- Original penalties applicable to a person of moral:

Two financial penalties shall be applied as the original penalties of fine and forfeiture in the manner consistent with the person ' s moral character.

A- the fine: We have already indicated that in the fine applicable to a legal person, the legislature has increased the minimum fine by double the minimum fine to be imposed on a natural person, since the fine cannot be less than four times the amount of the offence or attempt to commit the offence. The conviction of a moral person shall be handed down by a representative of his or her legal representative (03/01, No 12, Of February 19, 2003,, p. Article 05).

b- Confiscation: Confiscation also includes confiscation of the place of the offence and the means of transport used for fraud, a penalty introduced under Ordinance 96-22, article 5 of which provides that such punishment shall not be applied to a person subject to public law. This makes great sense because the imposition of such a penalty may deprive him of duties vital to society. After the amendment of Ordinance 96-22 by Ordinance 03-01, the above-mentioned paragraph was deleted in line with the law ' s imposition of criminal liability for persons subject solely to private law. In the event that confiscation cannot be applied in kind, the confiscation shall be replaced by a fine equal to the value of the items that should have been confiscated.

### 2- Supplementary penalties for a moral person:

According to article 05 of Ordinance No. 03-01, a judge may, in addition to the original penalties, impose one or even all of the following penalties for a maximum period of five years:

A - Prevention of exchange and foreign trade: as for the prohibition of exchange provided for in A5/2, it is the person who constitutes a supplementary penalty which may be imposed by the judge at his discretion, which is reflected in the operative part of the conviction judgement (**Zaghalani Abdel Majeed, 2001, No 01, p. 74**).

B-- Exclusion from public transactions, which is intended to exclude a convicted offender from any transaction concluded by the State, its public institutions, local groups and all enterprises which have the obligation or the will to apply the procedures of the Public Transactions Act.

C- Prevention of public calls for savings, this penalty for companies that resort to the capital market for financing.

d- Prevention of brokering activity on the stock exchange.

## **IV- Conclusion:**

From the foregoing, we conclude that the Algerian legislature has made exchange offences special procedures. Control by the legislature of exchange offences under separate legislation on the Penal Code and Customs Ordinance No. 96.22, as amended and supplemented by Ordinance No. 03-01, on legislation and regulation concerning the movement of capital from and out of the country. The offence of exchange is therefore an offence characterized by unusual characteristics in ordinary law.

- Exchange offences are characterized by the fact that their criminal conduct is not the same, but a multiple one. Crimes address a range of behaviours and leave the regulatory authority to determine procedures and formalities It's got to be respected.

- The legislator added to the offences of exchange the nature of the purely material offence by simply committing an offence.

Legislation and regulation on the exchange and movement of capital from and to abroad.  
 - The legislature ' s intention to tighten the penalties for exchange offences by amending 2003 and its intention to maintain the characterization of such offences as misdemeanours. The aim of the legislature is undoubtedly to avoid the weight of the procedure applied at the level of the criminal court.

- To limit the competence to deal with offences relating to dismissal to the criminal justice system only by filing a prior complaint on criminal follow-up and limiting the scope of reconciliation;  
 We therefore conclude that, despite the shortcomings in the functioning of the modern State, namely, the definition, management and supervision of monetary policy, the Algerian legislature has attempted to deter any violation thereof, all of which is concerned with the general stability of the national currency as the main engine of the national economy.

## Referrals and References:

1. 03/01, O. (No 12, Of February 19, 2003,). relating to the suppression of violations of legislation and regulation relating to exchange and the movement of capital to and from abroad, amends and supplements Order 96/22. Official journal.
2. 96/22, O. (No 43, Of July 10, 1996,). relating to the suppression of violations of legislation and regulation relating to exchange and the movement of capital to and from abroad. Official journal.
3. Ahsan Bousqaia. (2001). Reconciliation in Penal Matters in General and Customs Matters in Particular,. Algeria: National Office of Educational Works,.
4. Al-Mansouri, Y. O. (2012). Morphological solidarity in commercial papers, a comparative study. Algeria: Al-Halabi Legal Publications.
5. ARABI, M. (2000). Exchange violations, capital movement, and methods for settling them, legal and regulatory texts. Algeria.
6. ArwaFayez Al-Faouri, E. M. (2012). Money Laundering Crime,. Jordan: Dar Wael for Publishing and Distribution,.
7. Bouhantala Amal, B. I. (2018, , Issue 03). Exchange Crimes in Algerian Legislation. Al-Bahith Journal for Academic Studies, p. 203.
8. Bousaia, A. (2007, 4th). Summary of the General Penal Code,. Algeria: dar Huma.
9. Obaid, R. (1979, 5th ed). Commentary on the Supplementary Penal Code on the Crimes of Drugs, Weapons and the Smuggling of Cash. Arab Thought House,.
10. Yacoub, M. D. (2001). Liability in Economic Criminal Law: A Comparative Study between Arab Laws and French Law,. Syria,: Pages for Studies and Publishing,.
11. Zaghalani Abdel Majeed. (2001, No 01). Exchange Control in Algeria, Regulatory and Algerian Aspects, . Journal of Human Sciences,.