



BETWEEN MARKET FREEDOM AND THE CRIMINALIZATION OF SPECULATION: A STUDY ON THE CRIMINAL LIABILITY OF THE NATURAL PERSON UNDER LAW N^O. 21-15

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Send Article Date: 01-04-2026

Date of acceptance of the article: 19-08-2026

Abstract:

Various commercial activities are practiced by individuals within society under a regulated economic system characterized by trade freedom and the breaking of monopoly constraints. Economic transactions play a vital role in building a safe and stable community and stimulating economic development. However, certain actions by natural persons in these commercial activities have recently increased. We have seen a significant rise in prices in Algerian society without acceptable justifications, leading to distress for the Algerian citizen and hindering access to goods. This has affected their ability to meet basic needs. Simultaneously, there is a scarcity of essential goods, often monopolized by traders. This situation necessitates an urgent update of the legal framework addressing unlawful speculation, as outlined in Law No. 21-15 concerning the fight against unlawful speculation, issued in 2021.

Keywords: Unlawful speculation, market, commercial activities, scarcity, prices, Law No. 21-15

Introduction:

The state relies on various activities to achieve development and keep pace with global changes, with the economic sector being paramount. Despite its vital role in advancement, prosperity, achieving self-sufficiency, and even food security, this sector faces numerous unlawful practices that hinder economic progress. Among these practices is the manipulation of prices for essential food and consumer goods needed by Algerian citizens, such as fruits, vegetables, oil, sugar, coffee, and milk. This manipulation occurs

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through unjustified price increases or decreases, or by spreading rumors about the scarcity of specific goods, utilizing any means possible—especially in the digital age where information spreads rapidly.

This situation falls under what is known as unlawful speculation, prompting the Algerian legislator to enact Law No. 21-15 concerning unlawful speculation and its combat. This law imposes strict penal measures on violators, including the concept of criminal accountability in a broad sense. It embodies the punitive nature of the crime of unlawful speculation. Thus, the following issue arises:

To what extent is Law N°. 21-15 effective in addressing unlawful speculation concerning natural persons, and how does it define criminal responsibility for those who violate the legal provisions governing the speculation system? How is the idea of punishment conceptualized for the perpetrators of this crime?

The response to this issue will be structured according to the following elements:

First: Provisions on Criminal Responsibility of Natural Persons in Cases of Unlawful Speculation

- Definition of Criminal Responsibility
- Conditions for Establishing Criminal Responsibility for Natural Persons
- Barriers to Establishing Criminal Responsibility for Natural Persons

Second: Penal Provisions for Natural Persons in Cases of Committing Unlawful Speculation

- Regarding Principal Penalties
- Regarding Additional Penalties
- Regarding Common Provisions

Section I: Provisions on Criminal Responsibility of Natural Persons in Cases of Unlawful Speculation

The specificity of imposing criminal penalties necessitates identifying the individual or person responsible, as this individual is not criminally liable in all circumstances. It is essential to define what is meant by criminal responsibility, the conditions for its

establishment in cases of unlawful speculation, and the barriers to its applicability.

First Requirement: Definition of Criminal Responsibility

Criminal responsibility is defined as the individual's capacity to bear the criminal penalties resulting from their actions, or the obligation of a person to bear the consequences of their criminal acts (Khalfi, 2019, p. 329). It signifies the right of the perpetrator of a crime to receive the prescribed punishment, related to the offender's failure to comply with a criminal obligation, thus rendering them subject to the established penalty aimed at protecting that obligation (Zawash, 2016/2017, p. 3).

Upon reviewing the Algerian legislator's approach, it is noted that while the concept of criminal responsibility is not explicitly defined, its provisions are outlined in the second chapter titled "Criminal Responsibility" within the second section of the Penal Code concerning offenders (Order No. 66-156, 1966). However, in the context of unlawful speculation, the definition has been specified in light of recent developments, as evident in Law No. 21-15 concerning the fight against unlawful speculation (Law No. 21-15, 2021).

To define criminal responsibility in the context of unlawful speculation, it is necessary to clarify what is meant by it. According to Article 2 of Law No. 21-15, unlawful speculation is defined as any act of hoarding or concealing goods to create scarcity in the market and disrupt supply. It also includes any artificial increase or decrease in the prices of goods or securities, directly or indirectly, through intermediaries, electronic means, or any deceptive methods (Article 2/1, Law No. 21-15).

Thus, the Algerian legislator suggests that unlawful speculation constitutes any artificial disruption in financial and economic markets perpetrated by traders or any natural or legal persons, aimed at achieving specific goals rather than serving the public interest. This is facilitated through deceptive practices, including adapting to the digital transformation and instilling the notion of scarcity or fluctuation in the prices of any product.

From this perspective, criminal responsibility for natural persons in the context of unlawful speculation can be defined as holding individuals—especially traders—accountable for the consequences of



their illicit actions under commercial and financial market law, by any means available. Those committing acts specified in Article 2 of the aforementioned Law No. 21-15 are criminally liable unless there exists a legal impediment, thus qualifying them to bear punishment.

Second Requirement: Conditions for Establishing Criminal Responsibility for Natural Persons

The primary condition for declaring an individual responsible for their actions is the presence of legal capacity. To assert that someone is responsible, they must possess full capacity, which consists of two essential elements:

- Awareness

Awareness refers to the individual's mental capability and consciousness, enabling them to understand their actions, assess their consequences, and distinguish between criminal and permissible acts (Al-Warad & Delloul, 2021/2022, p. 49). Therefore, an individual must be aware of the implications of their actions, including the material aspects and their effects (Tayeb, 2021, p. 93).

In the context of unlawful speculation, the person causing sudden fluctuations in demand for any commodity must be aware that their actions are punishable by law. Regardless of the means employed—whether through digital platforms or electronic media—they must recognize that artificially inflating or deflating prices, monopolizing goods, or unlawfully declaring scarcity will disrupt market transactions. Hence, any person who is aware of their actions and willingly engages in behavior they know to be illegal—according to the Penal Code or related laws aimed at addressing unlawful speculation—is deemed to have full legal capacity.

- Freedom of Choice

Merely having awareness is insufficient for criminal responsibility; the individual must also possess the freedom of choice, which means the ability to direct their conduct toward a specific action or refrain from it, free from external influences that might compel or sway their will against their desire (Al-Warad & Delloul, 2021/2022, p. 49).

This applies to any person or trader who conducts the aforementioned actions voluntarily, without coercion, pressure, or threats that would nullify their will. Since the individual is aware and enjoys the freedom to choose in engaging in unlawful speculation, they are considered criminally responsible. Consequently, the specific provisions applicable to their criminal behavior, as established by the Algerian legislator, will be enforced in combating this crime.

Third Requirement: Barriers to Establishing Criminal Responsibility for Natural Persons

An individual may commit acts that violate general commercial regulations, particularly those related to unlawful speculation. However, due to personal circumstances aimed at preserving higher interests, they may not be criminally liable. This exemption applies only in specific cases:

A. Insanity

Insanity is defined as a disturbance in mental faculties that impairs an individual's ability to distinguish or control their actions. This insanity may be continuous or intermittent and results from a gradual decline in mental capacities (Khalfi, 2019, p. 343), rendering the person unable to reconcile their thoughts and feelings with their surroundings. Any mental disorder that significantly weakens an individual's ability to differentiate between their actions and behaviors eliminates their will, especially if the insanity is persistent (Zawash, 2016/2017, pp. 45-46).

Thus, any insane person who engages in unlawful speculation by any means is subject to the provisions of Article 47 of the Penal Code, which states that there is no penalty for those who are insane at the time of committing the crime (Article 47, Penal Code). Consequently, the insane individual is not punishable and may be subject to measures for their care. However, specific conditions must be met to exempt them from responsibility (Abd Al-Sattar, 1987, pp. 70-73):



- The necessity of being afflicted by insanity or a mental disorder.
- The necessity of losing consciousness or choice.
- The occurrence of this loss coinciding with the criminal act.

B. Coercion

Coercion can be categorized into two types: physical coercion, which completely nullifies will and choice, and moral coercion, which diminishes but does not eliminate them (Khalfi, 2019, pp. 345-346). This study will focus solely on physical coercion.

Physical coercion is defined as a material force that paralyzes or temporarily eliminates will, depriving an individual of control over their bodily functions and may compel them toward criminal actions (Zawash, 2016/2017, p. 54).

This was notably evident during the COVID-19 pandemic, which led to shortages of many products and commodities, alongside price hikes due to scarcity and the challenges posed by the pandemic. To establish coercion as a reason for exemption from responsibility, the Algerian legislator outlined its conditions in Article 48 of the Penal Code, which include (Article 48, Penal Code):

- The occurrence of an unexpected external force
- This force cannot be resisted.

It is noteworthy that we see within the framework of illegal speculation that the physical coercion resulting from natural circumstances, disasters, and dangers does not serve as an excuse for engaging in the crime of illegal speculation. Therefore, we opinion, those who commit acts of illegal speculation should be held accountable and punished severely for exploiting this coercion to achieve illegitimate goals.

C. Condition of Minority

A child is defined as any individual under the age of eighteen, unless they reach the age of maturity earlier according to applicable law (Al-Rasifan Al-Abadi, 2013, p. 19). Thus, the rules governing the

criminal responsibility of minors are based on the age at which their mental faculties mature. When awareness is weak, responsibility is likewise diminished or incomplete; conversely, when awareness is fully developed, criminal responsibility is complete (Khalfi, 2019, p. 344), as stipulated by Article 49 of the Algerian Penal Code (Article 49, Penal Code).

Therefore, if a minor commits acts aimed at creating unlawful speculation, their criminal responsibility for such actions does not arise automatically. Instead, it is essential to consider their developmental stages and ensure they have reached the age of eighteen and possess full legal capacity.

Section II: Penal Provisions for Natural Persons in Cases of Committing Unlawful Speculation

Given the alarming and increasing rise in the prices of essential goods in the national market, alongside the declaration of scarcity for some other consumer goods, a significant debate has emerged among various age groups within society. This situation necessitated the amendment of the Penal Code, particularly regarding the penal provisions for unlawful speculation under Law No. 21-15 in 2021.

First Requirement: Regarding Principal Penalties

According to Chapter Four of Law No. 21-15, titled "Penal Provisions" (Law No. 21-15, 2021), specifically in Article 12, unlawful speculation is punishable by imprisonment ranging from three to ten years and a fine between 1,000,000 DZD and 20,000,000 DZD.

This indicates that the legal characterization of unlawful speculation is classified as a serious misdemeanor, as outlined in Article 5, paragraph 2, which states that in the case of misdemeanors (Article 5/2, Penal Code), the principal penalties generally involve imprisonment for a duration of less than two months and not exceeding five years, unless the law stipulates otherwise.



Referring to the provisions of unlawful speculation, the minimum and maximum penalties are detailed in Article 5/2 of the Penal Code. The Algerian legislator, in response to the widespread and alarming nature of this phenomenon threatening the security and stability of commercial transactions and, consequently, the national economy, has imposed strict penalties under Articles 13, 14, and 15 of the same law. The maximum penalty includes life imprisonment, which is considered a principal penalty for felonies, as per Article 5/1 of the Penal Code (Article 5/1, Penal Code).

The increased severity of punishment arises in cases where unlawful speculation and price manipulation affect essential goods that concern all citizens, such as grains and their derivatives, dry legumes, milk, vegetables, fruits, oil, sugar, coffee, fuel, or pharmaceutical products. The penalty for such actions is classified as a serious misdemeanor, with imprisonment ranging from ten to twenty years and a substantial fine ranging from 2,000,000 DZD to 10,000,000 DZD (Article 13, Law No. 21-15).

In situations where the aforementioned actions occur during a state of emergency, health crises, or epidemic outbreaks—similar to the COVID-19 pandemic, which led to a dramatic rise in product prices and scarcity in Algeria—punishments become more stringent. Such crimes are classified as felonies, punishable by imprisonment ranging from twenty to thirty years and fines between 10,000,000 DZD and 20,000,000 DZD (Article 14, Law No. 21-15).

If the same actions are committed by an organized criminal group, the crime is classified as a felony, and the penalty is life imprisonment rather than temporary imprisonment or lesser penalties (Article 15, Law No. 21-15).

It is noteworthy that the Algerian legislator has provided mitigating circumstances for perpetrators of these acts, allowing for leniency based on compassion, but within the limits of one-third of the

prescribed penalty for those who commit the aforementioned acts (Article 22, Law No. 21-15), without violating the provisions of Article 53 of the Penal Code (Article 53, Penal Code).

Second Requirement: Regarding Supplementary Penalties

The Algerian legislator has not limited penalties for perpetrators of unlawful speculation to imprisonment or fines alone; rather, it has complemented the primary punishment with supplementary penalties that correspond to the criminal behavior exhibited by the offender or their accomplices. These are outlined in Articles 16, 17, and 18 of Law No. 21-15.

A. Supplementary Penalties According to Article 16 of Law No. 21-15

This article includes three additional penalties:

1. Prohibition from Residence:

Lasting from two to five years, this penalty allows for the prohibition of the offender's presence in certain areas. It applies from the end of the primary sentence or upon the release of the convicted person if the sentence involved imprisonment (Baalouj, 2023, p. 242).

2. Deprivation of Rights:

The individual may be deprived of one or more rights specified in Article 9 bis 1 of the Penal Code if the conviction pertains to an offense outlined in this law (Article 16, Law No. 21-15). The rights from which one may be deprived include:

- Dismissal from all public positions related to the crime.
- Loss of the right to vote or run for office and to hold any honors.
- Ineligibility to serve as a sworn assistant, expert, or witness in contracts or court proceedings.
- Loss of the right to bear arms, teach, or manage an educational institution.
- Ineligibility to be a guardian or custodian.
- Loss of all or some parental rights.



In the case of a criminal conviction, the judge must order deprivation of one or more of the aforementioned rights for a maximum of ten years, effective from the completion of the primary sentence or the release of the offender.

3. Publication and Posting of the Judgment:

The judge must order the publication and posting of the judgment in accordance with Article 18 of the Penal Code. This entails publishing the full judgment or an excerpt in one or more designated newspapers or posting it in specified locations, at the expense of the convicted individual, provided that the costs do not exceed the amount specified in the conviction and that the posting period does not exceed one month (Baalouj, 2023, p. 242).

B. Supplementary Penalties According to Article 17 of Law No. 21-15

This article also outlines three additional penalties directly related to the actions of the unlawful speculator:

1. Removal from the Commercial Register:

This involves the removal of the trader's status, thereby preventing them from carrying out their previously registered business activities. This is a consequence of violating the general rules governing speculative practices, leading to the exploitation of circumstances or engaging in previously mentioned unlawful behaviors. If convicted, the individual is removed from the commercial register (Article 17, Law No. 21-15).

2. Prohibition from Commercial Activity:

According to the provisions of Article 16 bis of the Penal Code, if the judicial authority establishes a direct link between the crime committed and the individual's business activities, and if there is a danger in continuing either, a judgment prohibiting commercial activity may be issued for a maximum of ten years in cases of felony convictions, and five years for misdemeanors. This judgment may be executed immediately (Article 16 bis, Penal Code).

This penalty serves as a preventive and protective measure against further unlawful speculation activities and aims to curb price manipulation in any form.

3. Closure of the Establishment:

Following a conviction for unlawful speculation, the establishment may be closed for more than one year. However, this does not infringe upon the rights of third parties who acted in good faith (Article 15 bis 2, Penal Code) and were unaware of the unlawful speculation, such as those renting premises or using the commercial registration without knowledge of the criminal act.

These additional penalties serve to reinforce the legal framework aimed at combating unlawful speculation and protecting the integrity of the market.

C. Supplementary Penalties According to Article 18 of Law No. 21-15

This article addresses a single penalty that aligns with the criminal acts aimed at unlawful speculation, which is confiscation (Article 18, Law No. 21-15). This applies to the location of the crime and the means used to commit the unlawful speculation, such as trucks carrying goods intended for unlawful speculation. It also includes the confiscation of these goods and the money obtained through these operations.

It is noteworthy that the Algerian legislator has established both primary and additional penalties that correspond to the criminal behaviors of illicit speculators, in light of real and digital developments amid the digital transformation.

Third Requirement: Regarding Common Provisions

In this context, it is essential to highlight both cases of attempted unlawful speculation and participation in it.



A. Case of Attempt

Referring to Article 30 of the Penal Code, the Algerian legislator refers to this as "attempt." It encompasses all attempts aimed at committing a felony through actions that unequivocally lead directly to its commission. These attempts are considered equivalent to the felony itself if they are not thwarted or interrupted due to reasons beyond the offender's control, even if the criminal result is not achieved (Article 30, Penal Code).

It is important to note that, according to Article 31 of the same law, attempts related to misdemeanors must be specifically defined; there is no attempt recognized for infractions. This applies to the actions classified as misdemeanors in Law No. 21-15 regarding unlawful speculation, as outlined in Article 13.

According to Article 19 of the same law, attempts at the misdemeanors specified in this law are punishable by the same penalty as the completed crime. The rationale for punishing attempts is that a crime has occurred, albeit incomplete due to external factors beyond the offender's control, posing a direct threat to legally protected interests. This threat originates from the offender themselves and their criminal intent (Suleiman, 1995, p. 164).

For instance, if a trader expresses a desire to increase the price of milk, oil, sugar, or fruits, or intends to decrease them without justification in a scheme to manipulate prices, or even attempts to incite controversy through misleading information on social media regarding the scarcity of these goods, and this does not result in a criminal outcome for reasons outside their control, their withdrawal from committing the criminal act aimed at achieving unlawful speculation would be deemed involuntary rather than voluntary. They would be punished with the same penalty as the completed crime due to the significant threat these actions pose to the national economy and the purchasing power of Algerian citizens.

B. Case of Criminal Participation

In addition to attempts, the legislator has recognized and considered criminal participation in unlawful speculation, as stipulated in Article 21 of Law No. 21-15. This law punishes the perpetrator, accomplice, and instigator of any crimes outlined within its framework, by any means necessary (Article 21, Law No. 21-15).

It is important to note that criminal participation is established when a single crime is committed by multiple offenders, not necessarily involving multiple crimes. The requirement is for a singular crime committed by more than one perpetrator (Suleiman, 1995, p. 186), whether they are principal offenders or accomplices, without contravening the legal provisions governing criminal participation under the Penal Code (Articles 41-46, Penal Code).

For example, if one trader collaborates with another or two or more individuals to commit one of the criminal acts specified in Article 13 of Law No. 21-15—such as conspiring to spread false information about the scarcity of milk or sugar, or if traders in a specific area agree to raise the prices of fruits and vegetables—this collective action weakens the financial burden on citizens and diminishes their purchasing power, indicating that the act is singular while the offenders are multiple.

Conclusion:

In conclusion, it can be stated that the Algerian legislator has addressed the crime of unlawful speculation in a clear and multifaceted manner regarding the establishment of criminal responsibility and the imposition of penalties for violations of the legal provisions under Law No. 21-15 concerning the fight against unlawful speculation. This represents a significant advancement in activating and embodying the rules of criminal responsibility, as well as addressing attempts and participation in acts that threaten the public interest of the state, particularly concerning the national economy and the purchasing power of citizens through price manipulation or



collusion in this regard—whether in physical reality or electronically, by any means necessary.

This legal framework fills a void that has caused numerous issues while incorporating a deterrent and punitive character that instills fear and discourages individuals from committing such acts outlined in Article 13 of the same law. The specificity of criminal penalties for unlawful speculation is reflected in the definition of the criminalized acts using broad terms and expressions, along with specifying the financial and custodial penalties associated with them, as well as the provisions regarding attempts and participation in criminal acts.

Among the most significant findings of this study are:

- Law No. 21-15 is clear in its provisions, aligning with the amendments made to the Penal Code in 2021, notably raising the penalty for temporary imprisonment from 20 years to 30 years.
- The crime of unlawful speculation features a dual legal characterization: as a general rule, it is classified as a misdemeanor, but if committed under specific circumstances, it is deemed a serious misdemeanor or a felony.

Therefore, I propose the following:

- It is essential to stipulate that these crimes should not be subject to amnesty of any kind or to the statute of limitations for the perpetrators, due to their seriousness and the lack of fear among offenders in committing them.
- It is preferable not to reduce these types of penalties, even marginally, to maintain the deterrent and punitive nature of laws against such criminal acts.
- Activating the role of civil society and encouraging individuals to report such crimes is crucial, along with ensuring the necessary legal protection for those who report violations committed by traders and others.

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