



EVALUATING THE EFFECTIVENESS OF CRIMINAL POLICY IN COUNTERING ECONOMIC CRIME AMID CURRENT ECONOMIC TRANSFORMATIONS

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Abstract:

In light of the rapid economic transformations shaping today's global economy, economic crime has emerged as a major challenge to financial stability and institutional trust. This article examines the effectiveness of criminal policy in countering economic crime within this evolving context. It analyzes the adequacy of existing legal frameworks, institutional mechanisms, and preventive and deterrent measures. The article also highlights the limitations of traditional criminal policy approaches and stresses the need for adaptive strategies that respond to economic and technological developments, while ensuring a balanced protection of economic interests and fundamental rights and freedoms.

Keywords: Economic Crime, Criminal Policy, Economic Transformation, Financial Regulation, Legal Enforcement

Introduction:

The twentieth century witnessed extensive state intervention in economic life, which inevitably necessitated the enactment of legislation aimed at protecting economic structures. Consequently, state involvement in the economic domain has become both an undeniable reality and a fundamental necessity, with public administrations playing a leading role in establishing the foundations of economic policy by monitoring economic phenomena and assessing their fluctuations and dynamics.

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Moreover, traditional law enforcement and criminal justice mechanisms have proven increasingly inadequate in addressing economic crimes. Their effectiveness has diminished due to the growing complexity of economic activities and the multifaceted nature of economic disparities, particularly within organized criminal networks. This development has had a significant impact on criminal law, shaping the role it can play in regulating and addressing economic offenses (Abbas Abu Shama, 2007, p.38).

The economy has become the principal driver of all aspects of societal life. In response, many states have enacted specialized economic legislation to safeguard their economic integrity in line with their respective policy frameworks. These measures go beyond general provisions in penal codes; some states have introduced independent criminal laws or incorporated specific criminal provisions within existing economic legislation (DawoodYaqub, 2008, p.17).

Criminal policy, through the delineation of its scope, constitutes a critical expression of the state's broader approach to criminalization and punishment. Scholars have highlighted its role in establishing normative frameworks for behavior aimed at fostering societal development. In the context of economic crimes, the Algerian legislator has adopted a criminal policy characterized by special procedures, including the involvement of the executive branch in defining the material element of economic offenses—a mechanism known as legislative delegation. Legal frameworks for economic crimes vary according to the nature of both the material and moral elements, with the latter often being weak in the context of business-related offenses.

Against this backdrop, the central question guiding this study is as follows: How can contemporary criminal policy adapt to current economic transformations to effectively combat economic crime while achieving a balance between development imperatives and the protection of the economic system?

This article adopts a descriptive and analytical approach based on the examination of relevant legal texts and economic criminal legislation, with particular reference to the Algerian legal framework.



It also draws on legal doctrine to assess the effectiveness of criminal policy in addressing economic crime in light of contemporary economic transformations.

1- The Substance of Criminal Policy

Criminal policy, in general, refers to the management and administration of matters. Just as a state has economic and urban policies for its internal affairs, it also has a criminal policy, which reflects—and indeed constitutes—a form of the state’s general policy (Hussein Abdel Ali, 2006, p.10).

The first recorded use of the term *criminal policy* was by the German jurist Fuerbach (Abdel Rahim Sidqi, 1987, p.39), who defined it as a set of punitive measures employed by the state against crime or, more broadly, as the legislative wisdom of the state. From the French perspective, the jurist Georges Levasseur considered criminal policy as *the art of decision-making*.

Studying criminal policy in general, and legislative policy in particular, requires an initial examination of the legal idea underpinning it, as this idea forms the basis for determining the fundamental directions of legislative policy. A legal idea is essentially a mental conception or representation of a legal phenomenon, whether actual or potential, in reality (Ahmed Fathi Sorour, 1987, p.7).

From this understanding, the features of criminal law become evident, encompassing its objectives, functions, characteristics, and nature. Naturally, these objectives and functions are determined by the goals sought by the state’s legal system. Undoubtedly, the state’s legal system is not limited to protecting the private interests of individuals and society; it also establishes rules of conduct aimed at developing society toward objectives that promote its progress. Thus, criminal law is characterized as a branch of public law.

Criminal policy, as mentioned, is closely aligned with the objectives of criminology, which considers crime a social phenomenon with subjective, social, and environmental causes and

with corresponding methods of control. Criminal policy encompasses the three main branches of criminal law:

- 1.1- **Legislative Policy:** Determines the types and categories of crimes and their corresponding penalties, as codified in the penal code.
- 1.2- **Judicial Policy:** Regulates criminal procedure, including the application of penalties and the extent of judicial discretion in enforcing them, as outlined in procedural law (Ahmed FathiSorour, 1987, p.7).
- 1.3- **Executive Policy:** Defines the authority of the administration responsible for executing penalties and preventive measures, and the extent of judicial oversight over their enforcement.

While criminal policy derives its content and methods from multiple foundations, its legal significance primarily rests on legislative policy. The legal system must distinguish between civil and criminal faults, with criminalization serving as the legislator's tool to clarify what constitutes criminal conduct (Ahmed FathiSorour, 2006, p. 10).

It can be asserted that those shaping criminalization policy and its corresponding penalties must recognize that any criminal sanction reflects the element of obligation inherent in a legal norm. This principle must always guide policymakers. Criminalization and punishment, as legal concepts, aim to achieve utilitarian objectives determined by the prevailing political and economic system. These objectives are not necessarily aligned with the society's established social or moral values and may, at times, even conflict with them. Economic crimes, in particular, represent some of the most prominent forms of legal offenses and exemplify the expansion of criminalization observed in contemporary penal legislation (Abdel Raouf Mahdi, 1976, p.11).

Although economic and political criminalization often targets objectives unrelated to social values, these objectives are typically protected due to their importance in maintaining the social order. A minimum level of harmony must exist between criminal norms and



the ethical, customary, and religious rules of the community; without such alignment, the norms risk being questioned in terms of their legitimacy and enforceability, ultimately rendering them ineffective (Mahmoud Taha Jalal, 2004, p. 73).

One of the most notable features of the twentieth century is the marked expansion of criminalized behavior, particularly within the economic sphere, where economic criminal laws emerged to criminalize acts affecting a state's economic policy. This phenomenon occurred across all countries, regardless of their economic systems or policies, though the extent and nature of this expansion varied according to the legal system in place.

It appears that criminal policy applied to economic crimes differs in both substance and penalties from that applied to general penal offenses—a distinction recognized in most comparative legislation. The question then arises: has the Algerian legislator followed a similar approach, or has it adopted a distinct criminal policy concerning economic crimes?

2- The Policy of Economic Criminalization in Algerian Legislation

The emergence of economic criminalization has historically been linked to economic crises, which compelled states to enact numerous economic laws to address these challenges. Consequently, international attention increasingly focused on economic criminal law, resulting in legislation designed to combat economic crimes, including in Algeria. In this context, the pattern of a state's economic policy has a direct influence on its approach to economic criminalization (Boushi Youssef, 2018, p.14).

Furthermore, criminal policy in Algerian legislation relies primarily on the principle of legislative delegation when enacting provisions related to criminalization and punishment in economic offenses. Under this principle, the legislative authority retains the prerogative to define criminalization and penalties, consistent with the separation of powers. However, exceptions exist, allowing the

executive branch to exercise legislative powers in extraordinary circumstances.

2.1- Scope of Legislative Delegation in Economic Crimes

In general criminal law, the penal norm comprises two inseparable elements: the criminalization element, which accurately describes the material aspects of the criminal act, and the penalty element, which stipulates the corresponding sanction. However, in the domain of business-related crimes, the Algerian legislator has not strictly adhered to these standards. Consequently, the executive authority, through the issuance of decrees and regulations, effectively acts as a secondary legislative authority (Ihab Al-Rousan, 2012, p.81).

The legislative norm thus becomes closely linked to executive determinations, with its binding effect contingent on the occurrence of future or potential acts that define criminalization (Ben Fariha Rachid, 2016-2017, p.60).

In economic crimes, the scope of legislative delegation expands: the legislature establishes general principles, such as determining the penalty, while leaving the executive branch to define the forms and manifestations of the crime. This approach arises from the legislature's inability to continuously monitor economic activity, which is characterized by speed, dynamism, and flexibility, depending on prevailing economic conditions. Moreover, technical expertise required for economic regulation often resides within the delegated authority (Mohamed Khmekhem, 2010-2011, p.28).

A review of Algerian penal law and complementary legislation demonstrates the practical application of legislative delegation in economic matters. For example, Articles 58, 61, and 62 of Ordinance No. 03-03 on Competition provide that the Competition Council—an independent administrative authority—may impose financial penalties in cases of non-compliance with the conditions and obligations set out in this law. The legislator has also authorized the executive authority to take deterrent measures in cases where individuals violate Articles 10, 11, and subsequent provisions of Law No. 04-02 concerning the rules applicable to commercial practices. The Algerian legislator has



empowered the executive branch to impose sanctions for economic offenses. Comparative examples include the Egyptian Capital Market Law No. 95 of 1992, where Article 67 defines the penalty while granting the Minister of Economy and Foreign Trade the authority to specify acts constituting criminal conduct via executive regulations (Mohamed Samir, 2015, p.38).

Similarly, the Tunisian legislator delegated authority to the executive and administrative branches to identify actions contravening banking legislation under Article 23 of the Law of January 21, 1976, concerning foreign exchange and foreign trade regulation (Ben FarehaRachid, 2016-2017, p. 61).

In Algeria, legislative delegation is evident in areas such as customs law, environmental protection within sustainable development, and regulations governing real estate development activities. The Algerian legislator has arguably overextended the use of legislative delegation by stipulating penalties while leaving the executive authority to define the elements and characterization of criminal acts, effectively separating the two components of the penal norm. Consequently, the executive branch participates in shaping penal provisions to align with economic policy objectives (Ben FarehaRachid, 2016-2017, p. 64).

2.2- Safeguards Against Executive Overreach in Legislative Delegation

Although most constitutions grant the executive branch the power to issue legislative decrees—particularly in economic criminal matters—based on legislative delegation and as an exception to the principle of legislative exclusivity in criminal law, such powers are accompanied by conditions and are subject to judicial review to ensure compliance with delegation laws. This serves as a crucial safeguard against executive overreach, maintaining the exceptional rather than absolute nature of the delegation (Ben FarehaRachid, 2016-2017, p. 75-76).

Judicial review of the legislative nature of such acts focuses on determining their legal status: whether they constitute law or remain

administrative decisions. Delegated regulations undergo two stages: prior to parliamentary approval, they are considered administrative acts subject to administrative court review; following approval, they acquire the nature of legislative acts and fall under constitutional review (Ben FarehaRachid, 2016-2017, p. 76).

However, under the Algerian Constitution, particularly the 1996 Constitution which replaced the 1963 Constitution, no explicit provision exists for legislative delegation. This raises questions regarding the constitutionality of laws that refer the determination of criminal elements to executive regulation. In the absence of direct constitutional guidance, one may refer to the Constitutional Council's opinion on parliamentary delegation to establish specialized judicial bodies (Article 24 of Organic Law 05/11 on judicial organization).

It follows that the Algerian legislator's practice of referring economic criminal matters to executive regulation—especially for criminal or quasi-criminal offenses—raises concerns regarding the compatibility of such practices with the rigid principle of criminal legality. Article 122-07 of the 1996 Constitution reserves the determination of felonies and misdemeanors exclusively to Parliament, although administrative violations may be within the executive branch's competence, as inferred from Article 125 (Eihab Al-Rousan, 2012, p. 84).

By involving the executive in criminalization through legislative delegation or referral, Algerian economic criminal law illustrates a cautious adaptation of the principle of legality. While this does not wholly displace the principle, it requires its application with specific modifications in the context of business-related offenses, representing a renewed understanding of criminal policy that transcends strict adherence to traditional frameworks.

2.3- Justifications for Criminal Law Intervention in Economic Life

Having discussed the scope of legislative and regulatory authority in defining economic crimes, we now turn to the main



justifications that prompted the legislator to regulate economic life through criminal law, targeting both institutions and economic actors.

As the role of the state in economic life evolved to stabilize society, ensure public safety, and establish economic foundations that foster positive incentives, it also sought to counteract behaviors by opportunists aimed at personal gain and enrichment at the expense of others and the state itself—primarily by depriving it of essential revenues for general development. A prominent example is fraudulent schemes perpetrated by fictitious companies to extort funds from the public, which have caused many victims to face bankruptcy and loss of savings, while creating instability in the general investment climate of certain countries (Mustafa Al-Ouji, 2016, p.250).

Criminal law, with its coercive mechanisms, represents the branch of law most capable of addressing problems arising from economic deviance, owing to the deterrent nature of its provisions against conduct that undermines a state's economic policy. Accordingly, key sectors of the economy—such as commercial companies, which constitute a pillar of modern economies—require regulation by economic criminal law (HussamBouhajar, 2017-2018, p. 18).

Moreover, due to the increasing complexity of economic activities and the sophistication of offenders' knowledge in navigating dispersed regulations, classical criminal law provisions prove insufficient. Perpetrators in the business field are thus often described as white-collar criminals (Cf. Jean Languier, 1992, p. 267).

This necessitated the establishment of a specialized legislative framework in economic criminal law, distinct from traditional criminal law provisions, tailored to the nature of these offenses. Economic crimes must therefore be linked to the interests protected under the state's economic policy.

2.4- The Complementary Relationship Between Criminal Policy and State Economic Policy

A state's economic policy is articulated through laws and regulations that reflect the economic dimension of governmental policy, aiming to achieve specific objectives. A state may adopt a **directive economic policy** to regulate economic relations between individuals, protect economic interests, set prices, and organize the market. Under this system, not only is certain conduct prohibited, but prescribed actions are also mandated under penalty of sanction—a model typical of socialist systems (Abdel Raouf Mahdi, 1976, p. 90).

Alternatively, a state may pursue a liberal economic policy, granting individuals economic freedom while intervening primarily to enforce rules that protect market competition and maintain market order, characteristic of liberal economies.

Modern economic criminal laws are primarily directive in nature. However, profound economic and social issues, such as the 1929 economic crisis in capitalist systems with minimal economic regulation, compelled states to intervene to prevent recurrence, emphasizing the protection of economic and social rights.

Moreover, mitigating social disparities by imposing restrictions on absolute freedom and implementing economic policies that consider justice and social protection has become a cornerstone of contemporary economic policy, giving rise to a mixed economic policy model.

Together, these factors necessitated the creation of a specialized criminal law framework addressing economic offenses. The primary objective of economic criminal law is to protect freedom from misuse, underscoring the importance of analyzing various legal models of economic crimes and determining the applicable law for each.

3- Legal Models of Economic Crimes and Their Characteristics

General Principle:

Criminalization occurs only where explicitly provided by law. In other words, an activity is considered criminal only if a legal provision



expressly criminalizes it. Such a provision encompasses not only the essential elements of the crime but may also include preliminary conditions, presumed or specific elements, whose presence or absence affects the existence of the crime. This framework is referred to as the legal structure of the crime (Ahmed Fathi Sourour, 2006, p. 92).

Each crime has its own legal model, distinguishing it from other offenses. Economic crimes are distinguished in law primarily through the specification of their material (*actus reus*) and mental (*mens rea*) elements.

3.1- Material Element of Economic Crimes

Like any other crime, an economic offense cannot occur without its constituent elements, beginning with the criminal act or activity (Tawfiq Al-Majali, 2005, p. 43).

Most scholars agree that the material elements of economic crimes are similar to those of other crimes. These include the criminal conduct, which can be either an act or an omission aimed at producing a criminal result.

Regarding the result, understood as the effect of the criminal conduct considered by the legislator in legal classification, general criminal law primarily focuses on harmful results or dangerous outcomes. In economic crimes, however, dangerous consequences predominate. Criminalization in this context is intended to prevent threats to the state's economic system, rather than punish actual harm.

For example, in laws criminalizing currency or banknote forgery, the crime occurs simply by engaging in counterfeiting or imitation, regardless of whether a particular result occurs. Legislative policy in economic crimes therefore often focuses on anticipated risk or threats, rather than waiting for actual harm, classifying these offenses predominantly as crimes of danger.

3.2- Mental Element of Economic Crimes

The mental element is a central component of any crime, reflecting the personality of the offender and forming a core aspect of

modern criminal policy. It links the material aspects of the crime to the offender's intent and is legally necessary: the mere presence of the material element is insufficient to constitute a crime without the corresponding mental element.

Economic crimes, like other offenses, require the presence of a mental element. However, what distinguishes them is the relative weakness of the mental element in some instances. For intentional economic crimes, the mental element consists of knowledge (*scientia*) and will (*voluntas*): the perpetrator must be aware of the elements of the crime and intend or accept them (Raouf Obeid, 1979, p. 346).

3.2.1- Knowledge:

Knowledge plays a critical role in economic crimes, encompassing awareness of the facts constituting the crime (material element) and awareness of the illegality of the economic activity, as required by general law. Conviction does not merely require the material act but also the perpetrator's knowledge of the dangerous nature of their conduct and the elements of the offense.

However, in economic crimes, knowledge is often presumed, due to the severity and societal impact of these offenses. This presumption may result in some offenders escaping punishment (Gerges Youssef Taema, 2005, p.226).

Regarding knowledge of the law, general principles hold that ignorance of the law is no excuse. While this applies to economic crimes as well, the complexity, diversity, and rapid evolution of economic legislation complicate strict application of this presumption. Ordinary individuals may be unable to fully understand or comply with all relevant laws.

The correct approach balances the presumption of knowledge: individuals expected to be aware of economic laws are presumed to know them and cannot claim ignorance, whereas for others, the laws may be considered incidental, without strict presumption.



3.2.2- Will (Intent):

Criminal intent entails both knowledge of the elements of the crime and a will directed toward realizing those elements. Will represents a conscious, deliberate psychological activity aimed at a specific goal.

Regarding negligence or fault-based offenses, these play a particular role in economic crimes. Economic offenses are primarily intentional, as intentional crimes are characterized by the will to achieve or accept the criminal result. In contrast, in negligent crimes, the result occurs outside the offender's will or intention (Tawfiq Al-Majali, 2005, p.42).

Economic criminal law often blurs the lines between intentional and negligent offenses, making the mental element distinct from that of other crimes. It cannot be confined solely to intent or negligence, nor can one always be prioritized over the other.

3.3- Characteristics of Economic Crimes:

Economic crimes possess distinct features that differentiate them from ordinary crimes studied under general criminal theory. They differ primarily in purpose or objective: while most ordinary crimes target an individual's body, property, or reputation, economic crimes primarily affect private and public interests in their economic and financial dimensions.

Additionally, the motive for economic crimes is predominantly financial gain, whereas ordinary crimes may be motivated by revenge, retaliation, or personal gain. Economic crimes are governed by specialized laws, highly interconnected with the state's economic system.

Key characteristics of economic crimes include:

3.3.1- Corporate Liability: Economic crimes may involve legal persons, holding them accountable based on social responsibility and risk, rather than moral culpability. Especially since the increase in the number of legal entities in recent years

has become an undeniable phenomenon, particularly in the economic field, as they represent the backbone of economic life at both the national and international levels. Since the law protects lawful actions by legal entities, it also grants the authority to hold them liable when they engage in unlawful acts.

3.3.2- Planning, Complexity, Secrecy, and Profit Motive:

Economic crimes typically involve high levels of planning, intelligence, and expertise to sustain criminal activity away from regulatory oversight. Perpetrators often use complex methods to conceal their acts and give them a semblance of legality. The pursuit of maximum financial gain is a traditional hallmark of organized crime; such groups are generally non-ideological, meaning they do not adhere to a political doctrine.

3.3.3- Dual Nature of the Crime:

Economic crimes can sometimes be administrative violations as well as criminal acts. For example, when an administrative employee commits an act constituting an economic offense, the crime may reflect temporary or situational motives, often influenced by shifts in the state's economic policy.

3.3.4- Specific Responsibility Rules:

Economic crimes often deviate from general penal law, especially regarding liability. Responsibility may extend to acts of others, including corporate liability. The mental element may be weakened, and the legislator sometimes equates attempt with incomplete criminal acts (Anwar Sidqi Al-Musaada, 2009, p.22).

Conclusion

Contemporary economic transformations, characterized by rapid market liberalization, increased openness, and the diversity of economic actors, have generated new, more complex forms of economic crime beyond traditional patterns. These developments pose significant challenges to criminal policy, which must adapt to a rapidly changing economic environment. Legislators and criminal justice institutions are thus required to develop more flexible and effective tools.



Analysis shows that effective criminal policy in this context requires a combination of strict legal deterrence and preventive governance mechanisms, including transparency, oversight, and institutional cooperation, alongside modernized procedural frameworks to address contemporary economic crime. Economic transformations cannot be effective without a strong criminal system that ensures protection of economic resources and trust in transactions.

Therefore, constructing an effective criminal policy to combat economic crime is no longer optional—it is essential for maintaining a safe economic environment that supports sustainable development. The ongoing challenge lies in the criminal system's ability to continually update its tools in line with economic transformations, while simultaneously addressing evolving economic crime and its escalating risks.

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