

The Role of Interpretation in Business Criminal Law In Light of Emerging Economic Transformations



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Abstract:

The criminal policy in the field of business has undergone several transformations, affecting various principles underlying general criminal law. One of the most prominent principles is the restriction on analogy in criminal law, which stands as a crucial outcome of the application of the principle of legality in criminal legislation. The specific nature of the business field has led to an expansion in the scope of analogy, making it the primary solution relied upon by judges in resolving various cases brought before them. This shift can be attributed to several factors resulting from changes in criminal policy aimed at combating business crimes.

Key Words: Criminal Law; Business Criminal Law; Transformation; Analogy; Criminalization.

دور التفسير في القانون الجنائي للأعمال في ظل التحولات الاقتصادية الناشئة

ملخص:

تعرف سياسة التجريم في مجال الأعمال عدة تحولات طالات مختلف المبادئ التي يقوم عليها القانون الجنائي العام، ولعل أبرز هذه المبادئ تقيد القياس في القانون الجنائي، والذي يعتبر من أهم النتائج المترتبة عن إعمال مبدأ الشرعية في التشريعات الجنائية، حيث أدت خصوصية مجال الأعمال إلى التوسيع من نطاق إعمال القياس، أين أصبح الحل الذي يعول عليه القاضي في حل مختلف القضايا المعروضة عليه، وذلك بالنظر لعدة أسباب نتجت عن التحول في السياسة الجنائية لمكافحة جرائم الأعمال.

الكلمات المفتاحية: القانون الجنائي؛ القانون الجنائي للأعمال؛ التحول؛ القياس؛ التجريم.



Le Rôle de L'interprétation En Droit Pénal des Affaires à La Lumière des Transformations Economiques Emergentes

Résumé: La politique de criminalisation du droit des affaires a connu plusieurs transformations qui ont affecté les différents principes sur lesquels repose le droit pénal général. le plus important de ces principes est peut être la restrictions de l'analogie en droit pénal considérée comme l'un des résultats les plus importants découlant de l'application du principe de légalité en droit pénal .la spécificité du droit des affaires a en effet conduit à l'élargissement du champ d'application de l'analogie ,qui est devenue la solution sur laquelle le juge s'appuie pour trancher les différents cas qui lui sont présentés ,et ce pour plusieurs raisons découlant de l'évolution de la politique pénal visant à lutter contre la criminalité économique .

Mots Clés: Droit pénal; Droit pénal des affaires; Transformation; Analogie; Criminalisation.



Introduction

Various legal systems aim to achieve what is known as legal security, which in this context entails basing criminalization on the principles of legality, clarity, and non-retroactivity of criminal law, except where the new law is less severe. It also involves limiting the judiciary's discretion in interpreting criminal provisions. However, in the field of business, the original functions of these principles have been altered to protect business policies and enhance their effectiveness in addressing the complexities of business-related offenses. This shift has redefined the legal element of these crimes, resulting in a disruption of its key consequences, notably the prohibition of analogy and the strict interpretation of criminal provisions.¹

The business sector is characterized by dynamism, change, instability, and complexity. This necessitates a flexible and dynamic approach to legislative drafting, distinct from traditional methods. Criminalization in this domain is increasingly overseen by the executive branch. To keep pace with rapid developments, legislation is often drafted in a broad and imprecise manner, allowing for multiple interpretations. This approach employs what is known as flexible techniques and the "free form" method of criminalization.

From a practical standpoint, this has led to the judiciary relying extensively on interpretation to clarify ambiguities in criminal provisions related to business.

Study Problem:

This issue underpins the focus of this study, which examines the significant transformations in criminal policy within the business sector, framed by the question:

To what extent is the technique of interpretation effective in the field of business?

To address this question, the study adopts an inductive methodology, relying on analysis and description. This involves examining legislative and executive provisions governing various aspects of the business environment. Accordingly, the discussion will first explore the general concept of interpretation (The first topic) and then specifically address the application of analogy in the business sector (second topic)

¹ Ahmed Fathi Sourour, Constitutional Criminal Law, Dar .Al Shorouk for Publishing and Distribution Egypt 2006, p 86



THE FIRST TOPIC: The Concept of Interpretation in Business Criminal Law

Interpreting legal provisions is a fundamental and preliminary step in applying the law. Interpretation has always been a critical concern for those tasked with enforcing the law. Moreover, the principles, methods, and rules of interpretation are equally relevant to those involved in drafting legislation. A proper understanding of interpretation allows lawmakers to anticipate potential gaps, correct errors, and draft provisions in a manner that fulfills their intended purpose.²

Interpreting criminal provisions is a mental process fraught with challenges but indispensable for clarifying ambiguities. A criminal provision may be unclear, necessitating explanation, or it may contain contradictory language or diverge in its linguistic and legal meanings. In such cases, the true intent of the legislature must be uncovered. Sometimes, a provision may be too narrow, covering less than what was intended, or overly broad, encompassing more than necessary. In both scenarios, it is essential to delineate its scope and boundaries to ensure its application aligns with the legislature's intent.

To elucidate its essence, the discussion will address the definition and steps of interpretation (first requirement) before examining its various types (second requirement) .

First requirement :Definition of Interpretation and Its Steps in Business Criminal Law

Provisions in business criminal law, like other criminal law texts, may either be clear and unambiguous in application or ambiguous and thus require interpretation to resolve the uncertainty. Interpretation, therefore, involves elucidating the meaning and content of a provision to enable its correct application. This is achieved by determining the intended meaning of the legislator's words, making the provision applicable to real-life situations. The concept of interpretation has been defined from several perspectives (first section). To carry out the process of interpretation, a set of methodological steps must be followed (second section)

First section : Definition of Interpretation in Business Criminal Law

Legal scholars differ in their definitions of interpretation, reflecting their varying perspectives on the subject. Some focus on its objective nature, emphasizing the substantive aspects of interpretation, while others define it based on its purpose or goal. Certain scholars adopt a purely linguistic approach, while others highlight the functions that interpretation serves. Some definitions combine multiple factors to

² Mohamed Zaki Abu Amer: Criminal Law: General Part, Dar Al Jameaa Al Jadida Publishing, Alexandria, Egypt, 2015, p. 47



provide a comprehensive understanding of interpretation. These differences can be summarized under the following two points:

1 -Linguistic and Terminological Definition of Interpretation in Business

Criminal Law

Linguistically, interpretation refers to uncovering or clarifying something, akin to explaining or revealing the intended meaning of a complex issue.³

Terminologically, scholars who base their definitions on the purpose of interpretation describe it as the process of clarifying ambiguous terms, supplementing incomplete provisions, and defining insufficient legal rules to complete and rectify texts and reconcile their contradictory parts.⁴

Chassat defines interpretation as the effort to ascertain the true meaning of ambiguous provisions, whether the ambiguity arises from a textual deficiency due to a lack of coherence between terms, the use of unfamiliar terminology, a flaw in logical construction, stylistic peculiarities, or typographical errors.⁵

2- Jurisprudential Definition

Interpretation is generally understood as the process of determining the most appropriate legal rule, derived from the terms used by the legislator, to prepare for its application to the facts presented before the criminal judge. While this is a general understanding, various jurisprudential perspectives emphasize specific elements of interpretation, which will be detailed below.

Scholars who focus on the linguistic aspect of interpretation define it as: "Clearly explaining the content of legal rules" ().⁶ This involves determining the true meaning of the criminal rule enacted by the legislator, emphasizing the linguistic meanings and verbal interpretation to uncover the text's intended meaning.⁷ From this definition, two key points emerge: first, the emphasis on linguistic interpretation, and second, the neglect of the essence, subject, and methods of interpretation. This linguistic approach is often employed in the criminal field.

On the other hand, scholars who emphasize the functional aspect of interpretation in criminal matters define it as: "The process of investigation and inquiry to ascertain the correct meaning of a legal rule, which is then applied to a real situation, or to

³ Al-Fayrouz abadi: Al-Qamus Al-Muheet Dictionary, Al-Resala Foundation, Lebanon, 7th Edition, Volume 2, 2003, p. 110

⁴ Rifai Sayed Said: Interpretation of Criminal Texts - A Comparative Study, 2nd Edition, Dar Al Nahda Al Arabiya, Cairo, 2008, p. 61.

⁵ Al-Fayrouz abadi: Al-Qamus Al-Muheet Dictionary, op. cit., p. 504

⁶ Abdul Mahdi Ahmad Al-Ajlouni: Rules of Interpretation of Texts and Their Applications in Jordanian Judicial Ijtihad - A Comparative Jurisprudential Study, PhD Dissertation, Faculty of Graduate Studies, University of Jordan, 2005, p. 66

⁷ Mustafa Al-Ouji: Penal Code (General Part), Al-Halabi Legal Publications, Beirut, 2006, p. 298.



deduce the legal judgment and the specific case for which the rule was designed, based on the terms used by the legislator".⁸

From the above definitions, it can be concluded that all interpretations agree on one fundamental point: interpretation is an essential element in applying legal rules, particularly in criminal law. It is indispensable since, in practice, it is inconceivable to apply a legal rule to a case before a judge without interpreting it.

Furthermore, interpretation has two primary meanings:

- Narrow Meaning: Removing ambiguity and clarifying the meanings of texts.
- Broad Meaning: Clarifying meanings and terms when they are ambiguous, correcting deficiencies in legal texts, resolving contradictions between provisions, and addressing gaps where legal texts fail to cover certain scenarios or cases revealed during their application.⁹

Such deficiencies in criminal legislation necessitate judicial interpretation to determine a ruling that fits the situation and resolves the case. Consequently, interpretation encompasses all processes required to make criminal legal provisions applicable to the specific and varied cases presented before criminal courts.

Second section : Steps of Interpretation in Business Criminal Law

The interpretation process involves several stages that interpreters—whether legislators, judges, scholars, or legal researchers—must follow to interpret a specific provision accurately. These stages include precisely identifying the provision under interpretation, analyzing its linguistic terms to determine their meanings, and finally linking this interpretation to logical reasoning and practical reality, considering the procedural system in place and the prevailing social norms of a particular time and place. These steps are outlined as follows:

1- Identifying the Provision Subject to Interpretation

This is the initial step in the interpretation process, requiring the interpreter to determine the specific provision to be interpreted.

- Legislative Interpretation: The legislator may include interpretative provisions within the same law or in subsequent amending legislation to clarify ambiguous texts for legal purposes.
- Judicial Interpretation: The judge identifies the provision applicable to the case at hand. If the provision is found to be unclear or flawed, the judge seeks to interpret it to eliminate any ambiguity.
- Scholarly Interpretation: Scholars often focus on interpreting provisions relevant to their research topics through critical analysis.¹⁰

⁸ Rifa'i Said Sa'id: Interpretation of Criminal Texts, op. cit., p. 63.

⁹ Ali Abdel Qader Al-Qahwaji: Penal Code, General Part, University Press for Printing and Publishing, Beirut, Lebanon, 2000, p. 89

¹⁰ Rifa'i Said Sa'id: Interpretation of Criminal Texts, op. cit., p. 65



2- Explaining Terms

This step follows the identification of the provision. It is based on the principle that every term in the provision is essential and cannot be considered superfluous, as legislators are presumed to draft with precision, avoiding unnecessary terminology.¹¹ Interpreters must not disregard the explicit meaning of the terms in the provision under the pretext of pursuing justice or serving public interest, as altering the text's meaning constitutes creating law, not interpreting it.

If the provision includes technical terms, these must be interpreted according to their specialized meanings, even if they differ from their ordinary usage. In cases where the text contains typographical errors or poor word choice, the interpreter may correct these errors, provided the legislator's intent is unequivocally clear and the error is evidently due to oversight or imprecision.

Given the scientific and modern nature of business criminal law, its provisions are often accompanied by sections dedicated to defining terms within the legislation. This is particularly true for laws such as the Customs Code, the Commercial Practices Act, and the Consumer Protection Act.

3- Linking the Provision to External Political and Social Factors

When interpreting criminal law, the interpreter must consider the various social and political conditions of the state, as well as adhere to the general context and prevailing orientation in the adopted criminal policy. Business criminal regulation is an integrated system, and it is essential to maintain consistency among the legal rules that contribute to this system, which aims to achieve financial and economic efficiency.¹²

The interpreter should not limit their analysis to the immediate objective of the specific provision but must interpret it in light of other related provisions within criminal law, particularly those connected to business criminal law, to avoid contradictions. Additionally, the title of the provision is part of its content and must be considered in its interpretation. However, if there is a conflict between the title and the body of the provision, priority must be given to the text, as it defines the behaviors that the legislator intends to criminalize and penalize in the business sector. This task becomes challenging, especially given the hybrid approach adopted in regulating business crimes.¹³

¹¹Ma'moun Mohammed Salama: Penal Code, General Part, 4th Ed, Dar Al-Fikr Al-Gharbi, Cairo, 1983, p. 41.

¹² Zaalani Abdelmajid: "Constitutional Principles in Criminal Law," Symposium on Public Freedoms and Political Development in Algeria, organized by the Ombudsman of the Republic, Oran, 29-30 November, p. 15.

¹³ Rifa'i Said Sa'id: Interpretation of Criminal Texts, op. cit., p. 67



Second requirement : Types of Interpretation in Business Criminal Law

The types of interpretation in business criminal law mirror those in general criminal law and law as a whole, following the general theory of interpretation in social sciences. Interpretation is categorized either by its source or by the entity performing it into legislative, judicial, and scholarly (doctrinal) interpretation. It can also be classified by the method or approach employed, typically influenced by criminal policy requirements or judicial methodology, into literal and logical interpretation.

First section : Interpretation by Source

Based on its source or the entity performing the interpretation, interpretation is divided into three main types:

- Legislative Interpretation: Issued by the legislator in the same law or in subsequent legislation to clarify ambiguous provisions.
- Judicial Interpretation: Provided by the judiciary when applying criminal law provisions in business cases.
- Scholarly (Doctrinal) Interpretation: Offered by legal scholars specializing in business criminal law.

1- Legislative Interpretation in Business Criminal Law

The Algerian legislator frequently employs this technique in business criminal law provisions. Legislative interpretation originates from the legislator, who, after enacting specific provisions, may issue supplementary provisions to clarify directly related issues that could provoke divergent interpretations.

Legislative interpretation has the same binding authority as the original provision it seeks to clarify. Some scholars argue that this form of interpretation serves as a corrective measure for legislative errors.¹⁴

Interpretative legislative provisions are treated like regular legislative texts. They are subject to judicial interpretation and governed by the same general rules of interpretation.

2- Judicial Interpretation

Given that criminal judges are not specialized in business law, they often encounter ambiguous or unclear provisions when adjudicating business crimes. This ambiguity arises from the flexible and open-ended drafting of business criminal law provisions. Consequently, judges frequently rely on interpretation and, at times, even resort to analogy to clarify these provisions. Judicial interpretation, in this context, involves deriving legal judgments from the judiciary's application of law to specific cases, aiming to uncover the legislator's intent in the business domain.

Judicial interpretations vary between courts and even among judges.¹⁵ While judicial interpretation lacks binding authority, it sometimes gains moral or persuasive

¹⁴ Ibid., p. 69



weight, especially when issued by higher courts, such as the Supreme Court, in relation to lower courts. In their role of applying legal provisions—primarily those related to financial, economic, and commercial matters—judges are compelled to interpret these provisions to ensure their proper application to the cases before them, given the specialized nature of the legal rules in this field.¹⁶

Despite being referred to as "official interpretation" due to its issuance by a formal judicial authority, judicial interpretation is not binding. It is not obligatory for other judges, regardless of their rank, and even the interpreting judge may later deviate from their initial interpretation if they find it inaccurate or insufficiently aligned with the legislative intent of the criminal provision in question.¹⁷

3- Scholarly Interpretation

Scholarly interpretation is conducted by legal scholars and academics. Unlike judicial interpretation, it is entirely non-binding. However, it holds significant intellectual value, supported by the scholar's academic stature and specialization in the field.

Scholarly interpretation extends beyond merely clarifying ambiguous provisions in business criminal law. It can inspire legislators by identifying gaps in legal texts and offering an ideal framework for future legislation. In fact, the very concept of business criminal law originated from academic discourse.

Moreover, scholarly interpretation plays a pivotal role in guiding judicial interpretation. Judges often consult the opinions of legal scholars when interpreting business criminal law provisions, using their analyses as a reference in the decision-making process.¹⁸

Second section : Interpretation by Method

In addition to categorizing interpretation by its source, legal doctrine also divides interpretation based on the method used. This categorization reflects the practical steps involved in interpretation and includes two primary methods: literal interpretation and logical interpretation.

1- Literal Interpretation

Literal interpretation, also known as textual or grammatical interpretation, focuses solely on explaining the wording of the provision as it is, without considering external factors. It is a traditional method that directly adheres to the literal meaning

¹⁵ Ben Friha Rachid: *The Specificity of Criminalization and Punishment in Business Criminal Law: Corporate Crimes as a Model*, PhD Dissertation, Faculty of Law and Political Science, Abou Bekr Belkaid University of Tlemcen, 2016, p. 217

¹⁶ Rifai Sayed Saeed, *Interpretation of Criminal Texts*, op. cit., p. 70

¹⁷ Ali Abdelkader Al-Qahwaji: op. cit., p. 90

¹⁸ Ben Friha Rachid: op. cit., p. 218.



of legislative texts. This approach was championed by philosophers such as Montesquieu and Beccaria and relies on the internal logic of the legislative text.¹⁹

The literal method emphasizes the classical principle that criminal provisions should be interpreted strictly and that no inferences should be drawn beyond the text's explicit terms. In cases of conflict between the literal meaning of the text and the legislator's intent, priority is given to the text itself, excluding the legislator's intent.²⁰

This method is founded on two main principles:

- Completeness of Criminal Legislation: The assumption that criminal law is comprehensive, with no gaps or deficiencies.
- Immutability of Criminal Provisions: The belief that criminal provisions are not subject to alteration or reinterpretation.

Critics of this method argue that it leaves no room for judicial adaptation to evolving social circumstances, thus hindering the dynamic interpretation of criminal provisions.²¹

Literal interpretation serves as the primary means for interpreters to deduce the meaning of a text based on its linguistic terms. It requires interpreters to adhere to the lexical meanings of words and the syntactic structures within the language. This approach not only examines the individual meaning of each term or phrase but also considers the logical structure and analytical framework of the language as a whole.²² Additionally, interpreters must recognize the evolution of language over time, distinguishing between linguistic and technical meanings to uncover the legislature's true intent within the context of criminal law.²³

2- Logical Interpretation

Logical interpretation emerged as an alternative to literal interpretation, particularly in response to the latter's inadequacies. While literal interpretation may suffice for straightforward and clear provisions, it often falls short when applied to the complex and nuanced provisions of business criminal law.²⁴

The flexible, broad, and open-ended language often used in business criminal law can lead to multiple interpretations, making it difficult to ascertain the legislator's true

¹⁹ Montesquieu: *The Spirit of Laws*, Volume 1, translated by Adel Zaiter, Kalimat Arabia for Translation and Publishing, Cairo, Egypt, 2012, p. 395

²⁰ Ramses Behnam: *The General Theory of Criminal Law*, 2nd Edition, Mansha'at Al-Maaref, Alexandria, 1971, p. 79

²¹ Refa'i Sayed Saeed: *Interpretation of Criminal Texts*, op. cit., p. 72.

²² Mahmoud Taha Galal: *Principles of Criminalization and Punishment in Contemporary Criminal Policy: A Study on the Strategy of Using Criminal Sanctions*, Dar Al-Nahda Al-Arabia, Cairo, 2005, p. 291.

²³ Ben Frikha Rachid: op. cit., p. 220

²⁴ Mahmoud Taha Galal: op. cit., p. 292



intent. In some cases, errors in phrasing may even distort the intended meaning of the text, rendering literal interpretation ineffective.

Logical interpretation seeks to overcome these challenges by moving beyond the strict wording of the text to uncover its underlying purpose and rationale. This method involves considering the broader context, including the social, economic, and political objectives that the legislation aims to achieve. It is particularly useful in addressing the ambiguities, contradictions, or gaps often found in business criminal law provisions.

Logical interpretation allows for a more nuanced and pragmatic approach, ensuring that the interpretation aligns with the broader objectives of criminal policy and the realities of business practices.

Thus, logical interpretation emerged to fill the gaps left by literal interpretation, treating the latter as an initial step in the broader interpretative process. Logical interpretation moves beyond the explicit meaning of the criminal provision's wording to uncover a deeper, implicit meaning intended by the legislator. This approach employs more sophisticated analytical methods than those used in literal interpretation, delving into the essence of the criminal provision and deriving its meaning from the underlying rationale, historical origins, and the social and economic context in which the legislation was enacted.²⁵

Every criminal provision aims to achieve a specific objective, which represents the underlying purpose or rationale for its existence. This purpose reflects the interests that the legislator sought to protect, as well as the social, political, economic, and moral considerations that necessitated its enactment. This concept is commonly referred to as the "spirit of the law."

The "spirit of the law" entails interpreting the provision in light of its intended purpose or rationale. This approach emphasizes understanding the legislative intent, identifying the interests meant to be safeguarded, and recognizing the harms the law seeks to prevent, along with the political, social, economic, and ethical objectives it aims to achieve.²⁶

Some refer to this method as teleological interpretation, as it focuses on uncovering the ultimate purpose of the criminal provision. To achieve this, various tools are employed, including:

- Reviewing the preparatory works accompanying the enactment of the provision.
- Balancing the linguistic meaning of the terms with their legal connotations.
- Considering the historical context of the provision's issuance.

²⁵ Rifai Sayed Said, *Interpretation of Criminal Texts*, op. cit., p. 74.

²⁶ Ben Frikha Rachid: op. cit., p. 218



- Reflecting on the legal interest the legislator sought to protect by criminalizing the act and imposing penalties.

This holistic approach ensures that the interpretation aligns with the broader objectives of the criminal law, providing a more comprehensive understanding of its application in practice.²⁷

THE SECOND TOPIC: Application of Interpretation in Business Criminal Law

Judicial practice in prosecuting business crimes has necessitated the interpretation of certain legal provisions. Initially, this was facilitated by legislative interpretation, which provided examples and definitions to aid judges. However, this approach was later criticized, as the art of legislative drafting typically avoids providing definitions or examples. Moreover, it is impossible for the legislative authority, despite its best efforts, to create provisions that are entirely flawless. This inevitably necessitates judicial interpretation to address gaps, clarify ambiguities, and resolve contradictions in meanings and judicial rulings.²⁸

The concept of interpretation was accepted once again, albeit within a very narrow scope, surrounded by strict conditions and limitations. The use of analogy in interpreting criminal provisions was prohibited, and strict adherence to literal interpretation was mandated to avoid creating new criminal provisions through interpretation. However, the peculiarities of the business sector compelled judges to deviate from these constraints.²⁹

Given the haste often involved in drafting business-related laws, which frequently leads to errors and ambiguities, and the complexity of the interests at stake in this field, judges cannot rely solely on literal or precise interpretation. Instead, they resort to broad interpretation and analogy, guided by the spirit of the law, which constitutes a clear breach of the principle of legality.³⁰

This expansive approach to interpreting criminal provisions in the business domain is particularly evident in French jurisprudence, especially concerning the protection of corporate credit. In this context, the judiciary has adopted a unique policy, deliberately avoiding strict adherence to the literal meaning of the text. The aim is to

²⁷ Ramses Behnam: op. cit., p. 219

²⁸ Ashraf Tawfiq Shams Al-Din: The Constitutional Limits of Criminalization and Punishment Provisions in the Jurisprudence of the Supreme Constitutional Court, Part 1, The Constitutional Journal, Supreme Constitutional Court, Egypt, Issue 13, 2008, p. 31

²⁹ Ali Abdul-Qader Al-Qahouji: op. cit., p. 89.

³⁰ Montesquieu: op. cit., p. 395



cleanse the business environment of various forms of misconduct and deceptive practices orchestrated by offenders in this field³¹

This discussion leads us to examine the extent to which criminal judges adhere to the principles of interpretation in business crime cases (first requirement)and the justifications that prompt criminal law scholars to support the idea of broadening the scope of interpretation in the business sector (second requirement)

First requirement : Principles of Interpretation in Business Criminal Law

Judicial precedent generally adopts the principle of narrow interpretation for substantive criminal provisions. Numerous judicial decisions have affirmed this approach, emphasizing that criminal provisions must be interpreted strictly, leaving no room for broad or logical interpretation by judges. This principle is codified in the French Penal Code of 1994, which states in Article 111-4: "Criminal law is to be interpreted strictly".³²

However, in practice, the application of strict interpretation in business crimes has faced challenges, depending on whether the provision in question is clear or ambiguous. Even when the text appears clear, judges often find themselves compelled to engage in broader interpretation to uncover the intended meaning and resolve cases brought before them.

This section will address the rules governing the interpretation of clear criminal provisions in business law (first section) before examining the rules applicable when provisions are ambiguous (second section).

First section: In Cases of Clear Provisions

At times, criminal law provisions are clear and encompass all elements of the crime, making it relatively straightforward for the judge to apply the text as intended by the legislator. In such cases, the judge must apply the provision strictly, without adding to or subtracting from its intended meaning. Here, interpretation serves merely to affirm the legislator's intent. This scenario involves two possible applications:

1 -Applying the Provision Based on Its Sole Interpretation

In this instance, the judge relies exclusively on the single, explicit meaning of the provision, avoiding any broad interpretation. A notable example can be found in French jurisprudence regarding fraud. The courts initially ruled that fraud provisions

³¹-The reason for the position of the French judiciary may lie in the absence of a specific provision that applies to all these actions before 1935, when judges were applying the provisions of the crime of breach of trust to these actions due to the many similarities between them. Therefore, the French legislator expanded the interpretation of Article 408 of the old French Penal Code and harshly applied it to actions that harmed the financial integrity of the company. This led to the development of what is known as the theory of agency between partners. The position of the legislations was not limited to applying analogies in the field of business but also prohibited retroactive application of the criminal text, provided it was more favorable to the accused. ; Rifa'i Said Sa'id: Interpretation of Criminal Texts, op. cit., p. 61

³² Ehab Al-Rousan: op. cit., p. 85.



did not cover the fraudulent acquisition of services. Consequently, a defendant who fraudulently obtained services was acquitted. This prompted the legislature to amend Article 313(1) of the French Penal Code, explicitly including fraudulent acquisition of services.

2- Applying the Provision Considering All Its Potential Interpretations

This method has two aspects:

First Aspect: It excludes narrow interpretation, while still adhering to the literal bounds of the text. Judicial precedent has recognized two key features:

- Adapting Old Provisions to Modern Contexts: It is necessary to align older provisions with contemporary daily life requirements. At the same time, strict interpretation is not violated if the provision is given all the dimensions intended by the legislator, particularly in response to technological advancements.
- Aligning Provisions with Criminal Policy Needs: Interpretation must align with the evolving needs of criminal policy, particularly as it pertains to technological and societal progress. This form of interpretation ensures that the content remains consistent with the general rule without diverging from its core.

All these examples illustrate what appears to be broad interpretation but is, in reality, consistent with the legislator's intent. This approach differs from broad interpretations that deviate from the legislator's original purpose.³³

Second section : In Cases of Ambiguous Provisions

Business criminal law provisions are often ambiguous and lead to confusion. This is due to the failure to adhere to general legal drafting principles when criminalizing and penalizing business crimes, as well as the shift away from traditional criminal law principles and policies in the business realm. Therefore, it is crucial to distinguish between two types of ambiguity in business criminal law provisions: simple ambiguity and complex ambiguity.

1- Simple Ambiguity

This type of ambiguity arises when a provision is poorly or incorrectly drafted, fundamentally affecting its legislative meaning. However, determining the true and intended meaning is relatively straightforward. In such cases, judges must not adhere strictly to the literal text but should instead seek the intended meaning directly.

2-The Great Ambiguity

This type of ambiguity typically arises in cases where there is a lack of clear definition in the text, or when words or phrases with broad meanings capable of multiple interpretations are used. In such instances, the judge cannot rely on the difficulties they face or on the necessity of a narrow interpretation of penal

³³ Ashraf Tawfiq Shams Al-Din: op. cit., p. 31.



provisions, as they are obligated to render a decision. Consequently, the judge must exert efforts to ascertain the legislator's intent, by consulting preparatory works, relying on general principles and foundations, or considering the broader social context. This often results in such texts leaving ample room for varied interpretations, leading the judge, in most cases, to resort to broad interpretation.³⁴

Second requirement; Justifications for Expanding the Interpretation of Business Crime Provisions:

The compromise of the fundamental principle of legality, as previously mentioned, is attributable to a range of economic, commercial, and financial considerations. These require legislative intervention that is both swift and flexible to address the challenges, changes, and evolving technologies enabling business criminals to adopt sophisticated and highly organized methods. These methods, developed through meticulous study and advanced techniques, often render crime detection authorities helpless in the face of the complexity characterizing such crimes.³⁵

First section : Flexible and Ambiguous Drafting of Business Criminal Law Provisions:

This expansion is particularly evident in the business environment, where there has been a notable increase in the use of flexible legal drafting. Legislators have issued criminal provisions with broad and undefined meanings, using terms that allow for multiple interpretations. These provisions are often ambiguous or overly expansive, lacking the precision and clarity traditionally characteristic of legal texts. This approach has been termed the "adaptation of criminal rules in the business domain."³⁶

Additionally, the free-form drafting method is employed in business criminal law, where the legislator defines the result clearly but leaves the actions leading to it undefined, allowing for flexibility in the means and forms of conduct. The flexibility of business criminal provisions is also evident in the absence of exhaustive lists of behaviors, methods, or tools used in crimes. Frequently, legislators enumerate some actions or methods and then append phrases such as "or any other" or "and others," which are inherently broad and non-restrictive. This approach prevents the exclusion of potential future methods that could arise due to technological advancements, which would otherwise escape the law's scope if drafted restrictively.³⁷

³⁴ Al-Rousan, Ihab, op. cit., p. 87

³⁵ Nabil Abdul Rahman Saleh, *Economic Crimes in Jordanian Law*, 1st ed., Dar Al-Fikr for Publishing and Distribution, Amman, Jordan, 1990, p. 44

³⁶ Jamal Al-Atifi: *The Concept of Economic Crime, Its Nature, Scope, and Special Provisions*, Report presented to the First Social Defense Session, Cairo, 1966, p. 63

³⁷ Ehab Al-Rousan: op. cit., p. 86



Second section - The Decline of the Legislator's Role and Legislative Inflation in Business Law

The legislator's role has diminished through the delegation of authority to criminalize and penalize in the business domain. This delegation allows the legislative authority to transfer its powers to the executive branch, necessitating a broader application of analogy in business criminal law³⁸.

Furthermore, there is a pressing need to reduce legislative inflation in the business sector. Business criminal law suffers from significant legislative overproduction, making it difficult even for specialists to fully comprehend. Legal scholars have noted that the proliferation of regulations has resulted in an inability to grasp their scope, not only for the public but also for experts. This undermines respect for the penalties imposed for violating these regulations. Instead of increasing the volume of legal texts, it would be more effective to allow judges to apply analogy based on existing rules, thereby reducing the need for new provisions that may go unnoticed or misunderstood³⁹.

Conclusion:

From the foregoing, it can be concluded that interpretation is an essential element in business criminal law. This necessity stems from various considerations directly related to communication through language, which typically conveys a message from the legislator to business professionals. Through this message, the legislator expresses an internal intent via words and phrases. Interpretation, therefore, intervenes with the aim of uncovering the true meaning and correct understanding of the intended message.

A criminal provision is essentially a message directed at the judge, issued by the legislator, and reflecting the latter's intent. The judge must receive this message and interpret it in a way that accurately identifies the legislator's intent. The matter goes beyond mere comprehension of the message; it extends to applying the message to specific cases, influencing other interests, and potentially affecting individuals' freedoms and rights by restricting or limiting them. Consequently, the judge must exercise extreme caution in interpreting legal provisions to avoid deviating from the legislator's intent. From this, the following conclusions can be drawn:

³⁸- Rana Al Attour, Sharing the Fight Against Crime between Law and order in French criminal legislation , An-Najah University Journal for Research (Humanities), Vol. 27, No. 09, 2013, p. 1824.

-The legislator merely sets the general guiding framework for elements of criminalization, leaving the interpretation to the executive authority through precise regulatory texts. This approach has led the legislator to delegate to the regulatory and administrative authorities the right to criminalize acts related to corporate crimes. Rana Al-Atour, The Division of Crime Control Between Law and Order in French Criminal Legislation.

³⁹ Ben Fareha Rachid: op. cit., p. 66



- **Interpretation in Criminal Provisions Aims to Uncover the Legislator's True Intent:** Regardless of the methods or tools used, the ultimate goal of interpretation should remain the same: to reveal the true meaning of the provision as intended by the legislator. Deviating from this meaning breaches the principles of separation of powers and the legality of crime and punishment, effectively transforming the judge from an enforcer of the law into a legislator, thereby posing a direct threat to individual freedoms.
- **The Dangers of Over-Expanding Interpretation:** When judges resort to logical interpretation of significantly ambiguous provisions, they may assign meanings beyond what the text can reasonably support, incorporating situations the legislator did not envisage. This highlights the need for the legislator to address gaps in the law to enhance protection of individual and societal interests.
- **Judicial Responses to Legislative Drafting Errors:** When a legislator's poor drafting alters the intended purpose and objective of a provision, two scenarios may arise:
 - The judge applies the provision narrowly, prompting the legislator to recognize and correct the error.
 - The judge assigns the provision its true intended meaning, effectively urging the legislator to rectify the oversight.
- **The Necessity of Interpretation in Law Application:** Interpretation is imperative for the practical application of legal provisions, which are originally designed by the legislator to protect specific interests. For this protection to be realized, judges must interpret the provisions in a manner that aligns with their intended purpose. Given the potential for interpretation to diverge from the provision's true objective and the legislator's intent, it is crucial for the legislator to establish general principles to guide the interpretation process, particularly in criminal law, due to its direct connection with individuals' fundamental rights and freedoms.

Recommendations

- **Legislative Prudence and Patience:** The legislative authority must exercise patience, careful deliberation, and technical proficiency in its legislative work, particularly when addressing rapid developments. This approach enhances the clarity and authority of the law, fostering respect among citizens, judges, and legal scholars alike.
- **Evolving Legal Research Methods:** Legal research methodologies should shift towards greater flexibility in addressing contemporary legal issues. This approach would help confront present challenges confidently, while legal education should be rooted in deep, research-based inquiry into current legal problems.



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