The Procedural Specificity in Combating Business Crimes in Algerian Legislation

الخصوصية الإجرائية لمواجهة جرائم الأعمال في التشريع الجزائري

kawther Bouhazma 1*
University Of Tindouf
Kawther.bouhazma@cuniv-tindouf .dz

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Abstract:

Business crimes are considered among the most complex and dangerous crimes of an economic nature, due to their negative repercussions on trust in financial transactions and data, and the threat they pose to national economic stability. Although the general rule is that these crimes are subject to the general rules of criminal procedure, the Algerian legislator has dedicated a set of special rules to them, both in the prosecution and the trial phases. This study aims to highlight the most important procedural specificities that distinguish this type of case, whether at the level of prosecuting their perpetrators or in terms of defining judicial jurisdiction to consider them within Algerian legislation.

Keywords: Business Crimes , Criminal Prosecution, Competent Judiciary , Administration , Algerian Legislation.

* ***Corresponding author***

Introduction

Due to the increasing financial and commercial activity in the country in recent years, and the resulting complexity and branching of financial and commercial transactions, which provides opportunities for those who disregard the sanctity of the law to tamper with national savings and public credit. Combating this necessitates the specialization of personnel responsible for investigating these crimes and handling their specific cases, as well as cases of a similar nature, such as corporate crimes, tax offenses, and customs smuggling.

The importance of the subject stems from the endeavor to uncover the extent of the Algerian legislation's success in establishing a specialized and effective procedural system to confront this type of crime, especially in light of the evolving methods of their commission and their reliance on complex technical means.

However, the legislator has dedicated to business crimes a set of procedural rules related to preliminary investigation, judicial inquiry, and trial, as part of the effort to establish a distinct legal framework that facilitates their detection, prosecution, and proof, given their complexity resulting from the rapid development of the technical means used in their commission, which required the adoption of procedural mechanisms more compatible with their nature.

This study aims to ascertain the extent to which Algerian legislation has adopted special procedural rules for the prosecution and adjudication of business crimes, along with an evaluation of the legislator's success in regulating these rules amidst the continuous proliferation and complexity of this type of crime.

Therefore, the following problem can be posed: What is the degree of efficacy and effectiveness of the procedural specificity in the criminal prosecution and adjudication of business crimes in Algerian legislation?

This is what we will attempt to answer and review through our analysis of various legal texts, using an analytical and descriptive methodology to define some concepts addressed by the study.

The study is divided into two main chapters:

Firstly: The Specificity of Criminal Prosecution in Business Crimes

Secondly : The Specificity of Adjudication in Business Crimes

Firstly: The Specificity of Criminal Prosecution in Business Crimes

Criminal prosecution necessitates the protection of society from various aggressions that threaten its stability. Since business crimes are characterized by complexity and inflict damage upon the national economy, the law has granted the Public Prosecution a pivotal role in initiating public action against their perpetrators. However, this role has not remained absolute, as the legislator has restricted its exercise in some cases to ensure sound judgment and protect the interests of economic parties[1].

The study of criminal prosecution in this field is divided into two main sections: we will address that it begins with the initiation of public action, and the action may be extinguished in business crimes.

1. Initiation of Public Action in Business Crimes

Because business crimes directly affect the economic structure of society, the Algerian legislator has authorized the Public Prosecution to directly initiate public action in its capacity as a representative of society, similar to other crimes. Nevertheless, it has established exceptions that limit its authority in certain cases[2].

1.1. Initiation of Public Action by the Public Prosecution

The legislation does not contain specific texts regulating the manner of initiating criminal prosecution in economic and business crimes[3], which means that jurisdiction in this area is entrusted to the Public Prosecution, which is responsible for considering all crimes stipulated in the Penal Code or those established in special laws[4].

The Code of Criminal Procedure stipulates that the Public Prosecution is the body that initiates public action on behalf of society and works to enforce the law, and has the authority to represent it before various judicial bodies. Despite the absence of specific texts for business crimes, the Public Prosecution remains primarily authorized to bring these actions. However, the legislator may, under certain circumstances, impose restrictions on its exercise by requiring the issuance of a complaint or a request by persons specified by law. This will be clarified in this regard[5].

1.2. Restrictions on the Public Prosecution's Authority

1.2.1. The Complaint

The injured party is granted the right to personally submit a criminal complaint[6] before the Public Prosecution or the Investigating Judge[7], making it a necessary prerequisite for initiating the prosecution. This restriction is explained by the specificity of economic crimes, the constituent elements of which are difficult for a non-directly injured party to grasp.

Neither the Algerian legislator nor other legislations have provided a specific definition for the concept of the complaint, which requires reference to jurisprudence, which considers it a report issued by the party injured by the criminal act, submitted to a judicial police officer or to the Public Prosecutor, without requiring a specific formality. It can also be filed before the Investigating Judge coupled with a civil claim[8].

The complaint embodies the victim's desire to initiate the criminal proceedings resulting from the crime, by notifying the public authorities of the crime committed against them[9]. As a result of the multiplicity and complexity of legislative texts, the legislator has moved towards endorsing mechanisms that limit the Public Prosecution's sole authority to initiate action, thereby enabling the victim to contribute to establishing the elements of the crime and highlighting its material

components, which is often realized through the Administration's initiative to file a complaint.

It is noted that in economic crimes, the complaint is not considered a prerequisite for the initiation of public action by the Public Prosecution unless the law explicitly stipulates it and specifies the required formalities[10]. The legislator has entrusted the right to submit it to the designated party, or to one who possesses an authorization to that effect, under penalty of nullity of the criminal prosecution procedures without it[11].

1.2.2. The Request

In some cases, the Public Prosecution may not initiate action except upon an explicit request from the competent authority, such as the General Directorate of Customs in customs offenses[12], or the Ministry of Finance regarding exchange offenses and capital movements[13] .

2. Extinction of Public Action in Business Crimes

As is the case with other crimes, the public action for business crimes may be extinguished according to the legally stipulated reasons. However, the legislator has dedicated certain specificities to them, which introduced some modifications to many of these reasons. The most important of which we will now address are Prescription and Conciliation.

2.1. Prescription

Prescription[14] is defined as the lapse of a specific period without any judicial measure being taken regarding the crime, which leads to the extinction of the action. However, Algerian legislation has exempted certain business crimes from this principle, such as corruption crimes or the embezzlement of public funds, as they are not subject to prescription in some cases, especially when their proceeds are smuggled outside the country.

The Algerian legislator has dedicated special rules concerning prescription in business crimes, whether related to the prescription of the public action or the prescription of the penalty. Article 54 of Law No. 06-01 on the prevention and fight against corruption stipulates that the public action and the penalty shall not lapse by prescription when the proceeds of the crime have been smuggled outside the country[15], without prejudice to the provisions of the Code of Criminal Procedure.

The legislator also exempted other categories of crimes from the rule of prescription, such as felonies and misdemeanors of a terrorist or subversive nature, in addition to transnational organized crimes and corruption crimes like bribery and the embezzlement of public funds.

Regarding the prescription of the penalty, it is extinguished by the lapse of five years from the date of the final judgment. However, if the penalty exceeds five years, the prescription period is equal to the duration of the penalty[16] . Nevertheless, there are special cases; for instance, in the misdemeanor of bribery, neither the action nor the penalty is subject to prescription, whereas in the crime of embezzlement of public

funds, the public action is not subject to prescription, while the penalty itself can be prescribed[17].

2.2. Conciliation

Conciliation represents an alternative means for the extinction of public action in some business crimes[18], where the law allows the concerned administration, such as the Customs Administration or financial bodies, the possibility of reaching an amicable settlement with the accused in exchange for the payment of a specified sum of money[19]. This system is considered an exception to the general rule prohibiting the waiver of public action, with the aim of preserving the economic interests of the state and avoiding the slowness of judicial procedures.

Criminal conciliation has found its applications in several crimes, for which special laws have been issued authorizing it, particularly regarding business crimes, including customs offenses, where conciliation is not merely a means for the extinction of public action.

But an alternative to judicial prosecution and this consideration is often a sum of money[20]. This is in addition to exchange offenses[21] and other business crimes in which the Algerian legislator has authorized conciliation. The legislator has also regulated the conciliation process in crimes affecting the consumer with specific controls[22].

The legislator adopted the term (Conciliation) to stipulate (Settlement/ Conciliation) in the criminal domain in general, unlike the Egyptian legislator who considered reconciliation a form of criminal settlement that occurs in crimes where the Administration is a party, and is for a financial consideration, especially in business crimes.

It should be noted that there are other reasons that lead to the extinction of public action in business crimes, such as the death of the accused, the issuance of a general or comprehensive amnesty, the repeal of the punitive text, or the existence of a final judgment that has acquired the force of res judicata.

Secondly : The Specificity of Adjudication in Business Crimes

Criminal justice is realized only through a trial that provides fundamental guarantees, as the judicial adjudication represents the crucial stage that determines the fate of the accused between conviction or acquittal. Given the nature of business crimes and the complexity they present, it became necessary to establish special rules for their adjudication, both in terms of defining the competent judicial authority and enabling certain administrations to impose penalties.

This chapter will clarify the jurisdiction of the Judicial Authority in adjudicating business crimes, and then the jurisdiction of the Administrative Bodies in this field (Section Two).

1. Jurisdiction of the Courts in Adjudicating Business Crimes

The trial is considered the final stage of the public action, as the saying goes, "The judiciary is the foundation of civilization," where the case is presented to the

adjudicating judiciary to issue the final decision. Given the special nature of these crimes, the Algerian legislator has moved towards establishing specialized courts and criminal centers with extended jurisdiction in and the Economic and Financial Criminal Center in.

1.1. Specialized Criminal Centers

The Algerian legislator did not provide a definition for the Specialized Criminal Centers, but it can be inferred that they are specialized judicial bodies tasked with adjudicating specific crimes. Therefore, it is necessary to address their territorial and subject-matter jurisdiction:

1.1.1. Territorial Jurisdiction

The territorial jurisdiction of the Public Prosecutors, Investigating Judges, and Trial Judges has been extended by virtue of Articles 37, 39, and 40. Specialized Criminal Centers are located in Algiers, Constantine, Oran, and Ouargla, covering the different regions of the country[23].

1.1.2. Subject-Matter Jurisdiction

This is the authority granted to a judicial body to adjudicate specific actions and none other. These Centers specialize in hearing certain crimes such as: money laundering, corruption, organized crime, drug offenses, crimes against information systems, and exchange offenses[24].

1.2. Establishment of the Economic and Financial Criminal Center

The Algerian legislator did not define the Economic and Financial Center, but by referring to the regulatory texts of its provisions, it can be concluded that it is a specialized judicial body with national jurisdiction at the Algiers Judicial Council, whose mission is the prosecution of the most complex financial and economic crimes. Therefore, it is necessary to address its territorial and subject-matter jurisdiction according to the Code of Criminal Procedure.

1.2.1. Territorial Jurisdiction

Its jurisdiction extends to cover the entire national territory. Both the Public Prosecutor and the Investigating Judge at the Economic and Financial Center exercise jurisdiction over this geographical area (Article 211 *bis* 1). The Center is located at the headquarters of the Algiers Judicial Council (Article 211 *bis*).

1.2.2. Subject-Matter Jurisdiction

It specializes in the most complex economic and financial crimes such as corruption crimes, smuggling, and money laundering (Article 211 *bis* 3)[25].

2. Jurisdiction of Administrative Bodies in Adjudicating Business Crimes

In addition to the judiciary, the legislator has granted some Administrative Bodies powers to monitor business crimes and impose financial or administrative penalties on their perpetrators, in line with the technical nature of these crimes.

2.1. The Court of Accounts

It is considered a supreme central oversight body over public funds. The powers of this body have been extended, so in addition to its original task of controlling public funds, it now plays an important role in contributing to the prevention and combatting of all forms of fraud and illegal practices harmful to public property.

Among the most important tasks assigned to the Court of Accounts are the following:

– Controlling the management and utilization of public funds and resources.

– Examining the extent of compliance with laws and regulations related to the execution of expenditures and financial appropriations.

– Detecting transgressions that inflict damage upon the Public Treasury or public bodies.

– Pursuing cases of concealed management or concealment of financial documents and records[26].

– Imposing financial fines on errant agents not exceeding the value of their annual salary.

– The possibility of referring serious violations to the criminal judiciary.

– Exempting the employee from liability if they prove they acted under a written order from their superiors[27].

2.2. The Financial Intelligence Unit

It is considered an independent administrative authority linked to the Ministry of Finance, specializing in combating money laundering and terrorism financing. It receives suspicious transaction reports from financial institutions, analyzes them, and then refers the files to the Public Prosecution in case of establishing serious indicators of the existence of a crime.

Among the most important tasks assigned to the Financial Intelligence Unit are the following:

– Receiving and processing suspicious transaction reports related to money laundering and terrorism financing.

– Collecting and analyzing confidential reports and suspicious financial information.

– Referring files that establish the seriousness of the suspicion to the competent Public Prosecutor to initiate judicial prosecution.

– Providing financial information to security and judicial authorities to enhance the fight against financial crimes.

– Developing financial control mechanisms in coordination with national and international bodies.

2.3.The Supreme Authority for Transparency

This is an independent constitutional oversight institution established with the aim of enshrining transparency in public life and limiting and combating corruption[28].

Its key tasks include:

– Collecting, utilizing, and disseminating any information that could assist administrations and individuals in corruption prevention.

– Preparing periodic assessments of the legal instruments and administrative measures and their effectiveness in the field of transparency and prevention.

– Receiving declarations of assets, verifying their accuracy, and processing them.

– Establishing a network aimed at engaging civil society.

– Promoting the principles of integrity in religious, charitable, and cultural activities and in public institutions, and international cooperation.

– Preparing annual reports to be submitted to the President of the Republic, with the public being informed of their content.

The Authority has the power to conduct administrative and financial investigations when illicit enrichment is suspected. It can demand that the public official provide justifications for any unjustified increase in financial holdings, without the possibility of invoking professional secrecy, in accordance with Article 5 of Law 22-08.

It also monitors the degree of commitment of public administrations and economic institutions to transparency standards and has the authority to issue binding recommandations within specified deadlines, with the power to refer violations to the competent authority in case of non-compliance. It also monitors administrations for non-compliance by public administrations and local collectivities, as per Article 07 of the Law on the Suprême Authority. [29]

Conclusion

The study of the procedural specificity in confronting business crimes in Algerian legislation has shown that the Algerian legislator has sought to establish a balanced procedural system to address business crimes by introducing specific features that characterize the stages of criminal prosecution and judicial adjudication. The focus has been on activating mechanisms that ensure respect for the presumption of innocence and achieving a fair trial, while strengthening the role of the judicial bodies entrusted with initiating and adjudicating public action.

However, practical application reveals a number of challenges that still impede the achievement of the desired effectiveness of the procedural system, particularly regarding the initiation of public action and the precise determination of the subject-matter and territorial jurisdiction of the courts, in light of the evolving and diverse nature of crime, especially complex or transnational crimes. This reality necessitates a profound legislative, technical, and administrative intervention to ensure the adequacy of the texts with the judicial reality.

In conclusion of this study, the following recommendations can be presented:

✓ Establishment of a specialized judiciary for business crimes that includes judges and prosecution members with specialized training.

✓ Continuous training for judges and prosecution members in business criminal law.

✓ Reinforcement of the Public Prosecution's role in initiating action while imposing legal oversight on its decisions.

✓ Consolidation of the special procedural rules for business crimes into a single codification to avoid the fragmentation of texts.

✓ Revisiting the rules of territorial jurisdiction to confront emerging crimes that transcend the local geographical framework, by granting extended powers to nationally or regionally specialized courts.

✓ Expansion of mechanisms for initiating public action to include civil and community bodies, within the framework of crimes of a general nature (consumer, health, etc.), thereby promoting societal oversight.

✓ Digitalization of the processes for initiating action and determining judicial jurisdiction via smart systems to ensure transparency and reduce instances of plea of lack of jurisdiction or slowness in adjudication.

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