

The Decline of the Principle of Legality in Economic Criminal Law

تراجع مبدأ الشرعية الجزائية في القانون الجنائي الاقتصادي

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Abstract:

The application of the principle of legality in the economic and financial field has experienced a relative decline as a result of profound transformations affecting economic structures and financial transactions. These developments have generated new forms of crime characterized by speed and flexibility, rendering traditional criminal legislation incapable of keeping pace through the precise and prior drafting required by the classical concept of legality.

In response to this reality, legislators have adopted flexible legislative techniques, including criminalization through general formulations, reliance on blank criminal provisions, and references to regulatory texts to determine the elements of criminalized conduct. The role of the criminal judge has also expanded in interpreting economic and financial provisions, while criminalization has increasingly shifted toward a logic of risk prevention rather than merely defining prohibited acts.

Although this trend may affect legal certainty and individual guarantees, it does not constitute an abandonment of the principle of legality. Rather, it aims primarily to enhance the effectiveness of modern economic criminal policy and protect the financial system.

Key words: Principle of legality, Legislative delegation, Referral, Interpretation, Flexibility.

Introduction:

The economic and financial sphere, under the rapid transformations generated by globalization and technological development, has witnessed the emergence of new forms of crime that have affected the general principles of criminal law. The traditional formulation of the principle of criminal legality is no longer always capable of meeting the requirements of effective criminal protection of the national economy and financial system.

The acceleration of economic developments and the growing complexity of financial transactions have driven economic criminal legislators to adopt flexible legislative techniques, sometimes based on relative ambiguity in legal texts, references to regulations, or expanded criminalization. This has resulted in a relative decline of the principle of legality in its classical sense, which is founded on rigidity, clarity, and prior precise determination of criminal acts and penalties.

This development raises issues affecting the very essence of criminal guarantees and places both judges and litigants before criminal provisions of a highly technical and evolving nature, reflecting a clear tension between the requirements of punitive effectiveness and the demands of legal certainty.

The importance of studying the decline of the principle of legality in economic and financial criminal law lies in the fact that the issue concerns one of the fundamental pillars of criminal justice and reveals the transformation of contemporary criminal policy in addressing economic and financial crimes. It also highlights the relationship between protecting constitutionally guaranteed

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individual rights and freedoms on the one hand, and safeguarding the economic and financial system from threats on the other.

Accordingly, the central research problem revolves around the legitimacy and limits of the decline of the principle of legality in economic criminal law and its ability to achieve a balance between effectiveness in combating economic and financial crimes and preserving criminal guarantees and legal certainty.

The research therefore seeks to answer the following question:

What are the manifestations of the decline of the principle of legality in economic criminal law? Is this decline a legitimate necessity imposed by the specificity of economic and financial crime, or does it constitute an infringement upon the essence of the principle of legality?

To address this issue, the study adopts both descriptive and analytical methods through the following axes:

- **First Axis:** Legislative delegation in economic criminalization.
- **Second Axis:** The use of blank criminal legislation in economic criminalization.
- **Third Axis:** Flexible and broad drafting of legal provisions in economic criminalization.

1- First Axis: Legislative Delegation in Economic Criminalization

In general criminal law, the existence of a criminal provision is a necessary condition for the existence of a crime; in its absence, the crime itself does not exist¹. This principle is guaranteed by the Algerian Constitution² and is expressly reflected in Article 1 of the Algerian Penal Code, which states: *"No crime, no punishment, and no security measure without law."*³

One of the most important consequences of the principle of legality is therefore the restriction of the power of criminalization and punishment exclusively to the legislative authority, as a direct manifestation of the rule of legislative exclusivity. However, given the highly technical and evolving nature of the economic and financial field, together with the urgent need for speed and flexibility in responding to continuous developments requiring specialized expertise, the legislator has increasingly refrained from enacting certain criminal provisions in favor of the executive authority. This choice is justified by the latter's technical competence and practical knowledge enabling it to address complex implementation issues⁴, This can be clarified as follows:

1.1- First: Definition of Legislative Delegation

Attempting to establish a comprehensive and rigid definition of legislative delegation may require abandoning the traditional understanding of criminal legality and adopting a more flexible approach toward criminal provisions relating to economic crimes⁵.

Legislative delegation may therefore be defined as the situation in which the legislative authority entrusts part of its competencies to the executive authority within the limits prescribed by the Constitution. It has also been defined as: *the act whereby the legislative authority, which the constitution entrusts with the power to enact legislation, delegates part of its competences to the executive authority (the Head of State or the Head of Government), on the basis of an explicit provision in the constitution that authorizes such delegation and sets out the necessary limits for its exercise, or where constitutional practice in a given state has come to recognize or permit the principle of legislative delegation.*⁶

From these definitions, legislative delegation appears as a mechanism allowing the legislative authority to temporarily relinquish part of its competence in a specific field to the executive authority, provided that such delegation is clearly authorized by the Constitution and exercised within defined conditions.

However, decrees and decisions issued pursuant to such delegation acquire the force of law only after ratification by the original legislative authority, namely Parliament, which remains the sole body empowered to enact legal rules and guarantee their legality.

Legislative delegation finds broad application in economic and business crimes, where the legislature transfers certain powers to the executive authority in order to adapt criminal qualifications and determine the material elements of offences. It should be noted that legislative delegation within the framework of constitutional law resembles administrative delegation in terms of substance. It consists of the relinquishment by the original holder of authority of part of his or her competences to another body. However, this relinquishment cannot be absolute or complete; it must be based on a legal instrument that authorizes such delegation. Accordingly, delegation may not include all the competences of the original authority but must be limited to some of them while others remain within its jurisdiction⁷.

Legislative delegation also resembles judicial delegation carried out by an investigating judge, whereby the judge appoints one of the judicial police officers to perform certain investigative tasks under specific conditions established by the Code of Criminal Procedure, when the judge is unable to perform them⁸ personally due to time constraints or the multiplicity of obligations.

1.2- Second: Constitutional Basis of Legislative Delegation

Article 142 of the Algerian Constitution explicitly establishes the system of legislative delegation, providing that:

"The President of the Republic may legislate by ordinances in urgent matters during the vacancy of the National People's Assembly or during parliamentary recess, after consulting the Council of State. The Constitutional Court must be notified of the constitutionality of such ordinances, which must be decided within ten (10) days..."

From this provision, it appears that the Algerian Constitution authorizes legislative delegation in urgent situations, during parliamentary absence, or in exceptional circumstances threatening the country, as referred to in Article 98 of the Constitution⁹.

However, delegation in the field of economic criminalization is often justified by the specific nature of the economic environment itself, which requires rapid regulatory intervention, even beyond strictly exceptional circumstances.

1.3- Third: Justifications for Adopting Legislative Delegation in Economic Criminalization

Allowing the executive authority to exercise certain legislative functions in business criminal law — despite constituting an exception to the principle of separation of powers and legislative exclusivity — must be based on serious and objective justifications, including:

➤ Reducing the Burden on Parliament

The legislative authority performs numerous and expanding tasks, including law-making, government oversight, and public policy debates. Legislative delegation therefore serves as a mechanism to reduce parliamentary workload, allowing Parliament to focus on essential issues while entrusting certain technical matters to the executive authority.

➤ Keeping Pace with the Speed and Flexibility of Economic Changes

Parliamentary legislative procedures are, by their nature, lengthy and complex, as they pass through several stages of discussion, voting, and approval. This process may not be compatible with the nature of economic changes, which often require rapid legislative intervention capable of keeping pace with the speed, flexibility, and dynamism of economic crime, as well as with its volatile and urgent nature¹⁰.

Accordingly, the scope for legislative delegation in business crimes becomes broader, as it allows the executive authority to respond more quickly and flexibly by issuing regulations and addressing economic violations, in contrast to the slower pace typically associated with the legislative authority¹¹. Legislative delegation therefore constitutes a tool that enables the executive branch to intervene immediately in order to impose an effective legal framework and address urgent situations without waiting for the traditional parliamentary process.

➤ **The Technical Nature of Economic Crimes**

At the end of the nineteenth century and the beginning of the twentieth century, economic and financial fields became characterized by a certain degree of technical and scientific complexity as a result of technological development. This development clearly influenced the criminal sphere. It became evident that perpetrators of business crimes, for example, often enjoy a high social and financial status that enables them to commit their offences with a level of professionalism and sophistication different from that of ordinary crimes.

These offenders usually rely on highly advanced information and tools while maintaining professional secrecy and confidentiality. A clear example of this can be found in crimes such as money laundering¹². Consequently, parliaments often lack the specialized technical expertise necessary to address such issues with precision¹³. By contrast, the executive authority possesses specialized technical and administrative bodies, making it more capable of drafting appropriate and effective legal rules in these fields.

➤ **Emergency or Necessity Situations**

The concept of necessity or a state of emergency (such as war, natural disasters, or major health and economic crises) is based on the existence of exceptional and extraordinary circumstances that require the intervention of the executive authorities by granting them exceptional powers. Such exceptional situations cannot be adequately addressed through ordinary legislation¹⁴.

When exceptional circumstances arise that threaten public order or the public interest, urgent legislative intervention becomes necessary and cannot be delayed. In such cases, legislative delegation is justified as a legal response to an emergency or necessity imposed by the need to protect the state and ensure the continuity of its institutions. However, this delegation must remain temporary and limited in both time and subject matter until the state of emergency ceases, in order to prevent it from becoming a permanent means of bypassing parliamentary authority.

Despite the advantages associated with such delegation—particularly in facilitating the issuance of regulations and reducing the burden on the legislative authority—excessive reliance on it at the expense of ordinary legislation may lead to legislative inflation and to an expansion of the power of criminalization in the hands of the administration. Therefore, the concept of legislative delegation should remain limited and restricted to cases of urgent necessity, as an exception rather than the rule.

2- Axis Two: The Use of the Blank Criminal Legislation Technique in Economic Criminalization

It is a well-established and widely accepted principle that criminal provisions generally consist of two components: the element of criminalization and the element of punishment. However, for certain considerations (which will be discussed below), the economic criminal legislator has departed from this principle by sometimes limiting the provision to only one component of the criminal rule while leaving the other undefined. This type of provision is therefore described as blank criminal legislation.

2.1- First: The Concept of Blank Criminal Legislation

In this situation, criminal law often does not directly determine the punishable conduct. Instead, it refers to another legal text for its determination, which is often issued in the form of an executive decree or other regulatory orders. This technique is known as **blank criminal legislation** (*loi pénale en blanc*), whereby the existence and content of the criminal provision become dependent on the executive authority. Such an approach may conflict with the principle of legality and appears clearly in several areas of legislation, such as economic and financial criminal law, environmental law, and consumer criminal law¹⁵.

Therefore, establishing a comprehensive and precise understanding of blank criminal legislation necessarily requires addressing its definition and distinguishing it from other similar concepts.

A. Definition of Blank Criminal Legislation

Blank criminal legislation may be defined as the act whereby the legislative authority enacts a general punitive provision while leaving the determination of the criminalized conduct to the executive authority, which may later issue the necessary regulations specifying the prohibited behavior. In essence, it represents a fragmentation of the legal rule: one part is enacted by the legislative authority, while the other part is determined by the executive authority. For this reason, some scholars describe it as an incomplete or imperfect criminal rule¹⁶.

It has also been defined as the situation in which the element of punishment or sanction exists within the criminal rule without the element of criminalization. This occurs when the criminal provision refers the determination of the punishable conduct to another normative text that has not yet been issued but may be promulgated later to define such conduct. In this case, the rule is referred to as a blank criminal rule.

In other words, a criminal provision may not contain the entire criminal rule within a single text; instead, the rule may be distributed across several legal texts, where one text contains one component of the criminal rule (either the obligation or the sanction)¹⁷. From a legislative drafting perspective, in blank criminal legislation the element of criminalization is not precisely defined. Rather, the legislator formulates it in the form of general principles, leaving the task of determining the specific elements of the offence to the competent authority¹⁸.

In summary, in its simplified meaning, blank criminal legislation refers to a criminal rule enacted by the competent legislative authority that establishes the penalty without specifying the criminalized conduct, while delegating the determination of such conduct to a subsequent normative text that will later be issued by the executive authority. This subsequent text then defines the behavior that triggers the application of the penalty, while the original rule remains in force with its sanction element pending the completion of the criminalization element.

B. Distinguishing Blank Criminal Legislation from Similar Concepts

The concept of blank criminal legislation overlaps with several similar legal notions in terms of both meaning and procedures. This overlap makes it necessary to distinguish between them in order to remove ambiguity and define the concept precisely.

➤ Blank Criminal Legislation and Legislative Delegation

The distinction between blank criminal legislation and legislative delegation has generated considerable debate due to the strong similarity between the two concepts, to the extent that some legal scholars consider them to be two sides of the same coin. However, a closer analysis of their respective definitions reveals that they share one fundamental feature: both involve the participation of the executive authority in the field of criminalization and punishment with authorization from the legislative authority.

The difference lies in whether this participation is total or partial. In other words, does the executive authority have the power to establish the criminal provision in its entirety—both the element of criminalization and the element of punishment—or is its role limited to regulating only one of these components?

The answer to this question reveals the essential distinction between the two mechanisms. Legislative delegation is comprehensive in nature, as the legislative authority entrusts the executive authority with the power to enact the criminal provision in its entirety by determining both the elements of the criminal offense and the applicable sanction. Delegation may also occur when the legislative authority establishes the criminalization and the sanction but leaves the determination of the material elements of the offence to the executive authority.

By contrast, blank criminal legislation appears when the criminal rule is divided between the two authorities. The legislative authority establishes the penalty, while the executive authority is entrusted, at a later stage, with defining the criminalized conduct through a regulatory text.

➤ **Blank Criminal Legislation and Legislative Referral**

It is also important not to confuse blank criminal legislation with the fragmented criminal rule, commonly known as legislative referral. Legislative referral is a technique used to ensure coherence and integration between legal provisions, whereby a legal text refers to another provision within the same law or to another law in order to avoid repetition.

In this case, the legal rule is distributed across several texts simultaneously, unlike blank criminal legislation where the legislator limits the provision to the determination of the sanction while leaving the criminalization component to be established later.

Referral may be internal, where the same law contains the element of criminalization in one provision and the element of punishment in another, provided that the reference between the provisions is explicitly indicated. Referral may also be **external**, meaning that one law refers to another law. For example, the Penal Code may refer to a special criminal law such as the law on the prevention and combating of corruption, or one special criminal law may refer to another¹⁹

Thus, criminal law does not always directly define the punishable conduct; rather, it may indicate that such conduct is determined in another legal provision through either internal or external referral, as explained above.

2.2- Second: Justifications for the Use of Blank Criminal Legislation in Economic Criminalization

The importance of blank criminal legislation stems from the fact that it represents one of the legislative techniques imposed by the nature of contemporary society and the rapid developments occurring in technical and economic fields. Blank criminal rules play an effective role in reducing the rigidity of criminal provisions, as they introduce a degree of flexibility that enables them to keep pace with the accelerated evolution of patterns of economic criminal behavior.

This is evident in the fact that when the legislator determines the sanction and incorporates it into the criminal provision, he does not necessarily have the corresponding element of criminalization in mind. If the latter had already been clearly envisaged, the legislator would have included it together with the sanction in the same provision in order to avoid the difficulties that might arise from referring to other sources, particularly those affecting the principle of legality.

Thus, the blank criminal rule derives its importance from being a form of flexible hypothetical criminalization, which allows the legislator to anticipate potential unlawful acts by establishing the sanction within a general framework while entrusting the task of defining the criminalized conduct to the competent authorities at the appropriate time. This ensures the protection of public interests without being constrained by the slowness of the ordinary legislative process²⁰.

In conclusion, it is impossible for the legislator to anticipate in advance all emerging forms of criminal conduct within precise criminal provisions. Consequently, the technique of blank criminal legislation enhances the effectiveness of criminal policy by allowing rapid responses to technical changes through concise legal provisions, without the need for continuous amendments to legislation. This approach avoids legislative redundancy, reduces pressure on the legislative authority, and promotes coherence within the legal system. Nevertheless, the effectiveness of this technique remains dependent on properly defining its scope and ensuring that it does not exceed constitutional limits. The legislator must therefore retain the original competence to determine the essential elements of criminalization and punishment, in order to avoid undermining legal certainty or weakening the guarantees granted to individuals.

2.3- Third: Applications of Blank Criminal Legislation in Algerian Legislation

In recognition of the specific nature of economic crimes, the legislator initially sought to adopt a system of special criminal laws designed to regulate various violations occurring within

the economic environment. This approach reflects the legislator's refusal to subject such crimes to the same principles governing general criminal law. Consequently, several examples of legislative delegation and blank criminal legislation can be found in Algerian special legislation, including the following:

- Article 30 of the Algerian Customs Code, which refers the determination of the customs zone boundary—an essential element in certain smuggling offences—to the Minister of Finance through a ministerial decision²¹. It should be noted that before its amendment by the 1998 law, this task was entrusted to the Director General of Customs. Pursuant to Article 30 of the Customs Code, the Minister of Finance issued several decisions on 1 July 2007 determining the boundaries of the customs zone for the various regions located within the customs territory. One notable feature of this decision is its adherence to the distance established in Article 29 of the Customs Code concerning the depth of the customs zone, which is 30 kilometers, applying this rule uniformly to all regions of the country, including the southern provinces, except for certain provinces where the customs zone was set at 60 kilometers²².
- Article 220 of the Algerian Customs Code, which refers the determination of goods subject to a movement permit—considered the material object of the smuggling offence—to a decision issued by the Minister of Finance. The same approach is adopted in Article 222 of the same law, which refers the determination of sensitive goods susceptible to smuggling to the executive authority²³.
- Article 82 of Law No. 03-10 on Environmental Protection within the Framework of Sustainable Development, which refers to regulatory texts the determination of the procedures and conditions for granting authorization and the rules applicable to the establishment of facilities related to the breeding, sale, rental, or transit of non-domesticated animal species, as well as the establishment of institutions dedicated to displaying certain specimens of domestic or foreign animals to the public subject to authorization²⁴.

Third Axis: Flexible and Broad Drafting of Legal Provisions in Economic Criminalization

The exclusivity of the legislator in establishing criminal rules imposes that legislative work be a matter of special concern. Accordingly, the legislator is required, in criminal provisions, to draft clear, precise, and non-contradictory texts that leave no room for doubt or inconsistency, and that prevent erroneous or overly broad interpretation of the text. On this basis, the principle of legislative exclusivity requires the legal rule to be dynamic²⁵, meaning that continuous monitoring and review by the legislator is necessary to make the necessary amendments to keep pace with developments. Otherwise, criminal law texts would become rigid, which would hinder the proper functioning of criminal justice.

Despite the legislator's adoption of a dynamic and monitoring approach, this has not been sufficient to cover all aspects, particularly those related to economic crimes and business offenses, which have given rise to new patterns of behavior harmful to economic and financial interests. Strict and rigid adherence to the wording of criminal provisions is no longer sufficient to achieve the desired criminal protection. This became evident as traditional legal texts often proved incapable of accommodating technical complexity and the evolution of methods affecting the economy. Consequently, the legislator resorted to flexible drafting of penal provisions, a method known as the "open-text template," which allows for the inclusion of multiple and evolving forms of criminal acts. In addition, broad interpretation emerged as a complementary mechanism enabling judges to activate existing provisions and adapt them to emerging economic realities.

3.1- First: The Open-Text Template Method

The open-text template method is widely used in economic crimes and business offenses, as the characteristic of precision and clarity cannot always be guaranteed in this technical category of crimes due to the numerous and frequently amended legislations governing them. Accordingly, flexible drafting—or the open-text template—is a method that criminal legislators employ when they cannot, during the drafting of legal texts, fully encompass the precise description of economic behaviors due to their complex technical nature²⁶. To better understand the concept of the open-text template, its definition and main features are outlined below:

Definition of the Open-Text Template Method: The open-text template method refers to: “a drafting approach in which the content of the legal rule is expressed in an imprecise manner, granting judges broad discretionary power in its application according to the circumstances and requirements of justice. Flexible drafting expresses the content of the legal rule in a way that responds to the treatment of each case, and the authority of those applying the flexible rule is known as discretionary power²⁷.”

Through this method, the legislator only specifies the criminal outcome while outlining the behavior leading to it in a loose manner, giving judges wide discretion to determine an appropriate response for each situation, unlike the restrictions imposed by ordinary rigid texts.

Adopting the open-text template helps to accommodate a wide range of criminal behaviors that align with evolving interests subject to criminal protection, which the legislator may not have anticipated at the time of legislation. Unlike the restrictive method in legal texts, characterized by precision and rigidity, the open-text template is flexible and broad. When issuing economic criminal provisions, the legislator employs terms and expressions that are vague and expansive, often using economic rather than strictly legal terminology, without providing definitions or clarifications. These concepts are ambiguous and open-ended, allowing for multiple interpretations²⁸. The flexibility of criminal texts in business law is also reflected in not limiting the forms, methods, or means used in the commission of a crime. The legislator frequently employs broad and open-ended expressions such as: “or any other means,” “by any method whatsoever,” or “any other way,” as a precaution against developments or new situations not covered by a rigid text.

An example of the open-text template is found in Article 325 bis of the Algerian Customs Code, which lists various customs offenses. Its first paragraph states: “... or obtaining any other advantage without justification,” its fourth paragraph: “... or any other documents,” and its fifth paragraph: “... and by any other fraudulent means.”

3.2- Second: Advantages and Disadvantages of the Open-Text Template Method

Despite the numerous advantages that the open-text template method offers in the field of economic criminal law or business criminal law, it conceals certain drawbacks. These can be summarized as follows:

A. Advantages of the Open-Text Template Method

The main advantages of the open-text template are:

- **Legislative responsiveness to diverse circumstances:** Flexible drafting reflects a legislative response to the variety of work conditions. It allows the legal rule to consider the specificities of each case without being constrained by rigid solutions, providing a stable outcome for the legal norm.
- **Adaptation to social and factual developments:** The open-text template enhances the ability of the legal rule to keep pace with social evolution and incorporate emerging facts, unlike rigid rules.
- **Promotion of judicial reasoning:** Flexible legal norms open the door to judicial interpretation, contributing to the development of judges’ analytical and reasoning skills when applying legal texts.

- Enhancement of justice: The method allows the application of legal norms according to the subjective and objective factors unique to each case. Flexible drafting enables judges to apply the law in line with societal changes and to address new situations effectively²⁹

B. Disadvantages of the Open-Text Template Method

Despite its advantages, the most prominent drawback lies in the variability of application: the same legal rule may be interpreted differently from case to case or from one court to another. Such differences can threaten the stability of transactions and legal positions, as the method grants judges broad discretionary power that could lead to overreach. Other disadvantages include:

- **Undermining legal certainty:** The relative ambiguity of the legal rule makes it difficult for individuals to anticipate the boundaries between lawful and criminal behavior, reducing trust in legal stability.
- **Excessive judicial discretion:** Broad discretion in applying flexible provisions may result in judicial arbitrariness.
- **Impact on the stability of legal norms:** The open-text template can limit uniform judicial application, potentially causing inconsistent rulings in similar cases. Variation in applying the same rule threatens the stability of transactions and legal positions, which is a fundamental requirement for legitimacy.
- **Risk of expansive interpretation:** The method may invite overly broad interpretation, sometimes exceeding the legislator's intent and creating new forms of criminalization outside the defined legislative framework.
- **Diminished role of the legislature:** Over-reliance on flexible drafting shifts the burden of defining the content of legal norms from the legislative authority to the judiciary, potentially violating the principle of separation of powers.

Nonetheless, the open-text template remains suitable for combating business crimes, because detailed anticipation of criminal behavior is neither possible nor desirable. Even if the legislator aims for comprehensive coverage, human initiatives and behaviors are inherently innovative and not fixed, particularly in the economic sphere. Therefore, broad formulations are used to encompass the maximum range of criminal behaviors. Excessive predictability is also undesirable, as it could allow offenders to evade punishment due to overly detailed legal texts³⁰.

3.3- Third: Expansive Interpretation of Economic Criminal Provisions

Interpreting a legal rule in general, and a criminal provision in particular, aims to uncover the intended meaning of the terms in the text, especially when the language is ambiguous or unclear³¹. The fundamental principle governing interpretation in criminal law is the Latin maxim *Poenalia sunt restringenda*, which dictates that criminal interpretation must be narrow in order to uphold legality. A criminal judge cannot, under any interpretive pretext, legislate or criminalize acts that the law does not prohibit or punish³². One of the most cited statements supporting this principle comes from the renowned jurist Jean Joseph Portalis:

"In criminal law, where only a written text existing prior to the act can guide judicial action, precise laws are required, not judicial interpretation."³³

Nevertheless, despite this principle, interpreting laws or seeking their true meaning remains a judicial necessity. Legal texts often leave room for ambiguity due to their quantity, interrelation³⁴, complexity, and technical terminology. To control and manage the wide range of criminal and deviant behaviors in the economic field, judges must be permitted to adopt expansive interpretation to counter fraud and deception, which often affect not only individual entities but the economy as a whole.

Some legal scholars argue that one key justification for allowing interpretation in economic criminal law is the exclusion of the principle "in dubio pro reo" (doubt interpreted in favor of the defendant) in customs offenses. For instance, a Supreme Court decision stated:

"It is legally established that the reports prepared by the officials mentioned in Article 241 of the Customs Code, regarding physical evidence contained therein and in accordance with

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Article 254 of the Customs legislation, bind the judge. He cannot exercise discretionary power as in general law; he must adhere to the content of these reports unless challenged for forgery or contradicted by evidence. Good faith is not considered in customs matters. If appellate judges acquit defendants on the basis of doubt, they have acted incorrectly and violated the law, justifying annulment of the decision."³⁵

In this regard, we support Professor Youssef Bouchi's view, which clarifies that the principle "in dubio pro reo" concerns evidence regarding the defendant, not the interpretation of criminal texts. Its foundation is the presumption of innocence, constitutionally guaranteed under Article 56 of the Constitution. If the evidence does not sufficiently implicate the defendant, any resulting doubt must be interpreted in the defendant's favor, resulting in acquittal³⁶.

Conclusion:

The retreat of the principle of legality in the field of economic and financial criminal law constitutes both a necessary legal response and an unavoidable requirement to address the complex and evolving nature of contemporary economic and financial activities. The study has shown that the flexibility of criminal provisions and the possibility of legislative delegation to the executive branch are essential mechanisms to keep pace with technical economic developments and complex financial crimes. However, excessive reliance on these exceptional mechanisms, which are foreign to traditional criminal law, may lead to serious abuses that are difficult to correct. Among the most significant risks are the erosion of legal safeguards, particularly those related to individual rights, and the increased potential for expansive judicial interpretation at the expense of explicit legislative texts. This could weaken the principle of legality and undermine the fundamental principles of the legal system. Therefore, a careful balance must always be maintained between the necessities of economic criminalization and the protection of legal guarantees, so that any retreat of the principle of legality in economic matters remains a matter of drafting adjustments aligned with economic necessity, rather than a disregard for the principle itself.

Study Findings:

- The principle of legality in economic criminal law has experienced notable retreats in its fundamental principles and outcomes, to the point of departing from the general rules of criminal law. However, this retreat should not be seen as a negation or abolition of the principle; rather, it represents a reformulation of its content in accordance with the requirements of contemporary criminal policy and the need for effective protection of the economy and the financial system. At the same time, a balance must be maintained between the demands of deterrence and efficiency on one hand, and the respect for the essence of criminal legality as a guarantee of the rule of law on the other.
- Flexibility in criminal legality within the economic domain is an effective tool for combating contemporary economic crimes. However, it requires strict legal oversight to prevent abuses, through the establishment of a legal framework that limits unjustified expansion of criminalization.
- While legislative delegation to the executive branch is important to keep up with the rapid pace of economic developments, failure to restrict it with strict safeguards may result in a clear violation of the principle of separation of powers.
- The adoption of economic criminal provisions with broad, vague, and imprecise meanings grants judges wide interpretive authority. This may lead to differences in interpretation and rulings between courts on the same subject and regarding the application of the same legal provision.

Proposed Recommendations

- ✓ Establishing an independent body of economic criminal law: An effective criminal policy to combat economic crimes necessarily requires the independence of economic criminal law, through the consolidation of its scattered provisions into a unified, separate legal code.
- ✓ Adopting a policy of limiting punishment: This can be achieved by emphasizing alternative sanctions, promoting restorative justice, and encouraging criminal mediation within

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economic criminal law, rather than relying on custodial sentences and punitive penalties. Such severe sanctions should be reserved only for major economic crimes that seriously threaten the state's economy.

- ✓ Creating effective oversight mechanisms: Mechanisms should be established to ensure that the executive branch does not abuse its authority when enacting economic criminal provisions. This includes monitoring the application of laws and evaluating their impacts.
- ✓ Considering specialized economic courts: There is a need to study the idea of establishing specialized economic courts to address economic crimes. In the meantime, it is essential to train judges specialized in handling economic crimes, understanding economic behavior, and assessing financial risks.
- ✓ Involving economic and technical experts in lawmaking: Experts should be consulted in drafting criminal laws related to economic and financial matters. Additionally, lessons should be drawn from advanced countries' legislative and judicial approaches to combating these types of crimes.

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