



Suppression of the Crime of Human Trafficking in Law 23-04

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Abstract:

The Algerian penal legislator established, through Law 23-04 relating to the prevention and combating of human trafficking, a penal framework incorporating a set of preventive provisions designed to prevent and combat this crime; given the paramount importance of ensuring the suppression of emerging crimes in a manner commensurate with the gravity of this specific offense, the legislator dedicated a special law; consequently, the core research question addressed in this paper concerns the substantive content of the penal rules governing the suppression of human trafficking under Law 23-04, where this subject was examined utilizing a content analysis methodology, yielding several key findings; foremost among them is that the legislator, within this law, expanded the aggravating circumstances which, when attendant to the crime of human trafficking, elevate the principal penalty to life imprisonment in certain cases .

Furthermore, specific articles of Law 23-04 refer to the application of complementary penalties stipulated in the Penal Code, including residence prohibitions, particularly concerning foreigners, where the legislator also penalized attempted commission even when the offense is classified as a misdemeanor; additionally, the provisions concerning the safety period outlined in Article 60 bis of the Penal Code were applied to human trafficking crimes.

Keywords: Crime, Human Trafficking, Principal Penalties, Complementary Penalties.

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**Introduction :**

Among the implications of the Protocol to Prevent, Suppress and Punish Trafficking in Persons on national legislations is that Article 34(1) of the United Nations Convention against Transnational Organized Crime obligates State Parties to adopt necessary measures—including legislative and administrative measures—to ensure the implementation of their obligations under this Convention; moreover, Article 34(2) obligates State Parties to criminalize offenses defined in Articles 5, 6, 8, and 23 of this Convention within their domestic laws, irrespective of their transnational nature or the involvement of an organized criminal group.

Subsequently, the Algerian Penal Code criminalized various acts constituting this criminal phenomenon under Articles 303 *quater* to 303 *decies* through Law No. 09-01; later, Law No. 23-04 comprehensively addresses all punitive measures for this crime while aligning them with international conventions and contemporary developments in digital and technological contexts.

Within this research paper examining the penal dimension of this law, we pose the following central question:

What constitutes the substantive content of the rules governing the suppression of human trafficking under Law 23-04?

To address this inquiry, we structured the paper as follows:

Chapter I: Penalties Prescribed for Perpetrators of Human Trafficking Crimes.

Chapter II: Aggravating and Mitigating Circumstances in Human Trafficking Crimes.

Chapter I: Penalties Prescribed for Perpetrators of Human Trafficking Crimes

The punitive dimension for the crimes under study is addressed in Chapter VI of Law No. 23-04, entitled Criminal Provisions, which is divided into two parts: the first part addresses penalties for kidnapping crimes, while the second is titled Common Provisions.

Within the framework of Law No. 23-04 dated 7 May 2023 concerning the prevention and suppression of human trafficking, the Algerian legislator has ensured the prosecution of all perpetrators of human trafficking crimes; thus, penalties are imposed whether the act is classified as a misdemeanor or felony, whether committed by a natural or legal person, and whether the perpetrator is a principal offender, instigator, or accomplice—furthermore, attempted commission is also penalized, as we shall address sequentially in the following subsections.

First Requirement: Principal Penalties

Punishment is defined as a sanction prescribed by the legislator and imposed by a judge on those held responsible for committing a crime; it entails inflicting suffering upon the offender



through the curtailment of certain personal rights, most notably the right to life or the right to liberty¹; Legally, punishment is defined as a sanction stipulated by law, imposed in the name of society upon an individual according to a judicial ruling convicting them and establishing their responsibility for an act deemed a crime by law, however, the principal penalty², constitutes the core sanction for the crime and is often sufficient in itself without resorting to other penalties; in this context, the Algerian legislator specifically defines principal penalties as those that may be imposed independently of any other penalty.

Section one: Principal Penalties for Human Trafficking Felonies

The Algerian legislator—akin to the Egyptian counterpart and Article 111 of the French Penal Code—adopts a tripartite classification of crimes under Article 27 of the Algerian Penal Code (C.P.), categorizing them according to severity into felonies, misdemeanors, and violations, with the legally prescribed penalty serving as the classification criterion³, as reference to Article 5 of the C.P. reveals an exhaustive list of principal penalties: for felonies, death, life imprisonment, or fixed-term imprisonment; for misdemeanors, imprisonment and fines. These apply to⁴:

1. Principal Offenders in Human Trafficking Crimes:

The Algerian legislator defines the principal offender under Article 41 of the C.P. as "any person who directly contributes to the execution of the crime or instigates the act..."⁵, consequently, the concept of the principal offender encompasses any individual who personally carries out the material acts constituting the crime; thus, direct perpetration involves playing a primary role in its commission—indeed, no crime can exist without a foundational act upon which its execution rests. The act may be committed by a single person, rendering the crime the fruit of his criminal activity and thereby making him the sole perpetrator; alternatively, several

¹ Ahmed Nouri, Hawa Salem, Recovery of Corruption Proceeds and its Role in Reducing Corruption Crimes, Journal of Human Sciences, University of Umm Al-Bouaghi, Algeria, Volume 8, Issue 1, 2021, p. 154

² Rawabih Farid, Lectures in General Criminal Law, Faculty of Law and Political Science, University of Setif, 2023/2024, p. 153.

² Ahsen Bousguia, A Brief Introduction to General Criminal Law, Houma Printing, Publishing, and Distribution, Algeria, 2014, p. 32.

⁴ Alawi Lazhar, Souikat Belkacem, The Penal Organization of the Crime of Human Trafficking under Law No. 23-04, International Journal of Legal and Political Research, Volume 7, Issue 3, December 2023, p. 138.

⁵ Law No. 82-04, Amending and Supplementing Order No. 66-156 of June 8, 1966, Containing the Penal Code, dated February 13, 1982, Official Gazette No. 7 - Nineteenth Year -, issued on February 16, 1982, p. 318.



persons may share the act, all being considered principal offenders¹; notably, the Algerian legislator explicitly designates the instigator as a principal offender under the same article².

1.1 The Direct Perpetrator in Crime Commission:

By examining the aforementioned Law No. 23-04, specifically Articles 41 and 42 thereof, we find that the Algerian legislator classified human trafficking crimes into two categories: misdemeanors and felonies; moreover, it deemed them felonies in two instances: firstly, if the victim was subjected to torture, sexual violence, or if the crime resulted in permanent disability, or if the act led to the victim's death – the act prescribed and punishable under Article 42 of Law 23-04 by life imprisonment; secondly, if the crime of human trafficking was committed while any of the aggravating circumstances, exclusively listed in Article 41 of the same law, were present, thereby incurring an imprisonment sentence of ten (10) to twenty (20) years coupled with a mandatory fine alongside imprisonment, ranging from 1,000,000 DZD to 2,000,000 DZD; furthermore, the penalty is aggravated to imprisonment from twenty (20) to thirty (30) years and a fine from 10,000,000 DZD to 20,000,000 DZD if the crime was committed by an organized criminal group, possessed a transnational character, or was perpetrated during an armed conflict, as stipulated in the last paragraph of the same article.

Conducting a simple comparison between Article 41 of Law No. 23-04 and its counterpart, Article 303-5 bis of repealed Law No. 09-01³, reveals that the Algerian legislator retained the former penalty of deprivation of liberty, namely imprisonment from 10 to 20 years; however, it expanded in the new text the circumstances which, when concomitant with the crime of human trafficking, lead to aggravated penalties, such that the presence of any such circumstance necessitates, ipso jure, the enhancement of punishment for the perpetrators; the purpose of all this being the legislator's attempt to curb most, if not all, forms of this criminal activity due to its heightened severity when associated with these circumstances, not to mention the significant criminal danger it portends concerning its perpetrators⁴.

It is also noted that the Algerian legislator prescribed an aggravated penalty ranging from 20 to 30 years' imprisonment for the crime of human trafficking when committed by an organized criminal group or when possessing a transnational character, under the last paragraph of Article 41 of Law No. 23-04; whereas it was previously punishable by imprisonment from 10 to 20 years under the last paragraph of repealed Article 303-5 bis; additionally, it introduced the aggravating circumstance of committing the crime during an armed conflict, this given the gravity of the offense when coupled with these highly perilous circumstances, whether

¹ Nawal Al-Alia, New Penalties for the Crime of Kidnapping under Law No. 20-15 (Law on the Prevention and Combating of Kidnapping Crimes), *Journal of Law and Political Science*, University of Khenchela, Algeria, Volume 2, 2021, p. 503

² Alawi Lazhar, Souikat Belkacem, op. cit., p. 139

³ Abrogated by Article 75 of Law No. 23-04.

⁴ Alawi Lazhar, Souikat Belkacem, op. cit., p. 139.



concerning the individual or the security and stability of the nation as a whole; given its danger on all fronts, both in terms of execution methods and the meticulous organization characterizing these entities, not to mention the criminal acumen of those managing them¹.

1.2 The Instigator:

Instigation entails implanting the idea of a crime in an individual and subsequently reinforcing it until it crystallizes into a resolve to commit the offense, as this definition clarifies that the instigator's activity is inherently psychological, being directed at the perpetrator's psyche to influence them into executing the crime, thereby distinguishing it from the perpetrator's activity, which predominantly assumes a material nature². Contrary to this position and to what most comparative legislations stipulate, such as French legislation under Article 121-7(2) of the French Penal Code and the legislations of Maghreb countries – Article 41 of the Algerian Penal Code (Code Pénal Algérien, CPA) treats the instigator of a crime as a perpetrator, not an accomplice³, as the Algerian legislator defines the perpetrator in Article 41 of the CPA as: "Anyone who directly contributed to the execution of the crime, or instigated its commission through gifts, promises, threats, abuse of authority or position, fraud, or criminal deception"⁴; consequently, Article 62 of Law No. 23-04 equates the punishment of the direct contributor to the act's execution with that of the instigator; it prescribes the penalties established for the committed crime for anyone who instigates human trafficking offenses⁵, and thus the instigator is punished with the same penalties as the principal perpetrator whose acts are legally classified as a felony⁶.

1.3 The Accomplice:

The accomplice is defined in Algerian legislation under Article 42 of the CPA as: "An accomplice to a crime is one who did not participate directly but assisted in any manner or facilitated the perpetrator(s) in preparatory acts, enabling acts, or acts of execution, with full awareness thereof"⁷. In line with Article 62 of Law No. 23-04, which prescribes identical punishment for the instigator and principal perpetrator in human trafficking crimes, the legislator – under Article 61 of the same law – equated the punishment of the accomplice in any human

¹ *ibid.*

² Mahmoud Naguib Hosni, *Explanation of the Penal Code: General Section, General Theory of Crime*, Al-Nahda Al-Arabiya House, Egypt, 1962, p. 501.

³ Ahsen Bousguia, *Reconciliation in Criminal Matters in General and in Customs Matters in Particular*, Houma for Printing, Publishing, and Distribution, Algeria, 2013, p. 166.

⁴ Article 41 of Law 82-04, *op. cit.*

⁵ Article 62 of Law No. 23-04, *op. cit.*

⁶ Alawi Lazhar, Souikat Belkacem, *op. cit.*, p. 140.

⁷ Article 42 of Law 82-04, *op. cit.*



trafficking offense with that of the perpetrator, regardless of whether the offense constitutes a felony or misdemeanor¹.

Notably, the Algerian legislator criminalized certain acts of post-facto assistance; such assistance following the commission of a crime does not constitute a form of accessorial liability but rather an independent offense unto itself, like the crime of concealing stolen goods² – the act prescribed and punishable under Article 50 of Law No. 23-04 by imprisonment from two (2) to five (5) years and a fine from 200.000 DZD to 500.000 DZD, which takes the form of concealing any perpetrator, objects, or proceeds derived from human trafficking crimes, or suppressing any traces or instruments of the crime, with full awareness thereof³.

Section Two: Original Penalties for Human Trafficking Misdemeanors and Attempt

Referring to Law No. 23-04, it prescribes penalties for human trafficking misdemeanors as imprisonment from one (1) to five (5) years and a fine from 100,000 DZD to 500,000 DZD in the following cases:

- A person aware of an *attempt* to commit or the actual *commission* of a human trafficking crime who fails to immediately notify the competent authorities⁴, with this penalty mirroring that stipulated in repealed Article 303-10 *bis* of Law No. 09-01⁵;
- A person benefiting from a service, advantage, or labor provided by a victim of human trafficking, while aware of this circumstance⁶;
- Any person disclosing information obtained during their duties that may reveal the identity of a human trafficking victim, witness, or whistleblower⁷;
- Any person who joins or participates in any capacity, within or outside the national territory, in an organized criminal group or conspiracy aimed at preparing or committing a human trafficking crime, shall be punished by imprisonment from three (3) to ten (10) years and a fine from 300,000 DZD to 1,000,000 DZD⁸;

¹ Article 61 of Law No. 23-04, op. cit.,

² Nawal Al-Alia, op. cit., p. 506.

³ Ibid., p. 141.

⁴ Article 44 of Law No. 23-04.

⁵ Repealed by Article 75 of Law No. 23-04.

⁶ Article 45 of Law No. 23-04, a new article introduced by this law.

⁷ Article 46 of Law No. 23-04.

⁸ Article 49 of Law No. 23-04.



- A transporter failing to comply with legislation and regulations concerning entry to or exit from the national territory, where this results in any form of human trafficking, shall be punished by a fine from 200,000 DZD to 500,000 DZD¹.

Section Three: Attempt in Human Trafficking Crimes

The Algerian legislator stipulates under the heading "Attempt" in Article 30 of the Penal Code: "All attempts to commit a felony that commence with the initiation of execution or through unequivocal acts directly leading to its commission shall be treated as the felony itself, provided they are halted or fail only due to circumstances independent of the perpetrator's will, even if the intended objective could not be achieved owing to a physical circumstance unknown to the perpetrator"², as attempt in a crime constitutes the commencement of an act intended to commit a felony or misdemeanor that is interrupted or fails for reasons beyond the perpetrator's control; this definition highlights the core concept of attempt – the incomplete execution of the crime – and aligns with the provisions of Article 30 of the Algerian Penal Code (Code Pénal Algérien, CPA)³.

Pursuant to Article 60 of Law No. 23-04, the Algerian legislator punishes attempts to commit human trafficking misdemeanors with the penalties prescribed for the completed offense – that is, the crime with all its elements fulfilled and its result materialized – thereby mirroring the text of repealed Article 303-13 bis of Law No. 09-01 amending and supplementing the Penal Code⁴.

It should be noted that the aforementioned penalties apply to natural persons; whereas a legal person committing any human trafficking crime shall be criminally liable under the conditions stipulated in the Penal Code under Article 63 of Law No. 23-04; namely, according to Articles 18 bis and 18 ter added by Law No. 06-23 dated 20 December 2006⁵, which correspond to repealed Article 303-11 bis of Law No. 09-01 amending and supplementing the Penal Code⁶.

Second Requirement: Supplementary Penalties

Supplementary penalties are defined as those which may be imposed without being coupled with another penalty and which are established by law for a specific offense⁷, as Article 55 of Law No. 23-04 stipulates that a natural person convicted of committing any human trafficking crime shall be subject to one or more supplementary penalties prescribed by the Penal

¹ Article 48 of Law No. 23-04.

² Article 30 of the Algerian Penal Code.

³ Mahmoud Najib Hasni, op. cit., p. 381.

⁴ Repealed pursuant to Article 75 of Law No. 23-04.

⁵ Articles 18 bis and 18 bis 2 of Law No. 23-06, op. cit.

⁶ Repealed pursuant to Article 75 of Law No. 23-04.

⁷ Rouabahafrid, op. cit., p. 159.



Code, mirroring the provisions of repealed Article 303-7 bis of Law No. 05-01 amending and supplementing the Penal Code¹.

These supplementary penalties are intrinsically linked to the nature and circumstances of the crime, where a judge may impose them only in conjunction with a primary penalty, and they must be explicitly cited in the judgment – otherwise, the judicial decision shall be deemed contrary to law², as this definition aligns with Article 4 of the Algerian Penal Code (CPA), as amended by Article 2 of Law No. 06-23, which states: "Those penalties that may not be imposed independently of a primary penalty, except in cases expressly provided by law, and which are either mandatory or discretionary"³.

Section One: Mandatory Complementary Penalties

These are penalties that the criminal judge is obligated to impose within the judgment, in conjunction with the principal penalty⁴; their mandatory character is evidenced by the phrase "the court must order" as stipulated in Article 9bis of Law No. 06-23, and the phrase "the judge must" contained in Article 9bis 1 of the same law; they consist of⁵:

- **Legal Seizure:** applied when sentencing for a felony, involving the deprivation of the convicted person's exercise of financial rights during the execution of the principal penalty, which is administered following the procedures prescribed for judicial seizure⁶.
- **Deprivation of Rights:** in the event of a felony sentence, the judge must order deprivation of one or more national, civil, and family rights as specified in Article 9bis 1 of Law No. 06-23 amending and supplementing the Penal Code, for a maximum duration of ten (10) years, effective from the date of completion of the principal penalty or the release of the convicted person⁷.
- **Confiscation:** pursuant to Article 15bis 1 of the Code of Criminal Procedure, as supplemented by Law No. 06-23; in cases of conviction for a felony, the court must order the confiscation of items used or intended for use in committing the offense, or obtained therefrom, as well as gifts or other benefits used to reward the perpetrator of the crime; furthermore, in cases of conviction for a misdemeanor, the court must order confiscation if the law explicitly prescribes this penalty, while safeguarding the rights of bona fide third parties; this is expressly affirmed by Article 57 of Law No. 23-04, stating: "the judicial authority must, in the event of conviction for any of the

¹ Repealed pursuant to Article 75 of Law No. 23-04.

² Ahmed Nouri, Hawa Salem, op. cit., p. 155.

³ Article 2 of Law No. 06-23.

⁴ Nawal Al-Alia, op. cit., p. 508.

⁵ Alawi Lazhar, Souikat Belkacem, op. cit., p. 143.

⁶ According to the text of Article 9 bis of Law No. 06-23.

⁷ According to the text of Article 9 bis 1 of Law No. 06-23.



misdemeanors provided for in this law, order the confiscation of the means used in their commission and the funds obtained by any means, while respecting the rights of bona fide third parties"; additionally, confiscation is mandatory for felonies, consistent with the provisions of Article 303bis 14 of Law No. 01-09 amending and supplementing the Penal Code¹.

Section Two: Discretionary Complementary Penalties

These penalties emerge from an examination of Article 9 of the Penal Code and subsequent provisions, alongside Articles 55 and 56 of Law No. 23-04, evidenced by phrases such as "may impose..." and "the competent judicial authorities may..."; thus, the legislature grants the judge discretion to pronounce them based on the crime's circumstances and gravity, as Article 55 of Law No. 23-04 refers to the application of complementary penalties under the Penal Code, which the competent judicial authority may impose—singularly or cumulatively—on perpetrators of human trafficking offenses, where these penalties, as per Article 9 of Law No. 06-23 amending and supplementing the Penal Code, include²:

- Prohibition of Residency: affirmed by Article 56 of Law No. 23-04, stipulating: "The competent judicial authority shall order the prohibition of residency on national territory—either permanently or for a maximum of ten (10) years—for any foreigner convicted of an offense under this chapter," mirroring the text of Article 303bis 8 of Law No. 09-01 amending and supplementing the Penal Code³;
- Temporary prohibition from practicing a profession or activity;
- Closure of an establishment ;
- Ban on issuing checks and/or using payment cards;
- Suspension, withdrawal, or cancellation of a driver's license, with prohibition on obtaining a new one;
- Withdrawal of passport ;
- Publication or display of the conviction judgment or decision.

Furthermore, under Article 55 of Law No. 23-04, competent judicial authorities may subject individuals convicted of human trafficking offenses—post-release—to medical and/or psychological supervision and/or electronic monitoring for up to one year; a measure we value as

¹ Repealed, pursuant to Article 75 of Law No. 23-04.

² Article 55 of Law No. 06-23, previous source.

³ Repealed, according to Article 75 of Law No. 23-04.



a rehabilitative mechanism integrating correction, reintegration, and reform¹, while as for complementary penalties for natural persons convicted of human trafficking, those applicable to legal persons fall under Article 18bis of Law No. 06-23 amending and supplementing the Penal Code².

Section Three: The Security Period

Article 64 of Law No. 23-04 stipulates the application of provisions concerning the security period, as outlined in Article 60 bis of the Penal Code, to human trafficking offenses, as these provisions align with Article 303 bis, paragraph 15, of Law No. 09-01, which amends and supplements the Penal Code³.

Upon referencing the Penal Code, it is evident that the Algerian legislature incorporated the security period through Article 18 of Law No. 06-23; consequently, Section IV titled "The Security Period" was added to Chapter III of Title II in Book II of Ordinance No. 66-156, comprising two articles (60 bis and 60 bis 1) following its amendment by Law No. 06-23 dated 20 December 2006, where the security period signifies: "the deprivation of the convicted individual from measures involving the temporary suspension of sentence enforcement, assignment to external workshops or open environments, exit permits, semi-liberty, and conditional release"⁴.

According to Article 64 of Law No. 23-04, the security period is mandatorily applied to perpetrators of human trafficking offenses sentenced to a custodial penalty equal to or exceeding ten (10) years, following the second paragraph of Article 60 bis of Law No. 06-23; the objective of imposing the security period for human trafficking crimes is to prevent and combat such offenses, reduce the likelihood of future recidivism, and achieve both general and specific deterrence⁵.

Second Requirement: Aggravating and Mitigating Circumstances in Human Trafficking Crimes

Criminal circumstances constitute elements occasionally attached to offenses, thereby altering their legal characterization or prescribed penalties⁶; comparative jurisprudence nearly unanimously agrees that circumstances do not form part of the constitutive elements of a crime,

¹ Alawi Lazhar, Souikat Belkacem, op. cit., p. 144.

² Alawi Lazhar, Souikat Belkacem, op. cit., p. 144.

³ Repealed, according to Article 75 of Law No. 23-04.

⁴ Articles 60 bis and 60 bis 1 of Law No. 23-06.

⁵ Wiza Tiresh Belasli, "Deterrent Measures in the Crime of Kidnapping in Light of Law No. 20-15," National Forum on the Crime of Kidnapping in Algerian Law: Between Prevention and Deterrence, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, December 14, 2021, Algeria, p. 149.

⁶ Fouzia Abdel Sattar, Explanation of the Penal Code: General Section, Al-Nahda Al-Arabiya House, Egypt, 1987, p. 26.



consequently, their presence or absence does not affect the crime's legal structure in any manner, rather their role is confined to aggravating or mitigating the gravity of the offense¹; circumstances are categorized by their effect into aggravating and mitigating circumstances².

Section One: Aggravating Circumstances in Human Trafficking Crimes

Aggravating circumstances denote additional elements that, when associated with human trafficking offenses, intensify punishment³; these may be classified into aggravators pertaining to the personal scope of human trafficking crimes (involving perpetrators and victims), aggravators related to the means employed and the spatiotemporal context of commission, recidivism as a general statutory aggravator, and finally, penalty accumulation⁴.

First: Aggravating Circumstances Pertaining to the Personal Scope of Human Trafficking Crimes

This encompasses both perpetrators and victims:

Aggravating Circumstances Relating to Perpetrators:

- Where the perpetrator is the victim's spouse, ascendant, descendant, guardian, collateral relative, or holds authority over them;
- Where the perpetrator is a public official whose position facilitated the crime's commission;
- Where the crime is committed by multiple individuals (multiple perpetrators);
→ In such cases, the penalty for human trafficking is elevated to temporary imprisonment ranging from ten (10) to twenty (20) years and a fine of 1,000,000 DZD to 2,000,000 DZD.
- Where the perpetrator is a public official or public service agent, and the offense resulted from a breach of professional duties or obligations, even if bound by professional secrecy⁵;
- → The penalty shall be imprisonment from two (2) to seven (7) years and a fine of 200,000 DZD to 700,000 DZD.

¹ Hafida Al-Qabi, "Aggravating Circumstances and Their Impact on the Punishment of the Principal Offender in Light of Law No. 20-15 Concerning the Prevention of Kidnapping Crimes," National Forum on the Crime of Kidnapping in Algerian Law: Between Prevention and Deterrence, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, December 14, 2021, Algeria, p. 261.

² Abdullah Suleiman, Explanation of the Penal Code: General Section, Vol. 1 (Crime), Office of University Publications, Algeria, 1995, p. 365.

³ op.cit, p. 366

⁴ Hafizah Al-Qabi, op. cit., pp. 161-162

⁵ According to Article 41 of Law No. 23-04.



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- Where the human trafficking offense is committed by an organized criminal group, possesses a transnational character, or occurs during an armed conflict;
→ The penalty shall be temporary imprisonment from twenty (20) to thirty (30) years and a fine of 10,000,000 DZD to 20,000,000 DZD, commensurate with the gravity of this circumstance.
- Where an individual establishes or leads an organized criminal group to commit human trafficking crimes;
- → The penalty shall be imprisonment from ten (10) to fifteen (15) years and a fine of 1,000,000 DZD to 1,500,000 DZD.

Aggravating Circumstances Relating to Victims:

These are circumstances linked to the victim, whose association with the crime aggravates its penalty:

- Where the victim is a child, lacks legal capacity, has special needs, or is in a state of ethnic vulnerability;
- Where the crime targets multiple victims;
- Where the crime is committed against individuals or groups due to their ethnic affiliation;
- In such cases, the penalty for human trafficking is elevated to temporary imprisonment from ten (10) to twenty (20) years and a fine of 1,000,000 DZD to 2,000,000 DZD.
- Where the victim is in a state of vulnerability, defined as: "any situation wherein a person is compelled to submit to exploitation due to age, gender, disability, physical or mental impairment, psychological condition, need arising from health status, socioeconomic circumstances, or irregular legal status";

- Pursuant to Article 45 of Law No. 23-04, penalties for human trafficking misdemeanors are aggravated against any person benefiting from services¹, advantages, or labor provided by a victim in such vulnerability; the penalty shall be imprisonment from five (5) to twelve (12) years and a fine of 500,000 DZD to 1,200,000 DZD, thereby extending criminal liability to beneficiaries of services or gains derived from victims of such offenses².

The penalty shall be imprisonment from two (2) to seven (7) years and a fine of 200,000 DZD to 700,000 DZD where the offense results in exposure of the identity of a human trafficking victim, witnesses, or informants, according to the provisions of the final paragraph of Article 46 of Law No. 23-04; this aggravating circumstance relating to the victim—when

¹ Law 23-04, op. cit.

² Official Gazette of Debates for the Ninth Legislative Term, Ordinary Parliamentary Session 2022-2023, issued by the National People's Assembly, Second Year - No. 138 issued on April 13, 2023.



associated with the offense—intensifies its penalty, in alignment with modern criminal policy trends protecting crime victims, witnesses, and justice-serving informants, and in implementation of international mechanisms¹.

Second: Aggravating Circumstances Related to the Means, Place, and Time of Crime Commission

These encompass :

- Where the human trafficking offense involves carrying weapons or threatening their use;
- Where the perpetrator employs narcotics or other psychotropic substances to subjugate the victim;
- Where the perpetrator withholds, destroys, or forges the victim's passport or identity document;
- Where the crime is committed through death threats or torture;
- Where the crime occurs during a health crisis, natural disaster, or biological/technological catastrophe;
- Where the crime utilizes information and communication technologies;
→ Human trafficking committed under one or more of these circumstances shall be punished by imprisonment from ten (10) to twenty (20) years and a fine of 1,000,000 DZD to 2,000,000 DZD².
- Human trafficking shall be punishable by life imprisonment where the victim is subjected to torture or sexual violence, where the offense results in permanent disability, or where the act causes the victim's death³.
- Any person who resorts to retaliation, intimidation, or threats in any manner whatsoever against victims, witnesses, experts, informants, their family members, or closely related persons shall be punished by imprisonment from five (5) to ten (10) years and a fine of 500,000 DZD to 1,000,000 DZD⁴.

¹ Alaoui Lazhar, Souikat Belkacem, op. cit., p. 147

² According to Article 41 of Law No. 23-04.

³ According to Article 42 of Law No. 23-04.

⁴ According to Article 47 of Law No. 23-04.



Third: Recidivism and Penalty Accumulation in Human Trafficking Crimes

Addressed as follows:

Recidivism as a General Statutory Aggravator:

Recidivism denotes the legal status ascribed to an individual who reoffends after being sentenced under a prior *final judgment*, within legally specified conditions; thus, its two requisite elements are:

- A conviction judgment against the perpetrator;
- Commission of a new offense after said prior judgment¹.

The Algerian legislature considers recidivism an aggravating circumstance that doubles penalties prescribed under Law No. 23-04 on Preventing and Combating Human Trafficking Crimes, pursuant to its Article 66²; this provision is *general* since the law does not require the subsequent crime to be identical or similar to that for which the recidivist was previously convicted³.

Penalty Accumulation:

Pursuant to Article 67 of Law No. 23-04 on Preventing and Combating Human Trafficking Crimes, penalties imposed under this law shall be accumulated with any other custodial sentence⁴.

Section Two: Legal Grounds for Exemption in Human Trafficking Offenses:

The Algerian legislator addressed these within Section Two of Chapter VI of Law No. 23-04 about the prevention and combating of human trafficking offenses, under the heading "Common Provisions"; these grounds are as follows⁵:

Firstly: Exculpatory Legal Defenses in Human Trafficking Offenses:

These constitute "circumstances stipulated by law which result in the removal of penalty from the perpetrator, while potentially subjecting them to security measures; also termed preclusions of punishment, as they prevent its imposition", where the designation as 'legal,' according to the Algerian legislator's expression, signifies that the law itself explicitly defines the specific conditions under which the requirements for invoking these defenses exclusively arise, precluding analogical interpretation of the texts specifying them; thus, they represent

¹ Abdullah Suleiman, op. cit., pp. 377-378.

² Article 66 of Law No. 23-04, op. cit.

³ Abdullah Suleiman, op. cit., p. 380.

⁴ Alaoui Lazhar, Souikat Belkacem, op. cit., p. 147.

⁵ Alaoui Lazhar, Souikat Belkacem, op. cit., p. 149.



circumstances exempting an individual from penalty even after judicial establishment that they committed the offense with all its elements established; consequently, the system of exemption from punishment nullifies the perpetrator's legal liability despite proven culpability¹; it exempts the offender from penalty not due to the absence of fault, but rather based on considerations intimately linked to criminal policy and social utility².

This principle is affirmed by Article 58 of Law No. 23-04, stipulating: "Any person who committed or participated in one or more of the offenses stipulated in this Law shall benefit from the exculpatory defenses exempting from penalty as provided in the Penal Code, provided that, before the offense(s) coming to the attention of the public authorities, they informed the administrative or judicial authorities thereof and contributed to saving the victim's life and/or uncovering the perpetrators and/or their apprehension"³, which is fundamentally concerns an individual who contributed to the commission of the offense, yet subsequently renders a service to society by reporting it to the administrative or judicial authorities before it reaches the knowledge of the public authorities, and assists in saving the victim's life and/or uncovering the perpetrators and/or their apprehension; in exchange for this service, the legislator deemed it appropriate to reward the informant concerning this category of offenses, particularly given the inherent difficulties in detecting them⁴.

Pursuant to the aforementioned article, the defense of the informant Excuse defense (legitimate defense) benefits the direct perpetrator, the accomplice, and the instigator; although this article does not explicitly mention the instigator, Article 41 of the Algerian Penal Code considers the instigator of a crime to be a perpetrator and not an accomplice, whereby we note a point of divergence between the text of Article 58 of Law No. 23-04 and Article 303 bis 9 of Law No. 09-01 amending and supplementing the Penal Code, which relates to the legislator's condition under the old text for benefiting from exemption from punishment: that the report concerning the human trafficking offense occur before its execution or attempt commences; whereas the new text does not require this, thus the informant regarding a human trafficking offense benefits from exemption from punishment whether it occurs before the crime's completion or after, the sole condition being that the crime is reported before it comes to the attention of the public authorities and that this contributes to saving the victim's life and/or revealing the identity of the perpetrators of human trafficking offenses and/or their apprehension⁵.

¹ Mohamed Al-Ayeb, Individualization of Criminal Punishment between Islamic Jurisprudence and Algerian Legislation, PhD thesis in Islamic Sciences, specializing in Sharia and Law, University of Batna, Faculty of Islamic Sciences, Department of Sharia, 2015-2016, p. 102.

² Ahsen Bousguia, A Concise Introduction to General Criminal Law, op. cit., p. 372.

³ Article 58 of Law No. 23-04, op. cit.

⁴ Nawal Al-Alia, op. cit., p. 514.

⁵ Alawi Lazhar, Souikat Belkacem, op. cit., p. 150.



Furthermore, victims of human trafficking shall not be prosecuted for violations of procedures relating to the entry of foreigners into Algeria, their residence therein, or their movement within it, under Article 51 of Law No. 23-04; this serves as a guarantee and protective measure for foreign nationals who are victims of such crimes, ensuring they benefit from various forms of legal and judicial assistance following the Official Gazette of the Debates issued by the National People's Assembly¹. Moreover, Article 52 of Law No. 23-2016 stipulates that the victim shall not be held criminally or civilly liable for any offenses they might commit whenever these are directly linked to their status as a victim of human trafficking, in line with global trends; as the legislator considers persons exploited within the framework of human trafficking to be victims who benefit from protection and are not subject to criminal prosecution"².

Section Three: Mitigating Circumstances

Mitigating circumstances, unlike aggravating circumstances, constitute additional elements that, when associated with human trafficking offenses³, lead to penalty reduction, which are specified by the legislator, mandating the attenuation of the accused's sentence upon their fulfillment; consequently, mitigating legal defenses do not fall within the discretionary authority of the criminal judge; rather, they are predetermined defenses that the judge must apply in observance of the principle of penalty individualization, as they are categorized into general mitigating legal defenses applicable to all offenses without exception, and specific mitigating legal defenses applied solely to particular crimes⁴.

Law No. 23-04 stipulates that the perpetrator, accomplice, or instigator may benefit from mitigating legal defenses for human trafficking offenses as specific mitigating defenses under its Article 59; whereby the prescribed penalty is reduced by half for any person who committed or participated in a human trafficking offense (whether a felony or misdemeanor) and, after the initiation of prosecution, assisted in apprehending one or more persons implicated in its commission and/or revealed the identity of those who contributed to its perpetration⁵; furthermore, a person convicted of a human trafficking offense may not benefit from the mitigating circumstances stipulated in the Penal Code beyond one-third (1/3) of the legally prescribed penalty⁶.

¹ Official Gazette of Discussions for the Ninth Legislative Term, Ordinary Session 2022-2023, issued by the National People's Assembly, Second Year - No. 139, issued on April 13, 2023.

² Official Journal of Debates, Second Year - No. 138, op. cit.

³ Abdullah Suleiman, op. cit., p. 366.

⁴ Wiza Belasli, op. cit., pp. 154-155.

⁵ Alawi Lazhar, Souikat Belkacem, op. cit., p. 150

⁶ According to Article 54 of Law No. 23-04

**Conclusion:**

From the foregoing analysis, it is deduced that the Algerian legislator has criminalized all forms of human trafficking, particularly that perpetrated through violence, threats, or subjecting the victim to torture or sexual violence, and prescribes severe penalties commensurate with the gravity of the offense, which may extend to life imprisonment; furthermore, the Algerian legislator classified human trafficking offenses into two categories: misdemeanors and felonies, designating them as felonies under two circumstances: firstly, if the victim was subjected to torture, sexual violence, or if the offense resulted in permanent disability, or if the act led to the victim's death; and secondly, if the human trafficking offense was committed while one of the aggravating circumstances exclusively enumerated in Article 41 of Law 23-04 was present.

In addition to the principal perpetrator of the offense, the instigator is considered a principal offender punishable by the same penalty as the principal perpetrator of human trafficking; moreover, the legislator equated the punishment of an accomplice in the commission of any human trafficking offense with that of the principal perpetrator, whether the offense constituted a felony or a misdemeanor. Law 23-04 also penalizes the attempt to commit misdemeanors related to human trafficking with the penalties prescribed for the completed offense; the aforementioned legal text further provides that one or more of the supplementary penalties stipulated in the Penal Code, whether mandatory or optional, shall apply to a natural person convicted of any human trafficking offense; it also stipulates the application of the provisions concerning the safety period outlined in Article 60 bis of the Penal Code to human trafficking offenses.

Regarding the aggravating circumstances of the personal dimension of the perpetrator of human trafficking offenses, the legislator linked them to the status of the perpetrator or the victim, or commission by an organized criminal group, or the transnational nature of the offense, or its occurrence during an armed conflict, or its commission against more than one victim, as well as the means, place, and time of the offense's commission, or the circumstance of recidivism, where benefiting from the exempting excuses from punishment stipulated in the Penal Code are those who committed or participated in one or more of the offenses provided for in Law 23-04, and who, before the authorities becoming aware of it, informed the administrative or judicial authorities thereof and contributed to saving the victim's life and/or uncovering its perpetrators and/or arresting them.

Victims of such offenses benefit from various forms of legal and judicial assistance in accordance with the Official Gazette of the Debates issued by the National People's Assembly; indeed, the legislator considers persons exploited within the framework of human trafficking as victims entitled to protection and not subject to criminal prosecution. Law 23-04 also clarified that the perpetrator, accomplice, or instigator may benefit from legally mitigating excuses concerning human trafficking offenses, as specific legally mitigating excuses are provided for in its Article 59.



Based on this analysis, the following recommendations can be proposed:

- Enhance the fight against human trafficking by activating the institutional role in confronting this crime through the establishment of an observatory or specialized bureau dedicated to combating it.
- Establish a specialized judicial body for human trafficking offenses.
- Issue periodic informational bulletins to raise societal awareness about the gravity of this crime.

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