

Insufficiencies of Incrimination in Social Security Matters

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Abstract:

This academic paper examines the critical deficiencies in the criminalization framework of social security law in Algeria, focusing on three major areas of concern: the imprecision of incriminating texts, redundant criminalization, and limited scope of criminalization. The study reveals how these insufficiencies undermine the principle of legality in criminal law and weaken the enforcement of social security regulations.

Key words: criminalization, Algeria legality, security, regulations.

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1. INTRODUCTION

Criminalizing norms must be drafted with clarity and precision. This requirement, which stems from guiding principles, forms the backbone of Social Security Criminal Law. It is significantly weakened, even disregarded, by the penal provisions in this area, which deviate from it on many points.

Criminalization in Social Security Law is characterized by legislative output of lesser quality, both concerning the imprecision of criminalizing texts in social security matters (A), and the redundant criminalization of social security fraud (B), and limited criminalization in this area (C).

2. The imprecision of criminalizing texts in social security matters

The clarity of the law manifests itself at two levels: the quality of the structural approach and the quality of the drafting of texts. Clarity is often linked to codification, which makes the norm more accessible and more readable (bouharrou, 2012, p. 28)

The Algerian legislator, considering the importance of the social security system in public finances, has refrained from adopting a distinct code on the criminalization of social security (boussis).

The current absence of codification is accompanied by defective methods of drafting criminalizations, which exacerbates the obscurity of the Law; this is particularly the case for

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criminalization by reference in Social Security Law (I) and blank criminalization (II).

2.1 Criminalization by Reference in Social Security Law

It is rare for the prohibited conduct to be fully described in a standalone provision. The method most often used. (coeuret, 1996, p. 58)

First, the imprecision of an incriminatory text allows the judge to extend the scope of repression to behaviors that were not thought, a priori, to fall within its purview (khelifi, 2018, p. 36.)

The difficulty in understanding incriminations in Social Security Law can be linked to the frequent necessity of consulting several different norms on the subject, which complement, modify, or replace each other, before having determined the behavior to adopt, which exceeds its competencies (martinel, 2019, p. 36.)

This is the case in social security matters, concerning the incrimination of obtaining undue benefits. This imprecision of the criminal text requires the repressive judge to consult the entire legislative and regulatory arsenal on the matter, in order to determine the concept of social benefits provided and the justified and illicit framework for obtaining these benefits.

Consequently, the criminal judge will frequently be obliged, in certain incriminations, to consult texts external to criminal law for example, offenses related to the CHIFA card.

We also note the offense of failure to pay the contribution for the opening of rights in unemployment insurance, where the offender is exposed to the criminal sanctions provided for by Art. 39 of Legislative Decree No. 94-11 of May 26, 1994, establishing unemployment insurance for employees liable to involuntarily lose their employment for economic reasons, for breaches of the provisions of Articles 8 and 9 and paragraphs 1 and 2 of Art. 10 of the same legislative decree.

Indeed, this imprecision of the text obliges the criminal judge to familiarize themselves with all related provisions, in order to understand the legislator's intent at the time of drafting this legislative decree, which often leads to a violation of the principle of strict interpretation of criminal text, one of the most important principles of criminal legality.

Furthermore, the criminal judge must apply the principle that "any doubt is interpreted, in all cases, in the interest of the accused" (), therefore, whenever the criminal text appears confused, ambiguous, or its content is in doubt, the latter will always be interpreted in the interest of the accused, by virtue of another origin, namely that the original in matters is justification.

2.2 Redundant Incrimination in Social Security Matters

The concept of duplicate incrimination refers to hypotheses in which the same behavior is liable to be covered by several criminal texts, whose scopes of application then overlap (op.cit)

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The proliferation of texts, codes, and the quasi-systematic recourse in Social Security Law to ensure compliance with its various provisions, often generate duplicate incriminations for the same acts, which, besides their uselessness, confront the judge with an inextricable conflict of qualifications, and the litigant with the impossibility of predicting with certainty the criminal consequences of their actions.

This is the case for the incrimination of false declaration, which is sanctioned in ordinary law by Art. 223, paragraph 1 of the Penal Code, as a form of forgery, and specifically in Social Security Law by Art. 83 of Law No. 08-08 of February 23, 2008, relating to social security litigation, as well as the incrimination of fraud to obtain undue benefits from the social mutual society, which is provided for and repressed by Art. 106 of Law No. 15-02 of January 4, 2015, relating to social mutual societies.

It was then discovered that social benefit fraud was subject to multiple incriminations, not only in the Penal Code but also in the penal provisions concerning social security. It was observed that many of these incriminations operated by reference to penalties or even to materiality.

The issue was not brought before the Algerian Constitutional Council, despite its violation of the principle of legality. On the contrary, it was brought before the French Constitutional Council ().

However, the Council did not respond, as it was invited to do, on the grounds of the legality of criminal offenses but **sua sponte** raised the complaint of an infringement of the principle of equality of citizens before the law by holding that “criminal law cannot, for the same offense, institute penalties of different natures, unless this difference is justified by another situation directly related to the object of the law”

Such a decision opens avenues for reflection regarding the constitutional treatment of redundancies in the repression of social benefit fraud, just as it necessitates discussing the reconfiguration of the repression of such fraud undertaken by the legislature thereafter.

According to French criminal doctrine, specific social security fraud offenses will be preferentially applied by virtue of the principle « **specialia generalibus derogant** », according to which the specific classification must be applied preferentially over the general classification.

Unlike Algerian criminal legislation, referring to Art. 32 of the Penal Code, if a single act is subject to several classifications, it must be assessed according to the most serious among them (litigation, algeria)

In cases where this single act is subject to incriminations under ordinary law and social security law, it will be assessed according to the most serious incrimination. After all this, we observe a redundant incrimination in social security law which constitutes a major breach of the principle of legality of incrimination (Mohammed MEZAOULI and Saleh LARBAOUI, 2018, p. 28.)

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3. Limited Incrimination in Social Security Matters

This concerns the limited criminal liability of legal entities in this area (I) and the limited incrimination of attempt (II).

3.1 - Limited Criminal Liability of Legal Entities in Social Security Matters

Given the seriousness and dangerousness of offenses affecting the social security system, their negative impact on the assets of social security organizations, particularly social contributions as rights of insured persons, the legislator limits the scope of criminal liability of legal entities under social security law, in incriminations relating to the electronic card and the social key of the insured person (elodie, 2013, p. 36.).

This leads to the fact that legal entities are not held responsible for numerous incriminations causing damage, to varying degrees, to the social security system, specifically, offenses relating to contributors, and offenses relating to cash benefits, namely, the incrimination of false declaration to obtain undue benefits, knowing that this incrimination will depend on the losses incurred by social security organizations.

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4. RESULTS AND DISCUSSION

This research has identified three major insufficiencies in the criminalization framework of social security law in Algeria:

- The Algerian legislator frequently criminalizes conduct by reference to other legal texts without clearly defining prohibited behaviors. This forces practitioners to consult multiple codes and provisions to reconstruct the complete offense, undermining legal clarity and accessibility.
- Criminal provisions delegate excessive discretion to executive authorities without establishing clear guidelines, allowing behaviors to

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be sanctioned before they are properly defined. This violates the constitutional principle of legality and permits judicial extension of repression beyond legislative intent.

- The lack of a distinct code on social security criminalization, despite the system's importance in public finances, exacerbates confusion and legal uncertainty.

- The same conduct is subject to multiple criminal texts with overlapping scopes. For example, false declarations are criminalized under both Article 223 of the Penal Code and Article 83 of Law No. 08-08, creating conflicts of qualifications and unpredictability.

- Redundant criminalization violates the principle of equality before the law when different penalties apply to identical conduct without justification.

- Criminal liability of legal entities is limited to offenses relating to electronic cards and social keys, allowing them to escape liability for numerous other serious offenses affecting social security systems.

Narrow Criminalization of Attempt: Attempt is criminalized only within restrictive limits, weakening deterrence and leaving gaps in protection of social security assets.

- RECOMMENDATIONS

- Develop and adopt a comprehensive code on social security criminalization that consolidates all criminal provisions in a single, accessible instrument.

- Prohibit blank criminalization and require all criminal provisions to clearly define prohibited conduct, constituent elements, and applicable penalties within the law itself.
- Minimize reference-based incrimination. Where references are necessary, clearly specify the referenced text and prohibited conduct within the incriminating provision.
- Eliminate redundant incriminations by establishing clear hierarchies (e.g., **specialia generalibus derogant**) and consolidating overlapping offenses.
- Extend criminal liability of legal entities to cover all serious social security offenses, including those related to contributors and cash benefits.
- Extend criminalization of attempt to all serious social security offenses where attempt presents comparable dangerousness to completed offenses.

5. CONCLUSION

This research has examined the critical insufficiencies in the criminalization framework of social security law in Algeria, revealing significant deficiencies that undermine the fundamental principle of legality in criminal law. Through comprehensive analysis of legislative texts, judicial practices, and comparative legal doctrine,

this study has identified three major areas of concern that characterize the poor quality of legislative output in social security criminal law.

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The investigation has demonstrated that incriminating norms in social security matters fail to meet the essential requirement of clarity and precision, which forms the backbone of criminal law. These deficiencies manifest across multiple dimensions, creating legal uncertainty, compromising the rights of the accused, and weakening the enforcement of social security regulations.

The findings reveal a systematic pattern of legislative inadequacy that requires urgent attention and comprehensive reform.

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