



The Specificity of the Elements of Economic Crime and the Extent of its Impact on the Rules of Criminal Law

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Abstract:

Given the rapid evolution of transactions and the changing circumstances in the economic sphere, most legislations, including the Algerian legislator, have sought to keep pace with this development. This has been achieved at the expense of the rules known in traditional criminal law. Thus, we find that the Algerian legislator, when regulating the economic aspect, stipulated special principles and provisions that deviate from the general rules in the Penal Code. Among these is the specificity at the level of the legal elements required for economic crime. We find a clear change in the features of the legal element, as well as the ambiguity of the material element of economic crime, in addition to the weakness of the moral element in some economic crimes.

Keywords: Economic Crime, Legal Element, Material Element , Moral Element

Introduction :

Economic crimes and deviant phenomena pose a serious threat to economic policy, which leads to significant harm to public security, the interests of society, and public safety. The commission of economic crime reveals the great criminal danger in the personality of the perpetrator and the extent of their endeavor to

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achieve personal gains at the expense of the public interest, without caring about the harm inflicted on national economic interests¹.

Given the rapid evolution of transactions and the changing circumstances in the economic sphere, most legislations, including the Algerian legislator, have sought to keep pace with this development. This has been achieved at the expense of the rules known in traditional criminal law. Thus, we find that the Algerian legislator, when regulating the economic aspect, stipulated special principles and provisions that deviate from the general rules in the Penal Code, including the legal elements that constitute economic crimes.

If the general elements were easy to apply to ordinary, familiar crimes subject to general law, the special nature of economic crimes, whose patterns and behaviors differ from the traditional patterns of natural crimes, makes the application of those elements, as established in ordinary law, a difficult matter. This necessitated that the Algerian legislator apply those elements in a manner consistent with economic crimes of all types.

Economic crime is characterized by its special legal model, which distinguishes it from other crimes, adding a specificity that sets it apart from the rest of the crimes in terms of its legal elements. This is what drives us, through this topic, to address the specificity of the elements of economic crime by raising several questions that we will seek to answer. Since economic crimes, in general, are characterized by specificity at the level of their constituent legal elements, the problem raised is: **To what extent does the criminal law for business deviate from the general rules regarding the legal elements that constitute economic crimes?**

To answer this problem and the questions it raises, the topic requires treatment through two main requirements: the legal element in economic crime (Requirement 1), and then the material element and what distinguishes it in economic crime (Requirement 2).

Requirement 1: The Legal Element of Economic Crime

The principle of **criminal legality** prevails in most legal states, including Algeria, and its essence is the supremacy of the law and the submission of all,

¹ Sulaiman, Hussein Muhammad. *Combating Economic Crimes and Deviant Phenomena, Prevention and Methods of Confrontation*. 1st ed., Naif Arab University for Security Sciences, Hamed Publishing and Distribution, Amman, Jordan, 2014, p. 213.



rulers and governed², to it. The basis of this principle is the protection of the individual and the guarantee of their rights and freedoms, by preventing public authorities from taking any action against them unless they have committed an act explicitly stipulated by law, and a criminal penalty is imposed on the perpetrator ³.

The supremacy of the law in the field of criminalization and punishment means the necessity of confining crimes and penalties to the written law, by defining the acts that are considered crimes, stating their elements, and then the penalties prescribed for them, their type, and duration by the authority⁴. This is what the Algerian legislator affirmed through the Penal Code, as Article 1 of it stipulates: "There is no crime, no penalty, and no security measure except by law". The law is therefore the direct source for criminalization and punishment⁵.

It is concluded from the foregoing that the principle of legality is of great importance to the state. However, despite the Algerian legislator's dedication to it in both the Constitution and the Penal Code, he has explicitly deviated from it in the application of general provisions in economic crimes. This is embodied in the **encroachment of the executive authority on the legislative authority** in enacting economic laws (Sub-requirement 1). Furthermore, the Algerian legislator granted the criminal judge great authority in the **broad interpretation** in the field of economic crime (Sub-requirement 2), in addition to the Algerian legislator's deviation from the original rule regarding the **temporal and spatial application** in this field (Sub-requirement 3).

Sub-requirement 1: The Encroachment of the Executive Authority on the Legislative Authority in Economic Crime

The original rule is that the legislative authority is the only one that possesses the power of criminalization through the definition of criminalized acts and behaviors, and the penalties prescribed for their perpetrators. Therefore, the

² Bouchewarb, Karima. *The Crime of Exchange in Algerian Legislation*. Master's Thesis, Criminal Law Specialization, Faculty of Law, University of Algiers 1, 2016-2017, p. 22.

³ Text of Article 1 of Ordinance No. 66-156 of June 8, 1966, including the Penal Code, Official Gazette of the People's Democratic Republic of Algeria, No. 49, issued on June 11, 1966 (Amended and Supplemented).

⁴ The Algerian legislator enshrined the principle of legality through Article 58 of the Algerian Constitution issued by Presidential Decree No. 96-438 of December 7, 1996, Official Gazette of the People's Democratic Republic of Algeria, No. 76, issued in 1996 (Amended and Supplemented), as this article stipulates: "No one shall be convicted except by virtue of a law issued before the commission of the criminal act," which confirms that the law is the direct source for criminalization.

⁵ Ben Gala, Laila. *Economic Crime in Algerian Legislation and Judiciary*. Master's Thesis, Business Law Specialization, Faculty of Law, Abou Bekr Belkaid University, Tlemcen, 1996-1997, p. 71.



executive authority does not have the right to criminalize an act or an omission, and the judge cannot criminalize an act or apply a penalty that is not defined by law⁶.

The law is the direct and sole source of criminalization, and this power is determined only by the legislative authority. Consequently, neither the executive nor the judicial authority possesses the power to exercise this jurisdiction, in compliance with the principle of separation of powers. This is the general rule or the original principle. However, every rule has an exception, as the executive authority can exercise this jurisdiction exceptionally, according to the procedures and circumstances defined by law, through the **encroachment of the executive authority on the legislative authority**

If the original rule is that criminalization only occurs through a law issued by the legislative authority, some exceptional circumstances may justify the deviation from this principle, such as a change in the system of government in the state, or its passage through dangerous circumstances like war or exceptional circumstances. This requires a legislative delegation from the parliament, limited in its scope and time, to confront those circumstances quickly⁷.

Legislative delegation may also occur in ordinary circumstances, where the legislative authority delegates the executive authority to issue regulations that have the force of law, provided that this delegation is limited in its scope and time and does not lead to an infringement of personal freedom⁸.

However, what is noticeable in the economic field is the **prevalence of this exception** to the extent that it can be said that the exception has become the rule, and delegation has become the rule within the contemporary criminal policy to confront economic crimes⁹. The reason for this lies in the fact that the economic field is characterized by movement, change, and lack of stability, in addition to complexity and intricacy, which requires technical expertise that the administration and the authority intervening in this field possess to realize its dynamics. This is what compelled the legislator to relinquish his authority and privileges, by virtue

⁶ Bouchewarb, Karima. *Previous Reference*, p. 25.

⁷ Ben Fariha, Rachid. *The Specificity of Criminalization and Punishment in Criminal Law for Business - Crimes of Companies as a Model*. Doctoral Dissertation, Private Law Specialization, Faculty of Law and Political Sciences, Abou Bekr Belkaid University, Tlemcen, 2016-2017, p. 58.

⁸ Nassour, Ihab. *Characteristics of Economic Crime*. Law and Politics Notebooks Journal, Faculty of Law, Mohamed Khider University, Biskra, Vol. 7, June 2012, p. 80.

⁹ Boudiaf, Ammar. *Introduction to Legal Sciences, General Theory of Law and its Applications in Algerian Legislation*. 4th ed., Jossour Publishing and Distribution, Mohammedia, Algeria, 2014, p. 158.



of a delegation issued by him. Consequently, the role of the legislator in the scope of criminalization in the economic matter, which is not possible to be accompanied by the rigidity of the traditional criminal rule, has declined¹⁰.

At the jurisprudential level, legislation by delegation has met with strong opposition, as some jurists argue that the legislative authority derives its legitimacy and the force of its work from the Constitution, and it is an authority that cannot be waived or disposed of. If it were permissible to waive it, the decisions issued by the President of the Republic would, by their nature, be identical to the legislation issued by the Parliament. It is also said that delegation enables the executive authority to amend existing legislation, which leads to a reduction in the importance of legislation and its descent to the level of regulations¹¹.

In addition to the delegation of the legislative authority to the executive authority in issuing laws related to the criminal economic aspect, there is also what is known as the **technique of issuing criminal texts in blanco** (blanket legislation). The original rule in general criminal law is that the substantive criminal rule must include two inseparable parts: the criminalization part, which focuses primarily on a precise description of the material facts of the criminal act, whether positive or negative, and the penalty part, which stipulates the sanction prescribed for the crime¹².

However, in the framework of economic crime, the legislator did not adhere to these fundamental criteria for the substantive criminal rule. He stipulates the penalty and delegates the matter of defining the elements of the criminal act to the executive or administrative authority. This has effectively resulted in a separation between the criminalization and penalty parts. Jurisprudence has termed this newly introduced technique as **criminalization in blanco**. Consequently, the administration has become the decision-maker in defining the elements of the criminal act, regardless of the legal text that provides a general framework for it, because it came *in blanco*¹³. This situation should not be understood as an

¹⁰ Berni, Karima. *The Effectiveness of Criminal Sanction in the Field of Business*. Doctoral Dissertation, Private Law Specialization, Department of Law, Faculty of Law and Political Sciences, Abou Bekr Belkaid University, Tlemcen, 2015-2016, p. 39.

¹¹ Nassour, Ihab. *Previous Reference*, p. 83.

¹² Khoukhoukh, Mohamed. *The Special Nature of Economic Crime in Algerian Legislation*. Master's Thesis, Criminal Law and Criminal Sciences Specialization, Faculty of Law, Ben Aknoun, University of Algiers, 2010-2011, p. 29.

¹³ Berni, Karima. *Previous Reference*, p. 51.



encroachment or an acquisition of the field of intervention, but rather as a necessity to find effective solutions¹⁴.

Sub-requirement 2: Broad Interpretation of Economic Crime Texts

The importance of the principle of criminal legality is reflected in the interpretation of criminal texts, which gives it a special intrinsic distinction: the principle of **strict interpretation** of the criminal text. However, this principle is not applied during the interpretation of the texts of the economic criminal legislation applied to economic crime. Instead, the principle of **broad interpretation** of the criminal text is applied, which means expanding the scope of interpretation of the text to the limits intended by the legislator, so that it conforms to reality. This interpretation is often relied upon in the interpretation of the texts of economic criminal legislation, because these texts are often vague and contain meanings that sometimes do not serve the intended purpose¹⁵.

Given the movement and speed of evolution that characterize economic crime, the legislator is required to use general terms in the legal texts that can confront the crimes that are contrary to economic policy. Therefore, the elements of economic crime are often vague or not clear in most cases. Hence, the criminal judge has **broad authority** in interpreting the text and defining the features of the crime. This is particularly evident when the legislator mentions the elements of the crime by way of example, which opens the door for the criminal judge to discover and appreciate other elements¹⁶.

An example of this in the Algerian context is what the legislator stipulated in Article 1 of Ordinance No. 96-22, which relates to the violation of the regulation and legislation concerning exchange and the movement of capital to and from abroad. The legislator left the field open for the criminal judge to define the means used in committing the exchange crime, as the article stipulates: "Any violation or attempt to violate the regulation and legislation concerning exchange and the movement of capital to and from abroad by any means whatsoever shall be

¹⁴ Text of Article 1 of Ordinance No. 96-22 of July 9, 1996, relating to the violation of the regulation and legislation concerning exchange and the movement of capital to and from abroad, Official Gazette of the People's Democratic Republic of Algeria, No. 43, issued on July 10, 1996 (Amended and Supplemented).

¹⁵ Abdullah, Ouhab. *Commentary on the Penal Code, General Section*. Moufom Publishing, Algeria, 2009, pp. 109-110.

¹⁶ Al-Khalaf, Abdul Rahman. *Lectures in Criminal Law - General Section - A Comparative Study*. Dar Al-Huda, Ain M'lila, Algeria, 2013, p. 57.



considered a violation..."¹⁷. The reason for this is the great development of the means that can be used in this field.

Furthermore, most tax crimes involve a criminal behavior in all material movements and accounting and legal operations, and all the means and arrangements that the taxpayer or others resort to with the aim of evading the tax. The law did not confine the criminal behaviors for the crime of tax fraud, as they are more than can be defined, but rather linked them to the **goal**, which is the evasion of all or some of the tax by way of fraud and deception. This means that the judge has **absolute freedom** in defining the criminal behavior through which the perpetrator evades the payment of the tax imposed on them.

Sub-requirement 3: Temporal and Spatial Application of Economic Crime

In common with other laws, the Penal Code is subject to the rules of time and place in its application. The criminal text is governed by specific and precise rules for its application in time and place. It is not sufficient for the criminalization text to exist and be applicable to a behavior to say that a crime exists and to apply it. Rather, this text must be in force at the time the behavior intended to be applied to it was committed. This means that it must be effective, i.e., in force. Therefore, as a complement to the principle of legality, we will address the validity of the criminal text for application in terms of time and place, and the extent of its application to criminal economic texts¹⁸.

First: Temporal Application of Economic Criminal Legislation

As is known, criminal texts are not eternal; they are subject to amendment and repeal from time to time, according to the will of the legislator and his appreciation in confronting the phenomenon of crime. The validity of the criminal text for application is determined in the period following the moment of its entry into force until the date of its repeal. This means that the text does not apply to facts that preceded it. This is known as the **principle of non-retroactivity of the criminal text**, which is one of the most important consequences of the principle of legality of crimes and penalties¹⁹.

However, there is an exception to the principle of non-retroactivity of the text, through the principle of **retroactivity of the law more favorable to the accused**.

¹⁷ Text of Article 3 of Ordinance No. 66-156, including the Penal Code (Amended and Supplemented), Previous Reference.

¹⁸ Abdul Qadir, Awda. *Principles of the Algerian Penal Code, General Section*. 2nd ed., Houma Publishing, Algeria, 2013, p. 84.

¹⁹ Al-Masa'dah, Anwar Muhammad Sidqi. *Criminal Responsibility for Economic Crimes - An Analytical and Comparative Study in Jordanian and Other Legislations*. 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p. 138.



This is what the Algerian Penal Code stipulated in Article 2, which states: "The Penal Code shall not apply to past facts, unless it is less severe than it was"²⁰. This means that the rules of this law apply to facts prior to its issuance if it is in the interest of the accused. Consequently, the application of the law that was in force at the time the crime occurred is excluded²¹. Therefore, if the principle of non-retroactivity of the legal text was the rule, the exception is retroactivity if the new law is more favorable to the accused.

This exception to the principle of legality came to achieve the interest of the accused from one side and the interest of society from the other. The interest of the accused lies in the reduction of the penalty that will be imposed on them, or their complete exemption from it if their act becomes permissible according to the new text. As for the interest of society, it is the society's acknowledgment, through the authority competent to legislate, that a new penal rule has changed from the conditions of criminalization or the conditions of punishment, such as mitigating the penalty, or replacing it with a security measure. This is an acknowledgment of the effectiveness of this rule and its superiority in achieving the public good, and at the same time, an acknowledgment of the lack of utility of the old criminal rule and its lack of validity to achieve the goals of criminalization and punishment²².

As for economic crimes, they were like other crimes and are subject to the rule of the immediate effect of the criminal text and its non-retroactivity, unless it was more favorable to the accused. However, due to the development of economic legislation on the one hand, and the enormous nature of economic crimes on the other, to keep pace with development, so that these legislations do not stand idly by in the face of many crimes that are committed and whose perpetrators escape punishment due to the application of general rules, jurisprudence began to call for the necessity of restricting the application of the rule of retroactivity of the text more favorable to the accused²³. Modern economic legislations have adopted this rule, to the extent that they did not merely restrict its application, but did not apply it at all within the scope of economic crimes. This has also been transferred to the modern judiciary in many countries²⁴.

However, by referring to the legal texts regulating the economic aspect in Algerian legislation, we note that the Algerian legislator applied the general rules

²⁰ Abdul Qadir, Awda. *Previous Reference*, p. 85.

²¹ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 139.

²² Khoukhoukh, Mohamed. *Previous Reference*, p. 31.

²³ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 140.

²⁴ Bousaqas, Ahsan. *The Concise in General Criminal Law*. 15th ed., Houma Publishing, Algeria, 2016, p. 104.



in this field, which is the accused's benefit from the new text if it is more favorable to them. This is an application of the text of Article 2 of the Algerian Penal Code²⁵.

Therefore, the Algerian legislator must review this point regarding the issue of applying the law more favorable to the accused, especially for economic crimes, given the economic policy pursued by the Algerian state. Since the criminal economic texts are characterized by a specificity that distinguishes them from others, and they regulate relations that are rapid in change and development on the one hand, and they are the interface that expresses the economic policy of the state, which in turn changes between one moment and another on the other hand²⁶. Consequently, the application of the rule of the law more favorable to the accused in this field is likely to affect the criminal policy. The perpetrator of economic crimes may resort to prolonging the litigation period, hoping to escape punishment, especially since the Algerian legislator has adopted a policy of repealing criminalization for most crimes and only imposing a severe financial fine.

Second: Spatial Application of Economic Criminal Legislation

The Algerian legislator, like other legislations, adopted the principle of **territoriality of criminal laws**, which means that any act that constitutes a crime in the Penal Code and occurs within the territory of the state is punished according to the laws of that state²⁷. Therefore, any person who commits a crime in the view of Algerian law, regardless of the nationality of the perpetrator, whether Algerian or foreign, is subject to it²⁸.

The Algerian legislator stipulated this principle in Article 3 of the Penal Code, which states: "The Penal Code shall apply to all crimes committed in the territory of the Republic..."²⁹. The Code of Criminal Procedure also stipulated the place where the crime occurred, based on the principle of territoriality, as per Article 586 thereof. This principle is also applicable to economic crimes that are committed

²⁵ Khashab, Hamza. *Introduction to Legal Sciences and the Theory of Right*. Balqis Publishing House, Dar El Beida, Algeria, 2014, p. 114.

²⁶ Text of Article 3 of Ordinance No. 66-156, including the Penal Code (Amended and Supplemented), Previous Reference.

²⁷ Text of Article 586 of Ordinance No. 66-155 of June 8, 1966, including the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 84, issued on June 11, 1966 (Amended and Supplemented), which stipulates: "Every crime is considered committed in the Algerian territory if one of the characteristic acts that constitute it has taken place in Algeria."

²⁸ Berni, Karima. *Previous Reference*, p. 49.

²⁹ Text of Article 588 of Ordinance No. 66-155, including the Algerian Code of Criminal Procedure (Amended and Supplemented), Previous Reference.



within the territory of the Algerian state and against its economic and political interests³⁰.

However, this principle has some exceptions regarding some economic crimes committed abroad, whether by an Algerian citizen or a foreigner, as the Algerian legislator considered economic crimes to be among the important crimes that affect the political and economic interests of the state. Consequently, any person, regardless of their nationality, who commits a crime that affects the national economy abroad is punished. This is called the **principle of real application** (or protective principle) of the criminal text³¹.

Article 588 of the Code of Criminal Procedure stipulated this, stating: "Any foreigner who commits a felony or a misdemeanor outside the Algerian territory as a principal perpetrator or an accomplice in a felony or a misdemeanor against the security of the state, or counterfeiting currency or negotiable bank papers, may be prosecuted and tried in Algeria according to the provisions of Algerian law if they are arrested in Algeria or if the government obtains their extradition"³².

Through the aforementioned text, it is clear that the Algerian legislator set conditions for the application of the principle of real application, which are:

The perpetrator of the felony or misdemeanor must be a foreigner.

The crime must occur outside the territory of Algeria.

The crime must affect the fundamental interests of the state.

The perpetrator must be arrested in Algeria or extradited by the state where the crime occurred.

The perpetrator must not have been finally judged or the penalty must not have been dropped by amnesty or prescription³³.

Requirement 2: The Material Element of Economic Crime

It is established that there is no crime without a material element, as it is the external manifestation of the crime, through which the assault on the legally protected interest is realized. It is also through it that the executive acts of the

³⁰ Al-Khalaf, Abdul Rahman. *Previous Reference*, p. 78.

³¹ Al-Ali, Samira, and Haitham Al-Ali. *Criminal Law for Business - A Comparative Study*. 1st ed., University Foundation for Studies, Publishing and Distribution, Beirut, Lebanon, 2012, p. 139.

³² Al-Khalaf, Abdul Rahman. *Previous Reference*, p. 149.

³³ Melhem, Maroun Karam. *Economic Crime - A Comparative Study*. 2nd ed., Halabi Human Rights Publications, Beirut, Lebanon, 2015, p. 196.



crime occur. Therefore, the verification of the material element is the fundamental condition for saying that a crime exists³⁴.

Economic crimes, like other crimes, require a material element for their existence. However, given the special nature of these crimes, they are characterized by special provisions regarding the material element, which means a deviation from the general rules established in the Penal Code.

The situation in economic crimes generally differs from that in crimes of general law in terms of forms and elements. However, there is some specificity regarding the forms and elements that constitute the material element of economic crime. Therefore, we will address the moral element in economic crime (Sub-requirement 1), then the elements of the material element (Sub-requirement 2), and finally the forms of the material element in economic crime (Sub-requirement 3).

Sub-requirement 1: The Moral Element of Economic Crime

The material element alone is not sufficient for the existence of a crime, whether this element is a behavior or a mere act that led to a criminal result. The crime is only complete when this element is associated with another element, which is called the **moral element**³⁵.

The moral element is the psychological aspect of the crime. Therefore, the crime does not arise merely by the existence of the material fact that is subject to the criminalization text. Rather, there must be a link between the crime's material facts and the perpetrator's psyche. The rule is that there is no crime without a moral element. The moral element is of fundamental importance in the general theory of crime, as it is the legislator's way of determining who is responsible for the crime, as a person is not responsible for a crime unless a relationship is established between its material facts and their psyche. However, in the field of economic crimes, it is noticeable that the moral element in them is not subject to the same general provisions established in the Penal Code, as the economic penal law is characterized by the **weakness and fragility of this element**³⁶.

According to the general provisions of the Penal Code, the moral element is based on **criminal intent**, which is of two types: general intent and specific intent. If all crimes of general law require general intent with its two elements,

³⁴ Abdel Hamid, Nisreen. *Economic Crimes - Traditional and Modern*. Modern University Office, Alexandria, Egypt, 2009, p. 86.

³⁵ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 222.

³⁶ Khoukhokh, Mohamed. *Previous Reference*, p. 45.



knowledge and will, specific intent is explicitly required only in some of them. As for the moral element in economic crimes, it is not subject to the same provisions established in the Penal Code, as it is characterized by several specificities:

First: Presumption of Knowledge

For the knowledge that the criminal intent is based on to be fulfilled, the perpetrator must be aware of all the legal elements of the crime. The perpetrator must know the elements that constitute the material element, which generally includes knowledge of the subject of the crime, the criminal result, and the causal link³⁷.

In order to protect economic policy, and to limit the escape of perpetrators of economic crimes from punishment, most legislations have resorted to the **presumption of knowledge of the facts and knowledge of the law** in economic crimes. Thus, the presumption of knowledge in economic crimes is based on two elements:

Presumption of knowledge of the material facts of the crime: This is by the perpetrator being aware of the criminal activity at the time of its commission for the economic crime.

Presumption of knowledge of illegality: This is that the perpetrator is aware of the legal texts that are punishable in the economic criminal legislation.

Second: Presumption of Will

Will is considered the second element constituting criminal intent. It is the perpetrator's will directed towards the commission of the criminal result³⁸. It means a conscious psychological activity directed seriously towards achieving a specific purpose, controlling the organic movements and driving them towards achieving this goal. Therefore, the voluntary act is characterized by combining the organic movement and the psychological factors that drive these movements. The person imagines the purpose they seek to achieve, then imagines the means that lead to achieving this goal, and then discharges all of that in the criminal activity in realization of the criminal result³⁹.

³⁷ Text of Article 2 of Ordinance No. 96-22, relating to the violation of exchange and the regulation concerning exchange and the movement of capital to and from abroad (Amended and Supplemented), Previous Reference.

³⁸ Berni, Karima. *Previous Reference*, p. 57.

³⁹ Text of Article 281, paragraph 1, of Law No. 79-07 of July 21, 1979, including the Customs Code, Official Gazette of the People's Democratic Republic of Algeria, No. 30, issued in 1979 (Amended and Supplemented).



As for economic crime, there is **no significant role for the will** in economic crimes, as if these crimes are based only on the element of knowledge, regardless of whether the will was directed towards achieving the result or remained within the framework of the behavior. Consequently, the role of the will in economic crimes is diminished⁴⁰.

Among the examples in this regard is what the Algerian legislator stipulated in Article 2 of Ordinance No. 96-22, which relates to the violation of exchange and the regulation concerning exchange and the movement of capital to and from abroad, which states: "The offender shall not be excused by their good faith"⁴¹. The exchange crimes are considered material crimes, where the mere commission of the material act that violates the law is sufficient for their occurrence, without the need to search for the existence of intent or to prove it, as they are crimes of danger, not harm. This is due to the danger of the offender⁴².

Similarly, Article 281, paragraph 1, of the Algerian Customs Code stipulates: "The judge is not permitted to acquit offenders based on their intent"⁴³. This means that the Algerian legislator has excluded the moral element from customs crimes and considered them material crimes that arise from the commission of the material act without requiring criminal intent or error on the part of the offender⁴⁴.

Sub-requirement 2: Elements of the Material Element of Economic Crime

The elements of the material element in a crime consist of three elements: the material behavior, the criminal result, in addition to the causal link between the material behavior and the criminal result.

First: The Material Behavior

The legislator only punishes acts that are criminalized by law. Psychological phenomena that exist within the self do not achieve the necessary behavior for the

⁴⁰ Rouk, Tariq. *Mechanisms for Combating the Crime of Exchange in Light of the Latest Amendments and Judicial Rulings*. Houma Publishing, Bouzaréah, Algeria, 2013, p. 54.

⁴¹ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 167.

⁴² Ben Fariha, Rachid. *Previous Reference*, p. 107.

⁴³ Ordinance No. 96-22 of July 9, 1996, relating to the violation of the regulation and legislation concerning exchange and the movement of capital to and from abroad (Amended and Supplemented), *Previous Reference*.

⁴⁴ Cheikh, Nadja. *The Specificity of the Crime of Exchange in Algerian Law*. Doctoral Dissertation, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2011-2012, p. 81.



existence of the crime unless they are embodied in the form of a material behavior that appears in the external world. This behavior is the activity that the perpetrator performs with the aim of achieving a specific criminal result, and it may be a **positive act** or a **negative act** (omission)⁴⁵.

Even if the criminal activity in economic crimes was similar to the criminal activity in other crimes, we would have ignored this matter, as it is easy to refer to in all books of the general section of the Penal Code. However, the criminal economic activity is characterized by its nature that distinguishes it from others⁴⁶.

By referring to the material behavior for most crimes of general law, we find that the behavior is mostly a **positive act** that the law prohibits, which represents the vast majority. As for the exception, it is by refraining from performing an act that the law commands, which is the case for **negative crimes**⁴⁷.

However, what is noticeable through most economic crimes is that they derive their existence from the **non-execution** by the perpetrator of a set of obligations, or the **non-following** of procedures that the legislator has specifically established. Consequently, the phenomenon of criminalizing negative acts, contrary to criminal law, has become entrenched⁴⁸.

An example of this is what is stated in Article 1 of Ordinance No. 96-22, as amended and supplemented, which relates to the violation of the regulation and legislation concerning exchange and the movement of capital to and from abroad, which stipulates that "Any violation or attempt to violate the regulation and legislation concerning exchange and the movement of capital to and from abroad by any means whatsoever shall be considered a violation, including:

False declaration.

Non-observance of the declaration obligations.

Non-repatriation of capital to the country.

Non-observance of the required procedures or formalities.

Non-obtaining the required licenses or non-observance of the conditions associated with them"⁴⁹

⁴⁵ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 173.

⁴⁶ Al-Ali, Samira, and Haitham Al-Ali. *Previous Reference*, p. 141.

⁴⁷ Ben Fariha, Rachid. *Previous Reference*, p. 118.

⁴⁸ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 175.

⁴⁹ Ben Gala, Laila. *Previous Reference*, p. 111.



It is concluded from the texts of the exchange regulating the acts that constitute the exchange crime that the **negative character** prevails over them, as the last of them does not know a single positive act that the perpetrator commits, which is prohibited by law, except for the false declaration, which is the only positive act for the material element of the exchange crime, as clarified by the first paragraph, which stipulates that "Any violation or attempt to violate the regulation and legislation concerning exchange by any means whatsoever, including false declaration..."⁵⁰.

Second: The Criminal Result

The criminal result is the effect resulting from the criminal behavior, which the legislator takes into account in the formation of the legal element of the crime. The criminal result has two meanings: a **material meaning**, which relates to the change that the perpetrator causes in the external world as a result of the criminal act they committed, and a **legal meaning**, which means the assault on the interest that the street deemed worthy of protection and criminal care⁵¹.

In ordinary crimes, the general rule is that punishment is based on the realization of harmful results in them, and criminalization of dangerous results is a rare matter. However, regarding economic crimes, the legislator may punish some problematic acts for their potential danger, without waiting for the occurrence of actual harm⁵².

This characteristic is one of the distinguishing features of criminalization texts in economic criminal law, as most economic crimes fall under the category of **formal crimes**, which the legislator does not require the realization of a specific result from the perpetrator's criminal activity for the existence of their material element. Formal crimes do not need a result to be realized, as they are equivalent to a complete crime and are known as **crimes of danger**, where the mere state of danger to the interest that is the subject of criminal protection, which the legislator requires, is sufficient for the crime to occur⁵³.

⁵⁰ Abdullah, Ouhab. *Previous Reference*, p. 251.

⁵¹ Bouchewarb, Karima. *Previous Reference*, p. 57.

⁵² Text of Article 52, paragraph 1, of Law No. 06-01 of February 20, 2006, relating to the prevention and fight against corruption, Official Gazette of the People's Democratic Republic of Algeria, No. 50, issued on March 8, 2006 (Amended and Supplemented).

⁵³ Article 30 of the Penal Code stipulates: "Every attempt to commit a felony which is begun by acts of execution, and which is not suspended or which does not fail to produce its effect except by circumstances independent of the will of the perpetrator, shall be punished." Article 31 of the same law stipulates: "Attempt in a misdemeanor shall only be punished if there is an explicit provision in the law, and attempt in a contravention shall not be punished at all."



Third: The Causal Link

The causal link is the connection that links the criminal result to the criminal behavior, meaning that the criminal result is related to the act that caused it. With the verification of the causal link, the material element is realized⁵⁴.

However, according to the opinion of Dr. Bint Qala Laila, she believes that the issue of searching for the causal link in the field of economic crimes does not raise a problem, because most of them are crimes of behavior, where the material search and its result are realized merely by the commission of the behavior⁵⁵.

Sub-requirement 3: Forms of the Material Element

A crime may arise with all its elements stipulated by law: the legal element, the material element, and the moral element, and it is a **complete crime**. Anyone who contributes to it, whether as a principal perpetrator or an accomplice, is responsible. However, it is not necessarily the case that all these elements are fulfilled, which raises the problem of the extent of the crime's completeness and the extent of responsibility of the person who contributed to it. This is what is called **attempt** in crime from one side, and the problem of the extent of responsibility of each person who contributed to the criminal behavior, where more than one will may converge in the commission of the criminal behavior. The problem of the extent of responsibility of each of them arises, and in the event of the existence of that responsibility, is everyone who contributed in one way or another subject to the same provisions? This is what is called **criminal contribution** or **complicity** in the commission of the crime⁵⁶.

Since some economic crimes are not realized by the criminal result, as they are considered formal crimes where the realization of the material behavior is sufficient, the problem raised is regarding **attempt** in economic crimes, and the same applies to **criminal contribution** or **complicity**.

⁵⁴ It should be noted that the equation between attempt and the complete crime in economic crimes is not a new idea, as the Algerian legislator had previously enshrined this act by virtue of Article 3, paragraph 1, of Ordinance No. 66/188 of June 21, 1966, relating to the establishment of special judicial councils for economic crimes (Repealed), which stipulated: "The act committed by any employee or the like, or any worker in the self-managed sector, by attempting or beginning to attempt, on the occasion or at the time of exercising their profession or function..."

⁵⁵ Khoukhouch, Mohamed. *Previous Reference*, p. 39.

⁵⁶ Bousaqas, Ahsan. *The Concise in Special Criminal Law*, Part Two, 13th ed., Houma Publishing, Algeria, 2013, p. 338.



First: Attempt in Economic Crime

Attempt refers to the situations in which the perpetrator fails to realize their crime, and the material result required for the existence of the crime is not realized, due to a reason outside the perpetrator's will. The basis for punishing the attempt is the danger of assaulting the legally protected interests, which would have been assaulted if the perpetrator had succeeded in executing the crime⁵⁷.

Attempt is one of the topics that touches upon criminal responsibility. The Algerian legislator has stipulated the criminalization of attempt in several texts specific to economic criminal law, including what is stipulated in Article 52 of Ordinance No. 06-01 relating to the prevention and fight against corruption, which states: "Attempt to commit the crimes stipulated in this law shall be punished with the same penalty as the crime itself"⁵⁸.

Since these texts did not come with special provisions, recourse to the general provisions is required. This is what is stipulated in Articles 30 and 31 of the Penal Code⁵⁹. The attempt in economic crime often differs greatly from the general rules, as economic legislation often equates the punishment and criminalization between the complete crime and the attempt⁶⁰ [61]. The reason for this is the factors that prompted the Algerian legislator to enact the texts regulating economic crime, which is to deviate from the general rules that govern the crime of attempt, with the aim of protecting the economic policy of the state⁶¹.

Therefore, achieving the political economic goals requires criminalizing acts that are less than what the Penal Code criminalizes, and which are likely to hinder the authorities from performing their duties or threaten danger in detecting crimes

⁵⁷ Khoukhokh, Mohamed. *Previous Reference*, p. 40.

⁵⁸ Text of Article 52, paragraph 2, of Law No. 06-01, relating to the prevention and fight against corruption (Amended and Supplemented).

⁵⁹ Article 42 of the Penal Code stipulates: "An accomplice in a crime is considered to be anyone who, without being a co-perpetrator, has assisted the perpetrator or co-perpetrators by any means, or has facilitated or prepared the execution of the preparatory or executive acts, with knowledge thereof." Article 43 of the same law stipulates: "The position of an accomplice is taken by anyone who habitually provides a refuge or dwelling for one or more of the persons who commit violence or theft against persons or property, or against the security of the state or public security, with knowledge of their criminal behavior." Article 44 of the same law stipulates the penalty prescribed for the accomplice, as the Algerian legislator equated in this regard between the penalty prescribed for the principal perpetrator and the penalty prescribed for the accomplice in the crime, as it stipulates: "The accomplice shall be punished with the penalty prescribed for the felony or misdemeanor."

⁶⁰ Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 191.

⁶¹ Ben Fariha, Rachid. *Previous Reference*, p. 122.



and proving them. This is what distinguishes economic crime with a specificity, as the Algerian legislator considered the attempt in economic crime to be like the complete crime⁶².

It is worth noting that the fundamental principle in the jurisprudence of general criminal law is that attempt cannot be conceived in all situations. Some crimes do not tolerate attempt due to an impediment related to the material element of the crime itself. What jurisprudence has agreed upon regarding this issue is that attempt cannot be conceived in **negative crimes** (omission crimes), on the pretext that they are crimes that occur merely by omission without stopping at a result, or a specific harm. However, the legislator, in the framework of some economic crimes, such as exchange crimes, did not fully adhere to the jurisprudential rule, as he intended to criminalize attempt in negative crimes, which is a deviation from the general rules established in the Penal Code, because attempt only occurs in **intentional crimes**⁶³.

Second: Complicity in Economic Crime

Criminal contribution or complicity has raised great importance with respect to economic crime, which prompted jurists of criminal law to address it and give it a large share of attention. This is what was effectively stated in the recommendations of the Sixth International Congress on Penal Law, held in Rome in 1935, where Article 3 thereof stated: "Punishment for economic crimes requires an expansion in the idea of the perpetrator and the forms of criminal contribution, and the possibility of applying criminal penalties to legal persons"⁶⁴.

This is what the Algerian legislator has effectively adopted, through Article 52 of Law No. 01-06 relating to the prevention and fight against corruption, which states: "The general provisions relating to complicity stipulated in the Penal Code shall apply to the crimes stipulated in this law"⁶⁵.

By referring to the provisions of the Penal Code, we find that the Algerian legislator stipulated criminal contribution in Articles 42, 43, and 44 of the Penal

⁶² Al-Masa'dah, Anwar Muhammad Sidqi. *Previous Reference*, p. 180.

⁶³ Berni, Karima. *Previous Reference*, p. 100.

⁶⁴ Al-Khalaf, Abdul Rahman. *Previous Reference*, p. 170.

⁶⁵ Text of Article 281, paragraph 3, of Law No. 79-07 of July 21, 1979, including the Customs Code, Official Gazette of the People's Democratic Republic of Algeria, No. 30, issued in 1979 (Amended and Supplemented).



Code, where he defined who is an accomplice and who is considered to be in the position of an accomplice, and also defined the penalty prescribed for them⁶⁶.

It is concluded from the foregoing that the Algerian legislator has equated all accomplices in economic crime in terms of punishment, whether they were a principal perpetrator or an accomplice in the crime. Consequently, the accomplice is no less than the principal perpetrator in terms of the degree of danger. Perhaps the legislative wisdom here is clear, which is the protection of the economy and the danger of economic crimes to the national economy. The enactment of the texts of the economic criminal law to this extent was to let everyone who contemplates committing these crimes that harm the national economy know that they will be punished with a severe penalty, no matter how small or large their role was, and regardless of the degree of their contribution⁶⁷.

Conclusion:

Economic crime is initially like the rest of the ordinary crimes, as its rules and elements do not differ from those established in ordinary law, unless the special legislation stipulates otherwise. The material behavior that constitutes the crime is sufficient for its existence. This is a mere limited exception, which is based on the text referred to by the criminal economic laws, which the Algerian legislator did not require criminal intent in them. Consequently, it is not correct to generalize it to the rest of the economic crimes.

Among the most important observations contained in the study of the specificity of the legal elements constituting economic crime are:

The encroachment of the executive authority on the legislative authority in economic crime. The original rule is that the legislative authority is the only one that possesses the power of criminalization through the definition of criminalized acts and behaviors, and the penalties prescribed for their perpetrators. There is an exception to this rule, which is **delegation**, where the legislative authority delegates the executive authority to issue regulations that have the force of law. However, what is noticeable in the economic field is the prevalence of this exception to the extent that it can be said that the exception has become the rule, and delegation has become the rule within the contemporary criminal policy to confront economic crimes.

We note that the Algerian legislator issued criminal texts in the economic matter that are vague and have broad meanings, and he did not even provide a precise

⁶⁶ Bouchewarb, Karima. *Previous Reference*, p. 80.

⁶⁷ Abdullah, Ouhab. *Previous Reference*, p. 270.



definition for them. They include absolute and ambiguous meanings that encompass more than one meaning, which makes the criminal judge resort to **broad interpretation** of the legal texts. In this regard, we note that the criminal judge's jurisprudence in interpreting the texts does not give a sound concept unless the latter is aware and knowledgeable of the various technical economic issues that allow him to define the elements of criminalization contained in the criminal rule, so that he can then apply them to the facts presented before him. Therefore, it is necessary to train judges specialized in the economic field in general, and in economic crime in particular.

We note that in the framework of economic crime, the legislator did not fully adhere to the set of general provisions that the material element must be subject to within the framework of general criminal law. Consequently, the **ambiguity of the material element** of economic crime is one of the prominent features of the criminal rules in the economic matter.

We also note that most economic crimes are dominated by the category of **negative crimes** (omission crimes), which are primarily based on the non-execution of obligations imposed on the offender, contrary to the crimes contained in general law, which are mostly dominated by positive crimes.

We also note regarding the attempt in economic crimes that the Algerian legislator criminalized the attempt in negative crimes, which is something that cannot happen, as attempt cannot be conceived in negative crimes or omission crimes.

We also note the **non-restriction of the moral element** in economic crimes with the provisions of the moral element in general law, in addition to the **prevalence of the idea of economic interest** over the freedoms of the individual, which led to an **equation between intent and non-intentional error**, and between intentional error and negligence.

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