Criminal Liability of Legal Persons for Customs Smuggling Offenses in Algerian Legislation and Comparative Law

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Abstract:

This paper undertakes an in-depth analysis of the criminal liability of legal persons with respect to customs smuggling violations in the context of Algerian law, supplemented by an in-depth comparative study of policies in France, the UK, and the US. The study charts the legislative developments in Algeria—most importantly the incorporation of liability of legal persons in the Penal Code and the amendments to the Code of Customs—whilst delving into the substantive and procedural conditions required to establish liability (theories of attribution, fault of organisations, evidential challenges) and evaluating the gamut of sanctions and remedial measures permissible. Sketches of comparative scenarios, including notable enforcement actions and jurisprudential developments in France, the UK, and the US, are drawn upon to distill conclusions intended to strengthen the enforcement apparatus of Algeria. The paper concludes with certain policy recommendations pertaining to clarification of statute, strengthening of investigation capacity, varied sanctions, and the promotion of in-house corporate compliance programmers.

Keywords: *Customs smuggling; Legal person; criminal liability; Algerian law; Comparative law.*

1. INTRODUCTION

International trade liberalisation has revolutionized global business, enabling the swift cross-border movement of goods and encouraging the creation

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of complex corporate value chains. Even as these developments have encouraged economic integration, they have also widened avenues for customs smuggling and other trade-related frauds. Smuggling outfits increasingly utilize corporate structures, putting in their way legitimate entities to disguise illicit business, blur lines of accountability, and escape detection. This evolution creates a double challenge for governments: first, the challenge of the law in holding non-natural persons like corporations culpable through criminal liability, and second, the policymaking challenge of creating sanctions effective enough to deter wrongdoing without causing undue harm to innocent shareholders, workers, or business partners.

In Algeria, recent changes to legislation reflect a growing understanding of such challenges. The addition of provisions for corporate criminal liability to the Penal Code and amendment of the Customs Code in 2017 (Law No. 17-04) represents a significant move towards embracing the institutional nature of crimes involving customs. These changes are crafted to hold corporations accountable when they facilitate or engage in smuggling practices, directly or by failing to ensure prevention of impropriety within areas of commercial activity. Even so, with regard to such legal enhancements, there are still practical shortcomings. Algerian law still struggles to define clear parameters for imposing liability on legal entities, to keep evidence standards consistent, and to enact adequate sanction mechanisms to balance deterrence and equity.

This study analyzes how Algerian law constructs and imposes criminal responsibility upon legal persons in the instance of customs smuggling. It also considers comparative legal models in France, the United Kingdom, and the United States, seeking lessons that can guide and enhance Algeria's model. Analyzing statutory materials, doctrinal treatises, enforcement reports, and selected case law, the study determines both strengths and weaknesses in Algeria's current framework. It also draws a cue from international best practice, such as guidance from the World Customs Organization and the OECD, to lay down concrete reforms that align domestic law with global norms. From this analytical and comparative view, the research aims to contribute toward a more standard and efficient legal response to the role of corporations in customs crime.

2. Criminal Liability in Theory and Practice

2.1 Conceptual and Theoretical Framework

Historically, criminal law held back from attributing criminality to collective bodies, as the maxim 'societas delinquere non potest' stated. As

corporations grew in economic power and capability for causing social damage, this line of reasoning came to seem more and more unlikely during the twentieth century. Many jurisdictions enacted legislation or developed jurisprudence to attribute criminality to legal persons during that period. Three broad theories underpin modern attribution models: identification, vicarious liability (respondeat superior), and organizational fault.

Identification theory (the 'directing mind and will' theory) imputes the conduct and intentions of those members of the directing mind of the corporation to the corporation. Vicarious liability holds the corporation responsible for wrongs perpetrated by the employees in the course of their employment even without senior-level intent. Fault or 'faute d'organisation' addresses defective company systems, controls, or compliance arrangements which render wrongdoing foreseeable and preventable only by better governance. All these theories call upon various evidentiary requirements and policy goals (retributive justice, deterrence, remediation).

2.2 Normative Trade-offs and Hybrid Approaches

Pure application of identification theory may leave liability gaps where misconduct is decentralized across middle-management or where shell companies and intermediaries are used. Conversely, broad vicarious liability risks penalizing firms despite lack of managerial fault. Organizational fault bridges these poles by targeting systemic failures—policies, procedures or culture—that create vulnerability to criminal conduct. Comparative reforms have trended toward hybrid models: retaining identification for deliberate, high-level wrongdoing while employing organizational fault and vicarious liability to capture systemic or pervasive misconduct. Such hybrids align well with customs smuggling phenomena, which often blend deliberate concealment by senior actors with procedural loopholes and compliance weaknesses exploited at operational levels.
Identification theory (the 'directing mind and will' approach) imputes to the corporation the acts and intentions of those individuals who embody the corporation's directing mind (generally senior managers or directors). Vicarious liability holds the corporation answerable for wrongful acts committed by employees within the scope of their employment, regardless of senior-level intent. Organizational fault or 'faute d'organisation' focuses on defective corporate systems, controls, or compliance frameworks that render wrongdoing foreseeable and preventable only through better governance. Each theory implicates different evidentiary requirements and policy goals (retributive justice, deterrence, remediation).

2.3 Customs Smuggling as an Organizational Crime

Customs smuggling is typically practiced through structured methods: misdescription, under-declaration, fictitious invoices, wilful origin misdescription, and use of transshipment or shell corporations to conceal supply lines. These methods can be practiced by employee-level offenders (e.g., logistics directors, freight forwarders) with or without top management knowledge. Thus, effective legal mechanisms need flexible attribution tools to ensnare both goal-oriented conspiracies developed by managers and institutionalized evasion produced by weak internal controls.

2.4 Algerian Legal Framework

Algeria's Penal Code (and, in particular, Article 51 bis) and the Customs Code (Law No. 79-07, as amended by Law No. 17-04) have the main statutory foundation for the criminal prosecution of legal entities. Article 51 bis provides that legal entities are criminally liable where offenses are committed on their behalf by their organs or representatives. The 2017 revision of the Customs Code strengthened substantive customs offence measures—establishing more precise definitions of acts of smuggling, administrative penalties, and criminal penalties where necessary.

These texts crystallize the prospect of corporate criminal liability for customs offenses but leave interpretive and procedural issues to courts and enforcement agencies, such as (a) the exact threshold for attribution of the criminal act to corporate advantage, (b) the level of authority or representativeness needed on the part of the human actor, and (c) whether and how organizational fault is to be determined.

3. Comparative Perspectives

3.1 France

France's legal framework is instructive for Algeria due to shared civil-law roots. Article 121-2 of the French Penal Code explicitly provides for corporate criminal liability for offenses committed for their benefit by their organs or representatives. French courts have developed the concept of “Faute d'Organisation” (Organizational Fault), which holds companies liable when their organization or management fails to prevent criminal behavior. The Court of Cassation and lower courts have progressively applied this doctrine across economic crimes, and significant jurisprudence clarifies evidentiary standards for organizational fault (e.g., absence of adequate controls, deficient compliance systems).

A notable jurisprudential development (Court of Cassation, Nov 25, 2020) extended corporate liability in the context of corporate acquisitions, signaling judicial willingness to adapt doctrines to evolving corporate realities. The French experience shows that statutory recognition, combined with doctrinal tools addressing organizational fault, produces a robust enforcement environment against corporate wrongdoing including customs-related offenses.

3.2 United Kingdom

The UK has historically relied on the identification doctrine, equating the conduct and intention of senior individuals with those of the firm. The UK over the past decades has added doctrines of attribution remedial and procedural instruments—corporate sentencing guidelines increase sanctions for economic crimes and prioritize disgorgement and remedying; Deferred Prosecution Agreements (DPAs) have been used to secure convictions by agreement where firms are cooperative and remedial. Tesco DPA (2017) is an example of the use of negotiated settlements and remediation, although not a customs case, it reflects enforcement trends: high financial penalties, concessions of fact, and compliance actions.

For customs offenses specifically, HM Revenue & Customs (HMRC) and UK courts alike have utilized both criminal prosecution and civil recovery to impose customs duties and sanctions, often utilizing corporate cooperation to organize settlement arrangements.

3.3 United States

US trade fraud and customs evasion enforcement is characterized by aggressive use of criminal statutes, civil enforcement (e.g., False Claims Act), and multimillion-dollar settlements. The Department of Justice (DOJ) and U.S. Customs and Border Protection (CBP) have pursued high-profile cases—such as settlement of multinational corporations for import misclassification and undervaluation. The March 2024 Ford Motor Company settlement for $365 million in resolution of misclassification and undervaluation helps to illustrate the scale of enforcement in the US setting. US law also provides individual executive liability for certain regulatory scenarios (e.g., the Responsible Corporate Officer doctrine). Large fines, strong investigatory powers, and whistleblower incentives are thus profiled as part of the US model.

3.4 Comparative Synthesis

Comparative analysis suggests several practical reforms Algeria could consider:

- Legal clarity: Codify modes of attribution (identification, organizational fault, and vicarious liability) and provide guidance on evidentiary standards for organizational fault.
- Enhanced sanctions: Design fines and confiscation regimes that ensure penalties exceed illicit gains; consider remedial sanctions like court-ordered compliance programs or monitorships in severe cases.
- Prosecutorial tools: Explore mechanisms akin to DPAs or negotiated settlements adapted to Algeria's legal system to secure restitution and remediation without protracted trials.
- Capacity building: Invest in customs forensic accounting, beneficial ownership registries, and international cooperation arrangements to trace complex smuggling schemes.
- Transparency and jurisprudence: Create a public repository of decisions and administrative enforcement actions to guide consistency in enforcement and judge-made doctrine development.

4.Illustrative Case Studies and Enforcement Examples

4.1 International Enforcement Examples

United States: In March 2024, the Ford Motor Company paid $365 million to resolve allegations that it underreported and undervalued imported Transit Connect vehicles in an effort not to pay more duties (DOJ enforcement and CBP matters). The case shows the use of civil and criminal enforcement tools to accomplish significant fiscal remediation as well as to convey deterrence.

United Kingdom: The Tesco example (Deferred Prosecution Agreement, 2017) and other corporate settlements show how negotiated settlements can achieve financial remedies, admissions of fact, and commitments to comply—all without a full criminal trial. Tesco's example concerned accounting misconduct, but procedural takeaways can be extrapolated to customs enforcement: DPAs or similar mechanisms can be effective where cooperation from corporations produces restitution and behavioral change.

France: Corporate liability principles have been applied habitually by French courts in economic crimes, and decisions on organizational fault have set proportionate expectations for companies' compliance systems.

4.2 Algerian Context: Notable Administrative and Criminal Actions

Publicly disclosed Algerian enforcement action in customs are usually seizures, administrative sanctions, and criminal referrals in cases of large-scale evasion or smuggling. Published judicial decisions against legal persons

specifically for smuggling in customs are still rare in available databases. Government pronouncements by the Algerian Directorate General of Customs and spasmodic reporting by the press indicate active enforcement—port seizures, fine for undeclared or inappropriately described goods, and criminal investigations where organized fraud has been alleged. The lack of judicial reports that are available demonstrates the need for official publication and scholarly compilation of case law to maintain doctrinal accuracy.

5. CONCLUSION

Algeria's legislative framework of legal person criminal liability is going in the right direction towards contemporary enforcement against customs smuggling. Statutory establishment, however, needs to be complemented with doctrinal development (particularly on organisational fault), augmented investigatory capability, well-tuned sanctioning frameworks, and structures to encourage corporate compliance and cooperation.

Comparative British, US, and French experience demonstrates the success of explicit doctrines of attribution, robust sanctions in the shape of forfeiture and remedial orders, and prosecutorial approaches that promote cooperation. Codifying methods of attribution, reinforcing sanctions over criminal gain, raising remedial instruments (such as orders requiring compliance), and improving transparency by publishing jurisprudence would all be beneficial to Algeria.

Future studies would have to collect and compare Algerian court decisions on corporate responsibility in customs matters, supply empirical measurement of enforcement results, and quantify the impact of suggested reforms on trade compliance and tax protection.

6. RECOMMENDATIONS

- **Codify attribution standards:** Amend or clarify statutory provisions to expressly incorporate organizational fault and provide guidance on the evidentiary thresholds for corporate liability.
- **Strengthen investigative tools:** Enhance customs forensic accounting units, create beneficial ownership registries, and expand mutual legal assistance protocols with key trading partners.
- **Calibrate sanctions:** Ensure fines and confiscation measures are sufficient to eliminate economic incentives for smuggling; introduce disgorgement and restitution mechanisms.

- **Introduce negotiated resolutions:** Consider legal frameworks for deferred prosecution or similar settlement mechanisms adapted to domestic law to secure remediation and compliance without protracted litigation.
- **Promote corporate compliance:** Incentivize robust compliance programs through mitigating factors in sentencing and provide guidance on minimum compliance standards for import-export businesses.
- **Increase transparency:** Publish judicial decisions and administrative enforcement reports to build consistent jurisprudence and inform the market about enforcement expectations.

7. Additional Algerian Case Examples and Doctrinal Insights

Barring the lack of readily available Algerian court rulings directly facing corporate criminal responsibility for customs smuggling, doctrinal and administrative sources confirm its slow recognition:

- A doctrinal study by Abdelmadjid (2013) draws attention to the introduction of Article 51 bis in the Algerian Penal Code that explicitly established the principle of criminal responsibility of legal persons. The study draws attention to the non-publication of case law but confirms that judicial practice has started invoking the provision, including customs-related crimes.
- The Algerian Directorate General of Customs obviously acknowledges that legal persons are liable to be held accountable for customs-related currency crimes, obvious evidence that implementation against corporate actors is not limited to natural persons.
- Current Algerian doctrine also states that legal persons' liability can be imposed on smuggling and customs offenses connected therewith, and such penalties can be fines, seizure, suspension of activity, or even liquidation of the entity.

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