

The problem of the moral pillar in customs crime.

DERRAR Abdelhadi* ¹, FELIDJ Ghizlene ²

¹ Faculty of Law and Political Science, Abu Bakr Belkaid University - Tlemcen ,
(ALGERIA), abdelhadi.derrar@univ-tlemcen.dz

² Faculty of Law and Political Science, Abu Bakr Belkaid University - Tlemcen ,
(ALGERIA), felidjghizlene@yahoo.fr

Received: 21/04/2025

Accepted: 07/06/2025

Published: 12/06/2025

Abstract:

The problem of the moral pillar in customs crime addresses the challenges and complications related to the moral aspect of customs crimes. It comes to providing interpretations of customs actions, manipulation of taxes and tax evasion from a moral perspective. Questions about the moral responsibility of individuals and companies in the field of customs and international trade are raised when they violate the laws that harm society and the economy in general. This problem includes studying professional ethics to work in the field of customs and the need to comply with moral standards and social values to reduce customs crimes and enhance integrity and transparency in global trade.

Keywords: Crime; moral pillar; customs legislation; responsibility; economy.

1. INTRODUCTION

It is fixed jurisprudence, law and judiciary, that merely committing the material materials is not sufficient for its establishment, and the question of its criminal perpetrator as an original actor or partner - the material support - even if the physical pillar in practice represents the essence of the crime and the evidence of its occurrence, but it must be proven the availability of psychological elements that are called the moral corner of the crime,

The moral corner is the psychological aspect of the crime, so the crime does not do the same as the physical incident that is subject to the text of the criminalization, but there is a link between the material materials of the crime and the psychological psychology of its perpetrator, so the rule is that there is no crime without a moral corner, the moral corner has the basic importance in the general theory of the crime because it is the legislator's path to determine the person responsible Her materials and psychology.

* Corresponding author .DERRAR Abdelhadi

Among the terms that the Algerian legislator used to indicate the availability of the moral pillar, such as the use of the term “whoever deliberately commits”, as well as the term “with intent” or term

“For the purpose of” a sign of intent, or terms such as “neglect” or “recklessness” to indicate the image of intentional error as images of the moral corner.

If the matter is settled in the general criminal principles, then there is no crime without the availability of this pillar, and it is one of the most difficult issues that face the authority of the accusation on which the burden of proof as a public origin is, then it is the prosecution that provides the availability of the moral pillar under the penalty of the criminal inability.

The forms raised regarding customs crimes as an economic crime that have sparked controversy and a juristic dispute through a departure from the rules prescribed in the general principles, especially the moral pillar that is an element of crime pillars, if the case of various criminal laws recognizes the existence of the moral pillar as one of the general pillars that make up the crime, then how is the case in customs crimes regarding the moral pillar, considering it One of the economic crimes?

Through this intervention under the problem of the moral pillar in customs crime, we will try to address the jurisprudential argument over the availability of the moral pillar in customs crime, in addition to determining the position of the Algerian legislator on the moral pillar in customs crimes as an economic crime.

2. The dialectic of the moral pillar in customs crime

Several jurisprudence opinions have emerged on the subject of the moral pillar in customs crimes and their materials, there are:

- The legal corner in the customs crime is required when the criminal follow -up is on the authority of the accusation,

- As for the second opinion, it was assumed that there is a moral pillar in customs crimes, and he exempted the Public Prosecution from the burden of evidence

2.1 Jurisprudence opinion that the customs crime is a crime Intentional

Supporters of this trend see that despite the peculiarities of customs crimes in terms of criminalization and punishment mechanisms in order to provide adequate protection for the national economy, these specifications do not prevent from referring to the general rules in establishing the rules of criminalization and punishment, because the Customs Law is a complementary law for the penal law, and the latter is the origin of the criminal rules.¹

¹ ahseen bouskia, Al -Wajeez in General Criminal Law, I6, Housa House, Algeria, 2008, p59.

In this context, he sees an aspect of jurisprudence, that it is necessary to have a moral corner in every crime even if the customs crime is the same, because the lack of this corner would prejudice the essence of the criminal law.

Accordingly, this juristic aspect of customs crime is seen as other public law crimes that require moral elements to establish and prove. Even if opinions differ in this aspect between merely the requirement of the general intent represented in the elements of science and will, and between the requirement to provide the special intent of the general intent.

2.1.1 The juristic aspect that suffices with the general criminal intent in customs crimes.

We mean the general criminal intent as the simplest forms of criminal intent.

In comparison to the customs crime, the general criminal intent requires that `` the will of the perpetrator, the perpetrator of the customs crime, is directed to bring the actions formed for the crime of smuggling as a copy of the customs crime. " ¹

From this definition, we conclude that the general criminal intent is based on the elements of knowledge and will. Criminal questioning requires the perpetrator's knowledge of all circumstances and facts that give the act his criminal significance

An example of this: The element of science in customs smuggling requires the perpetrator that the goods that he takes out of the customs circle are not licensed to exit, such as drugs and explosive materials, and the matter requires his knowledge of its violation of the regulations and laws that the customs administration guarantees its application.

As for the element of criminal will, it is a "psychological force that directs all the organs of the body or some of it towards achieving an unlawful purpose" and by dropping the customs crime, the will takes the image of a strong desire to bring the material acts of the crime,

Example: Whoever smuggles explosive materials, there is no doubt that he aims to obtain financial returns as a result of selling them after they are removed from the customs domain in illegal images.

Conclusion: And we conclude from all this that there is an opinion from the first jurisprudential aspect that is satisfied with the availability of the general criminal intent represented in science and will to establish and prove customs crime, while neglecting the special criminal intent, all of this towards an explicit image of acknowledgment of

¹ Anwar Muhammad Sidqi, Criminal Responsibility for Economic Crime, House of Culture for Publishing and Distribution, Jordan, I 1, 2007, p. 98

the customs crime.¹

2.1.2 The jurisprudential aspect that requires a special criminal intent in customs crimes.

Sometimes the law requires in order to establish the moral pillar of the crime, in addition to the general intent that provides a specific goal that pushes the perpetrator to commit the crime, represented in the form of the goal that the perpetrator seeks, and it is termed in criminal jurisprudence with the “criminal emitter” which differs according to the type of crime committed,

An example of this: In the murder crime, the motive is the person’s desire to get rid of the victim, and in the crime of theft, the emitter will have the intention of owning the money owned by others, but in customs crimes, most of the motivation to it is to evade payment of taxes and customs duties, based on the declaration of customs law and its fiscal job, in order to ensure the national economy and the public treasury.

Conclusion: As long as there is a jurisprudential opinion that is satisfied as soon as the general criminal intent represented in science and will to establish the crime, the other side of jurisprudence sees that the special criminal intent must also be available to hold the perpetrator of customs crime criminal responsibility.

2.2 Jurisprudence opinion that recognizes the materialism of customs crime

To clarify the content of this opinion, we decided to divide this requirement into two branches, we try to address the first branch to study the content of the material nature of customs crime, while we allocate the second branch to determine the other criticisms directed at this opinion, as follows:

2.2.1 The content of the legal nature of customs crime.

Contrary to the aforementioned opinions, there is an aspect of jurisprudence that sees in the economic crime in general and the customs crime in particular, material crimes based on two pillars, namely the legal corner and the material pillar, which does not require criminal intention.

From this standpoint, the rule of customs is controlled by the rule of “contentment with the violation of the customs law”, so it is sufficient for the criminal responsibility of the perpetrator, the mere submission to material actions that violate the legal and regulatory texts that customs interests in implementation, by neglecting the search for the psychological state that the perpetrator is committing, which matches the concept of material crime. In general, it requires a moral corner in the crimes that are painful in the national economy,

¹ Jalali Baghdadi, *Ijtihad in the penal materials*, the National Corporation for Communication, Publishing and Advertising, c. 1, Algeria, 1996, p. 109

Which results in several results in terms of defense rights and machinery, which is the exemption of the Public Prosecution from the burden of proving this pillar, despite its extensive powers, compared to the accused in violation of the principle

Conclusion: Therefore, the moral pillar in economic and customs crimes did not remain preserved in its traditional form, boasting of legislators in this field for the idea of economic interest on individual freedoms and interests of individuals.¹

2.2.2 criticism directed at the jurisprudential opinion that is materially crime.

Jurisprudence was not silent about what was said regarding the issue of the material nature of economic crime, but rather criticized this proposal that the material crime framework for the customs matter is not appropriate, as the latter does not tolerate the characteristics of material crimes on the whole for several reasons related to several:

A: the criterion of the strictness of the penalty and its cruelty, the more we are facing a strict penalty in economic crimes, the more we approach the concept of intentional crimes that require proof of criminal intent with its perpetrator, so the penalties for customs law are strict penalties, this is away from the framework of material crime, because some customs crimes require criminal intention and not all of them assume the moral pillar.

However, this criticism was answered from the lack of deduction of the crime materials from the same crime, but this deduction was from the density of the penalty, and everyone knows that the penalty is the expected result to confront the perpetrator of the crime.

B: It is also among the criticisms of this jurisprudence opinion that the customs crime may be likely to be likely to be likely to study the crimes of abstaining crimes (negative crimes) that are just leaving.

But the problem is that most of the customs crimes are crimes based on material actions - positive - concrete behaviors such as illegal transportation of goods within the customs range, or smuggling of goods in fraud, and thus customs crime is not a material crime because it contains the manifestations of the mayors in committing it.

Therefore, we see that customs crime, just as other crimes, in terms of the presence of intentional psychological elements the moment they committed, include criminal intention, for example, carrying fake money and smuggling them outside the customs range is not a hobby to fill the void, but rather the perpetrator behind this is violating the customs law.

Conclusion : Therefore, all that is in the matter is that the moral pillar through

¹ Issam Afifi Abdel -Basir, the principle of criminal legitimacy, a comparative study in the positive law and Islamic criminal jurisprudence, the University of Fikr, Alexandria, 2004, p. 159

criticism directed at the opinion -holders of customs crime is that the moral pillar is supposed to be present in the customs crime and is not already exist, in order to facilitate the proof of the Public Prosecution in view of the seriousness of the crime and the speed of customs fraud.¹

3. The position of the Algerian legislator on the moral pillar in the crime Customs

Legislators in almost all countries of the world tried to strive when drawing a criminal policy in this type of high risk crime, to achieve a kind of compatibility between the requirements of objective and procedural rules for the rules of traditional criminal law, and between the protective requirements of economic activity, which put them in an embarrassing position between reconciling economic protection as a public interest, and between protecting rights and freedoms in the face of the criminal nature of the legal rules The customs, given that the issue of maintenance of rights and freedoms is restricted by constitutional texts. The Algerian legislator, at a year for legal rules, must respect the rules stipulated constitutionally.

Hence, legislators in most countries of the world prompted the lack of goodwill to the establishment of customs crimes, and thus accepting only two pillars, namely the legal pillar and the material pillar, an attempt to avoid the harmful results that they are attached to the public treasury, without costing themselves the trouble of searching for the realization of the moral pillar.

But this proposal does not mean that there is no intention to the perpetrator of the customs crime when it is practically to come to the impossibility of the absence of intent.

It is worth noting that the manifestations of the assumption of criminal intent stipulated that the legislator stipulates in the customs article, which is what we will try to address in two requirements:²

3.1 The manifestations of adopting the principle of contentment with the violation of customs law As a modern approach to criminal policy by the Algerian legislator

After facing a crisis in the application of the rules of traditional criminal responsibility to customs crimes, due to its lack of sufficiency, especially after the development of the methods and methods of committing crimes, which threatens the economic interest and competes with customs interests, legislators decided to add some privacy to the rules of this law, such as customs technologies that depart from the general rules in dealing with this corner in particular, by assuming legally with the violator, and exempting the authority to accuse from The burden of proof.

¹ Mohamed Sobhi Mohamed Najm, Explanation of the Algerian Criminal Procedure Law, University Publications Court, I3, Algeria, 1992, p. 86

² Mohamed Marwan, The Evidence System in Criminal Articles and in Algerian Postea Law, Part 1, University Publications Court, Algeria, 1999, p. 95

And as it is known that in the general rules of the crime, we find that the moral pillar in it must be provided for the establishment of criminal responsibility, while the exception is merely assuming this pillar in some of the crimes stipulated by the Penal Code, such as the crime of issuing a check without balance, in which the moral pillar is presumed, as the insufficient balance represents the bad intention of the accused in committing the crime, which is what is the exception.

While the above rule when it is transmitted to the strict rules of customs law, the assumption of criminal intent becomes the original, and its requirement is the exception in evidence of what is stipulated in the Algerian Customs Law canceling goodwill in customs disputes in accordance with the concept contained in Article 281 of the Customs Law, which states that “the judge may not acquire violators based on their intention and not reducing the fines.”

Therefore, we conclude through the foregoing that customs crimes in Algerian legislation are simply bringing the physical actions that make up for them, without proving the requirement of the moral pillar for its establishment, regardless of its legal adaptation, as it does not take into account the good intention of the perpetrator, by adopting several clues to the establishment of criminal responsibility, such as the clarifies of the accidental possession of goods in customs fraud.

As for the judiciary, he pursued the same approach above, and prevented the confrontation with good intentions in the field of customs violations, and therefore the exemption of the holder for the goods of fraud, as if it is prepared as an absolute or relative ban, or imported or issued without a permit on the basis of his ignorance of this fraud or his good intention, or something that is not permissible.¹

Another example: In the same context, it is not possible to exempt a seller of smuggled goods, a source or imported without a permit on the pretext of his ignorance or his goodwill in that, and thus the judiciary of the accused's discharge based on goodwill is an explicit violation of customs law.

Conclusion: However, the Algerian legislator did not completely abandon the legislative assumption of this corner in customs materials even:

- Do not be lost in this interest in this law on the one hand,
- In order to preserve individual rights and freedoms on the other hand,

Through studying the provisions of the Customs Law and the Anti -Smuggling Law, which indicates the requirement of a kind of moral elements, which indicates the swing of customs crime between the legislative assumption, which is predominant, and the requirement as a picture that is overwhelmed by the assumption of its moral corner.

¹ Marouk Nasr El -Din, Lectures in Criminal Proof, Evidence of Criminal Proof, "Confession and Destinations", House of Homa, Algeria, 2008, p. 103

It is what we will try to address with the brief explanation through the demand.

3.2 The Algerian legislator will return to the classic rules in rooting Exceptionally criminal rules.

By referring to the texts regulating the Customs Law and the Anti -Smuggling Law, the legislator sometimes decides to remove customs crimes from the realization of the principle of contentment with the violation of customs law, or what is known as the error of the violation, and that is exclusively, which we will try to address.¹

3.2.1 Evidence for the requirement of criminal intent in the provisions of the Customs Law.

There are specific cases, in the exclusive, in which the criminal responsibility in the customs article is not established, except by proving the availability of the criminal intent in it clearly, and the Public Prosecution in these cases must prove knowledge and the sinful will is directed to violating the customs law, such as a copy of a return to the provisions of the Penal Code in this regard after its transcendence.

A: The return of customs law to stipulate the intention to participate and benefit from fraud.

The firm in the general rules of principles is that the shareholder is not a partner just to prove the physical actions that make up the crime, but the sinful intention and the shareholder of the shareholder must also be available to the fact that they want to support them, and his endeavor to achieve them intentionally, in order to achieve his criminal goals.

With our extrapolation of the texts of the amendment of the new customs law 17-04, we find that he returned the text of Article 309 that was previously canceled, which talks about partners by referring the penal law without, determining the punishment in the content of the customs article, and the customs law itself has regulated this issue and determines the amount of punishment, and as long as the provisions of the Penal Code through Article 42 of it require the criminal intent through the phrase “with his knowledge of that” this recognition means this recognition. Dean by crime.

As for taking advantage of fraud, Article 311 of the Customs Law before the cancellation stipulated that every attempt to know the perpetrators of customs violations is the possibility of impunity from punishment that was considered a picture of the benefit of fraud, as long as the legislator used the term “knowledge” is a sign of the element of knowledge, and the latter is considered an element in the formation of the general criminal intent, which justifies the mayor of the customs crime And it is what was modified through the text of Article 310, using the phrase `` directed for smuggling

¹ Nael Abdul Rahman, Economic Crimes in Jordanian Legislation, Dar Al -Fikr for Publishing and Distribution, Jordan, 1990, p. 148

purposes

B. The requirements of the criminal intent in the first degree misdemeanor and the violations of the second degree.¹

The first degree misdemeanor stipulated in Article 325 of the Algerian Customs Law, which is to obtain the delivery of one of the bonds in the text of Article 21 of the same law, or proceeding with this by forging public seals, or fraud methods or statements, or in every other monetary method that requires criminal intent that requires criminal intent, because the Algerian legislator used a term to indicate it and it is the 'fraud'.

C. The requirement of intent to start customs crimes.

As long as the Algerian legislator in the text of Article 328 of the Customs Law before its amendment related to the regulation of the issue of attempt was referred to the application of the general rules contained in the Penal Code, this directed from it to adopt the criminal intent in customs crimes, as long as the initiation of the provisions of the Penal Code is the start of implementation and then a disappointment for reasons beyond the will of the perpetrator, the issue of will indicates intent. As for the amendment of the Customs Law 17-04, the legislator did not stipulate the referral to the general rules explicitly, but rather the initiation of the same punishment prescribed to this misdemeanor.

3.2.2 Manifestations of the criminal intention of the hospital from the texts of the law Anti –smuggling

By referring to the provisions of the law on combating smuggling, we extract from its regulation for the crime of customs smuggling, that the moral pillar requires that it be committed from the implementation of the rules of criminal proof known in criminal trials, because in the criminal court the court raises a question about each incident, and among the questions asked: Is the accused guilty of committing the crime? Which necessitates the search for criminal intent.

On the other hand, we find that the Algerian legislator in his organization of customs smuggling crimes stipulated that a warehouse intended for smuggling, or a means of auxiliary transfer to that, is the term “purpose” used in the Anti -Smuggling Law indicates intent, which requires the elements of science and will to use the store.

As for the mitigation items, the customs law recognizes the existence of reasons for the optimism of criminal responsibility, which enables the reasons for the disintegration of the criminal responsibility contained in the Algerian Penal Code to the

¹ Nizar Saeed Al -Din Al -Issa, principles of macroeconomics (How the economy works in theory and application), International Scientific House and House of Culture for Publishing and Distribution, Jordan, i1, 2001, p. 245

customs dispute.

This is what the Customs Law indicated through the confrontation with the force of Cairo and the latter is "a force resulting from nature without a person has a will in it, expecting it or pushing it" without forgetting the exemptions in customs law to the sacrifice of ships and air boat leaders in the event that such a circumstance is proven, without violating the obligations specified in Articles 64 and 65 of the Customs Law.

Hence, we see that estimating the reasons for the perversion of criminal responsibility is a tendency from the Algerian legislator to recognize the existence of psychological elements when committing customs crime, as an exceptional image only, due to the limited field of its field, but most often is the assumption of the moral pillar of it, in order to facilitate the Public Prosecution in proof, and keep pace with the tremendous development in committing crimes, and maintenance of the national economy as an interest that is worthy of protection.¹

4- Conclusion

And we conclude this intervention, we conclude that the moral pillar of customs crime in Algerian legislation is still raising a legal problem on the extent of its existence in this type of crime of a special nature, by virtue of the control of the issue of assumption when determining the criminal follow -up, and exempting the accusation authority from proving it in violation of the presumption of innocence, which deviates from the principles of public law on the one hand, and between using terms The criminal texts suggest its requirement and require proving it as the terms of " fraud " is in limited and exceptional cases.

Perhaps what increases the problem is complicated and tagka is the legislator's approval in the customs article for reasons through which criminal responsibility is negated, the most important of which is the force majeure.

Accordingly, the reason for this problem regarding the moral pillar is that economic laws are of importance, which requires the requirement of the utmost gravity in observing them and closing the way to go out against it, otherwise it is not possible to implement the economic policy, and then the small or weak moral pillar in these crimes is a characteristic that is characterized by it.

The reason for the weakness of the moral pillar and its marginalization regarding the customs crime is due to the enlarged legislative texts in the economic article in general, and its dispersal, in addition to giving prevailing the idea of the economic interest on the freedoms of the individual,

¹ Shawky Ramez Shaaban, General Theory of Customs Crime, University House for Printing and Publishing, Beirut, 2000, p. 58

Which led to the settlement between the mayor and neglect, between intentional error and the non -intentional error.

Bibliography List :

Books :

1. Ahsen Bouskia, Al -Wajeez In General Criminal Law, I6, Housa House, Algeria, 2008.
2. Anwar Muhammad Sidqi, Criminal Responsibility For Economic Crime, House Of Culture For Publishing And Distribution, Jordan, I 1, 2007.
3. Issam Afifi Abdel -Basir, The Principle Of Criminal Legitimacy, A Comparative Study In The Positive Law And Islamic Criminal Jurisprudence, The University Of Fikr, Alexandria, 2004.
4. Jalali Baghdadi, Ijtihad In The Penal Materials, The National Corporation For Communication, Publishing And Advertising, C. 1, Algeria, 1996.
5. Marouk Nasr El -Din, Lectures In Criminal Proof, Evidence Of Criminal Proof, "Confession And Destinations", House Of Homa, Algeria, 2008.
6. Mohamed Marwan, The Evidence System In Criminal Articles And In Algerian Postea Law, Part 1, University Publications Court, Algeria, 1999.
7. Mohamed Sobhi Mohamed Najm, Explanation Of The Algerian Criminal Procedure Law, University Publications Court, I3, Algeria, 1992.
8. Nael Abdul Rahman, Economic Crimes In Jordanian Legislation, Dar Al - Fikr For Publishing And Distribution, Jordan, 1990.
9. Nizar Saeed Al -Din Al -Issa, Principles Of Macroeconomics (How The Economy Works In Theory And Application), International Scientific House And House Of Culture For Publishing And Distribution, Jordan, I1, 2001.
10. Shawky Ramez Shaaban, General Theory Of Customs Crime, University House For Printing And Publishing, Beirut, 2000.

Journal article :

1. Abdel Majid Zaalani, The legal nature of customs penalties, the Algerian Journal of Legal, Economic and Political Sciences, Part 36, No. 04, 1998.
2. Abdul Hamid Al -Hajj Saleh, customs smuggling between theory and application, a study in the unified customs law of the Gulf Cooperation Council states, the Journal of the University of Damascus for Economic and Legal Sciences, the second issue, volume 23, 2007.