



Smuggling under Algerian law and the fight against it by the customs authorities

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Abstract Smuggling under Algerian law and the fight against it by the customs authorities

Based on the premise that smuggling is a harmful phenomenon to society on all levels, and echoing those who liken it to a deadly scourge like a virus that ravages the human body, this work, aimed at first-year Master's students specializing in Business Law at the Faculty of Law, Constantine 1 University (Brothers Mentouri), and which falls within the framework of coordination between the Customs Services and the University, attempts to address the issue of “Smuggling as a crime under customs legislation and the role of customs in combating it”. It was assigned to two axes. The first addressed the phenomenon in order to diagnose it from all its aspects, not only in terms of defining the basic terms and concepts, but also to clarify its geographical scope, its forms, the means used for smuggling, and the use of the resulting funds, to reach, in the end, its preview. Then to combat it by focusing on the various legal and operational mechanisms and means put in place by the customs authorities to combat this phenomenon, It has become clear that Algeria has given great importance to combating this phenomenon by putting in place many mechanisms, especially legal, institutional, operational and logistical ones, to maximize the effectiveness of the interventions of the agencies tasked with combating it.

Keywords: Smuggling – Customs Law – Algerian Customs Service – Mechanisms for combating smuggling and Coordination between agencies.

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1 .Introduction

Smuggling is a phenomenon on which there is universal agreement: it is harmful to society at every level. Indeed, some regard it as a deadly scourge, like a virus that, once it has invaded a body, gradually eats away at it until it is unable to perform even the most basic vital functions.

Consequently, all nations of the world employ every means to combat this phenomenon. First, they focus on legal measures to criminalise, detect, prosecute and suppress it; then they deploy human and material resources to implement these provisions. Indeed, they are constantly seeking to establish appropriate mechanisms and structures to curb it.

Algeria has not been immune to this phenomenon encroaching upon its territory; indeed, the vastness of this territory, the diversity of its terrain and the difficulty of monitoring all its borders make it a favoured area for smugglers seeking to make illicit gains quickly. Therefore, like other countries, it has mobilised all available resources to combat this phenomenon and has even enacted a comprehensive, separate piece of legislation to achieve this objective, namely Decree No. 06-05 of 18 Rajab 1426 (corresponding to 23 August 2005), which contains the Anti-Smuggling Act.

A thorough study and analysis of this dangerous phenomenon requires, first and foremost, a comprehensive understanding of it; as understanding the phenomenon is considered a necessary diagnosis to grasp it from all angles, so that we may ultimately assess it (first axis). Then, if it is accepted that this phenomenon is a scourge that harms society at all levels, it must subsequently be combated (second axis), in accordance with the following plan:

Introduction

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Theme 1: Understanding the phenomenon of smuggling (diagnosis)

Gaining an understanding of smuggling in all its aspects requires knowing what it is (its definition), the geographical areas in which it takes place, the forms it assumes, the methods used, and the various uses of the proceeds, so that we may ultimately examine the crime of smuggling.

First: The nature of smuggling

Smuggling is an ancient phenomenon; historically, it has been linked to the organisation of societies and the very emergence of the state. We find evidence of it in Ancient Egypt, the Roman Empire and even among the Greeks, owing to the substantial and easily obtained income and profits it generates for those who practise it. But what is the definition of smuggling?

1 .The linguistic definition of smuggling

According to the New Student' s Dictionary, the word 'smuggling' is derived from the verb 'to flee' (harrab, yahrab, tahrib), meaning that whoever smuggles a commodity has brought it secretly from one country to another.

As for French, the word for ‘smuggling’ is :Contrebande

Larousse/smuggling: the act of secretly bringing prohibited goods into a country, or goods on which customs duties have not been paid

Meanwhile, in the Encarta Dictionary :Encarta Dictionary

Smuggling (noun, feminine) (smuggled goods):

1 -Illegal trafficking (of goods) between two countries

*To smuggle cigarettes

2 -Goods that are the subject of illegal trafficking between two countries

*To smuggle

Microsoft Encarta Collection 2005. 1993 – 2004 Microsoft Corporation.

2 -The technical or legal definition of smuggling

Without delving too deeply into this subject, there are numerous definitions set out in various customs laws and related legislation, from which we can derive a definition that we consider to be generally accepted.

Article 324 of the Algerian Customs Code defines smuggling as follows: “For the purposes of applying the following provisions, ‘smuggling’ means:

-The import or export of goods outside customs offices.

-Breach of the provisions of Articles 51, 53 bis, 60, 62, 64, 221, 222, 223, 225, 225 bis and 226 of this Code;

-The fraudulent unloading and shipment of goods”.

The acts mentioned in this Article or the violation of the provisions of the above Articles shall not be considered smuggling where they relate to goods of negligible value within the meaning of Article 288 of this Law.” .

Similarly, the Jordanian Customs Law defines it in Article 203 as: “The bringing of goods into the country or their removal therefrom by unlawful means in contravention of the applicable legislation and regulations, without the payment of customs duties and taxes in whole or in part, or in contravention of the provisions of prohibition and restriction” .

Article 121 of the Egyptian Customs Law defines smuggling as: “The introduction of goods of any kind into the Republic or their removal therefrom by unlawful means without paying the customs duties due, in whole or in part, or in contravention of the regulations in force regarding prohibited goods ” .

The Yemeni Customs Law, in Article 268, defines it as: “Smuggling is the importation of goods into the Republic or their exportation therefrom by unlawful means without paying customs duties and taxes in full or in part, or in contravention of the provisions on prohibition and restriction, or the fraudulent unloading and loading of goods; Smuggling also includes failure to present goods at a customs post or bypassing it, making false declarations, and the use of hiding places ” .

As for French customs legislation, smuggling is defined in Article 417, which states :

1- Smuggling refers to imports or exports outside customs offices, as well as any breach of the legal or regulatory provisions relating to the possession and transport of goods within the customs territory.

2- The following, in particular, constitute acts of smuggling...

It then lists, in line with Algerian legislation, the circumstances that constitute smuggling.

We note, therefore, the close similarity between the linguistic definition and the technical definition of smuggling; consequently, we shall consider smuggling to be “ a breach by the exporter or importer of specific goods of one of their obligations, namely the requirement to pass through a customs office and declare the goods to customs, as well as the obligation to accompany the goods during their movement, particularly within the customs territory, with documents proving their legal status in accordance with the laws and regulations that the customs administration is responsible for enforcing.”

Secondly: The geographical scope of smuggling

Here we refer to the area or areas within the customs territory where smuggling operations take place. For this purpose, a distinction must be made between two concepts introduced by the Customs Law, namely: the customs territory and the customs zone.

Article 1 of the Customs Law defines the customs territory as comprising: “the national territory, internal waters, territorial waters, the contiguous zone and the airspace above it.”

According to Article 29 of the Customs Law, the customs area comprises a maritime zone and a land zone .

A. The maritime zone

This consists of internal waters (i.e. the waters between the coast and the baseline), which include ports and bays, territorial waters extending 12 nautical miles from the baseline, and the contiguous zone, which is a maritime zone extending 12 nautical miles from the outer limit of the territorial waters.

B. The land area

This extends from the coast inland along a straight (imaginary) line for a distance of 30 km, and from the land border along a straight line for a distance of 30 km. Furthermore, the second paragraph of Article 29 permits the extension of the depth of the land zone from 30 km to 60 km, and even up to 400 km in the provinces of Illizi and Adrar, Tindouf, Tamenghast, subject to a joint ministerial decision by the Ministers of Finance, National Defence and the Interior.

Thirdly: Forms of Smuggling

There are two types of smuggling: actual smuggling and constructive smuggling.

1 – Actual smuggling

The most significant form of smuggling is that provided for in Article 324 of the Customs Law, which consists of the import and export of goods outside customs offices.

Import refers to bringing goods into the territory of the Republic, whilst export refers to taking goods out of the territory of the Republic.

Goods refer to all products and commercial and non-commercial items and, in general, all items capable of being traded and owned (Article 5, paragraph 'c').

Customs offices, meanwhile, are checkpoints under the authority of the Customs Administration, located across the country's entire land, sea and air borders 6.

2-Legalised smuggling or smuggling by virtue of the law.

This refers to situations where opinions may differ as to whether they constitute smuggling or not; however, the legislator has classified them as smuggling, hence the term 'legalised smuggling', i.e. by virtue of the law 7.

These acts can be classified into two groups:

- Smuggling acts relating to the customs territory;
- Smuggling acts relating to the customs territory.

A. Smuggling acts relating to the customs territory:

These consist of:

*The movement of goods subject to a movement licence within the customs territory in contravention of the provisions of Articles 221, 222, 223 and 225 of the Customs Law.

*The movement of prohibited goods or goods subject to high duties within the customs territory and their possession in contravention of the provisions of Article 225 bis of the Customs Law.

First case: The movement of goods subject to a movement permit within the customs territory constitutes a breach of Articles 221, 222, 223 and 225 of the Customs Law.

Under no circumstances may certain categories of goods be transported within the land area of the customs zone unless their owner or holder has obtained what is known as a ‘transport licence’. It is a written licence issued by the Customs and Excise Department (Section 220 of the Customs Act).

Carriers must declare such goods at the customs office nearest to the point of removal when they are to be removed from the land area of the customs territory for transit within or outside the customs territory, provided that the declaration is made prior to the removal of the goods, unless a licence has been granted by the Customs Department (Article 222 of the Customs Law).

They must also be taken to the nearest customs office for declaration if these goods are coming from within the customs territory to enter the land area of the customs territory. Carriers are also obliged to comply with all the details contained in the transport licence, particularly those relating to the duration of transport and the route (Article 225 of the Customs Law).

Consequently, several questions arise, the most important of which are :

- What goods are subject to a transport licence ?
- What is a transport licence ?
- And what forms of smuggling occur within the customs territory when it comes to goods subject to a transport licence?

- Goods subject to a transport licence

The Customs Legislator has delegated the matter of determining which goods are subject to a movement licence to a decision to be issued by the Minister of Finance (Article 220).

Indeed, the Minister issued a decision setting out the list of goods subject to a movement permit within the land customs territory, dated 15 Jumada al-Thani 1444 (corresponding to 8 January 2023), which sets out the framework - the framework for goods subject to a movement licence and those for which no exemption may be granted, as well as the permitted quantities for certain goods subject to this licence in the land area of the customs territory, as well as cases of exemption from the

movement permit, depending on either the quantity of the goods, the place where they are seized, or the status of the persons in possession of them.

- Movement Licence

It may be said that a movement licence is a written document issued by the Customs and/or Tax Administration authorising the movement of goods subject to a movement licence within the land area of the customs territory.

On 3 February 1999, the Director General of Customs issued Decision No. 17, which sets out the procedures for implementing, namely the format of movement permits and the conditions for their issue and use .

Article 2 thereof provides: “The movement licence shall be issued on a printed form, a model of which is attached in the Annex”.

Article 3 thereof provides: “Movement licences shall be issued to carriers, owners and holders of goods susceptible to fraud which have been lawfully acquired :

At customs centres for entry or exit, or at the nearest office or centre for entry in the case of imported goods.

-At the customs office nearest to the point of collection of the goods to be collected within the customs territory for transport within or outside it.

-At the nearest customs office, centre or tax administration office within the customs territory.

As for the information contained in the transport permit, it consists of:

- The name, surname and address of the person authorised to transport the goods;
- The names, surnames, ranks and places of residence of the officials signing the permit;
- The address of the place of loading of the goods, the address of their destination, the route to be followed, the duration of transport (number of hours), the type of transport used and its number.

-The nature, quantity and weight of the goods being transported.

·Forms of smuggling within the customs territory where goods subject to a transport licence are concerned

These take two main forms :

- Transport within the customs territory without a transport licence;
- Failure to comply with the details stated in the transport licence.

Transport within the customs territory without a transport licence: Under this heading, we will address the following:

Firstly, regarding goods coming from outside the customs territory:

Carriers of goods subject to a movement authorisation arriving from within the customs territory must present them at the nearest customs office for declaration upon exiting the customs territory by land. Furthermore, upon entering the customs territory, they must, upon first request, submit the documents proving lawful possession of these goods (Article 221 of the Customs Law) .

Secondly, with regard to goods intended to be removed from within the customs territory :

the owner or holder must declare the goods prior to their removal; failure to do so shall be deemed smuggling unless a licence has been granted by the Customs Department .

- Failure to comply with the details specified in the transport permit

The carrier must comply with all instructions and details contained in the transport permit, particularly regarding the route and the duration of the transport, which must be strictly adhered to, except in cases of force majeure or a legally established incident (Article 225 of the Customs Code).

Second case: Transport and possession of prohibited goods or goods subject to high duties within the customs territory

In accordance with customs legislation, the following are prohibited within the customs territory :

A - The possession for commercial purposes of goods whose import is prohibited or subject to high duties, as well as their transport, where no convincing document can be produced to prove the legal status of such goods under customs legislation, upon the first request by customs officials...

B - The possession of goods prohibited for export, not justified by the holder' s normal needs for family or professional use, and assessed, where necessary, according to local usage (Article 225 bis of the Customs Code).

Accordingly, a distinction can be made here between two forms of smuggling :

Firstly : the possession of goods whose import is prohibited, for commercial purposes, or those subject to high duties and charges, as well as their transport, where no convincing documentation can be produced to prove the legal status of such goods under customs legislation, upon the first request by customs officials :

Based on the above, it can be said that there are two types of goods: prohibited goods and goods subject to high duties and taxes.

As for prohibited goods, there are two types: goods that are absolutely prohibited, and all goods whose import or export is prohibited, under any customs regime or in any form whatsoever, based on this law or other relevant laws, in any capacity whatsoever, particularly those affecting:

- public order, public security, public health or public morals;
- the protection of national treasures of cultural, artistic, historical or archaeological value;
- the protection of flora and fauna.

The second category comprises goods subject to a relative prohibition, which may only be imported or exported upon presentation of a licence or certificate or completion of specific procedures, if the following is established during the inspection process :

- If they are not accompanied by a legal document, licence or certificate,
- If they are presented under an inapplicable licence or certificate.

Furthermore, goods may only be cleared through customs upon presentation of a licence or certificate or completion of special procedures, if the following is found during the inspection process:

- that no legal document, licence or certificate has been presented,
- that they were presented under an inapplicable licence or certificate (Article 21 of the Customs Law)..

As for goods subject to high duties and charges

Goods subject to high charges are those on which the total rate of duties and charges exceeds 60% (paragraph (g) of Article 5 of the Customs Law) .

A customs offence relating to this type of goods occurs when they are held for commercial purposes or transported without legal documentation, or when they are held in a manner not justified by the holder' s normal needs for family or professional use, as assessed, where necessary, according to local usage.

B. Smuggling offences relating to the customs territory:

These take two forms:

- The transport of goods susceptible to smuggling without accompanying documents proving their legal status,

-Their possession without documents proving their legal status (Article 226 of the Customs Act) .

-The transport of goods susceptible to smuggling without accompanying documents proving their legal status

The transport of goods that are smuggled more frequently than others throughout the customs territory requires the presentation of documents proving their legal status in accordance with the laws and regulations that the Customs Administration is responsible for enforcing (Article 226 of the Customs Act).

The documents proving the legal status of the goods under the Customs Code are purchase invoices, delivery notes or any other document proving that the goods were harvested, manufactured or produced in Algeria or that they have otherwise acquired Algerian origin, or customs receipts or other customs documents proving that the goods were legally imported or are authorised to remain within the customs territory.

Consequently, the movement of this category of goods throughout the customs territory shall be deemed to constitute smuggling if the goods are not accompanied by one of the documents mentioned above; the same applies if the documents presented are forged, incorrect, incomplete or do not apply to these goods.

It should be noted that the obligation to provide these documents also applies to persons who have acquired, transported or disposed of the goods in any manner, as well as to those who have provided proof of origin; this obligation remains in force for a period of three (03) years from the date of disposal or the provision of the documents proving origin, as the case may be.

- Possession of sensitive goods susceptible to smuggling for commercial purposes without supporting documentation

It may be said that possession consists of a person's physical or actual control over an object or a right, whether or not they are the holder of that right; possession may be based on a right of ownership or any other real right, or it may not be based on any right at all.

As for possession in customs legislation, it refers merely to physical possession, not possession in the true sense of the word. This is confirmed by referring to the French text, which uses the term *détention*, corresponding to 'possession', and does not use the term *possession*, which means 'possession', as Article 303 of the Customs Code states: 'Any person who possesses goods subject to fraud shall be deemed responsible for the fraud', which corresponds in French to 'la personne qui détient les marchandises de fraude est réputée responsable de la fraude.'

This is the approach taken by the judiciary, with the Supreme Court ruling on the existence of possession in several cases:

“In accordance with Article 303 of the Customs Code, any person who possesses goods subject to fraud is deemed liable for the fraud. In the present case, the defendant Lakhmisi is the possessor of the vehicle in question, and the administration is not required to search for the actual perpetrator, as the apparent perpetrator is the sole party to be prosecuted”.

“In customs law, the decisive factor in establishing an offence is the material element, namely the possession of goods that may be subject to fraud; the possessor is therefore held liable under Article 303 of the Customs Act, and the moral element is not taken into account at all, nor is mere denial”.

In the field of customs, and in accordance with Article 303 of the Customs Act, any person in possession of smuggled goods is deemed to be liable for fraud; in the present case, the person in possession is G. M., not Mr G. A, and that these proceedings were not brought against the person who should have been prosecuted, given that the vehicle subject to the forgery was found in the possession of G. M., who purchased it from the defendant, who has not been proven to have committed the offence himself”.

“According to Article 303 of the Customs Code, any person in possession of goods subject to fraud is deemed liable for fraud. In the present case, the claimant was arrested by the National Gendarmerie whilst stealing his car, which was carrying illuminated globe models without documents proving their legitimacy, and he stated to the judicial police that they did not belong to him. ”.

As for the commercial purpose, it may be said that this relates to acting as an intermediary in the trade of goods with the intention of speculation and making a profit,

whereas under customs law, this purpose may be inferred from the circumstances of the case and related factors such as the number of trips to the same country, the profession of smuggler , the quantity of goods seized and their value, and other such objective elements that cannot be exhaustively listed.

As for transport without legal documents, transport refers to the movement of goods from one place to another, which may be carried out by physical means such as the use of animals or vehicles (self-propelled or towed), aircraft, ships, or bicycles (bicycles or motorcycles), or any other means other than walking on foot.

As for the absence of legal documents, this refers to legal documents proving the legal status of the goods; the failure to provide documents proving legal possession of goods susceptible to fraud throughout the customs territory is considered a customs offence.

IV. Methods Used in Smuggling

To carry out smuggling, smugglers employ a wide variety of methods and even resort to tricks that may seem bizarre or even ingenious when uncovered; Their aim is to deceive anyone who stands in their way, and even if their operations are foiled, they

plan to minimise the costs, such as ensuring that their members are not arrested. However, we can categorise these methods as follows:

1 .Human methods:

We can distinguish several scenarios depending on the complexity of the operation:

- *A single individual carrying out the smuggling operation for their own personal gain;
- *Multiple individuals;
- *The formation of networks;
- *The use of third parties who may or may not be aware of the smuggling operation.

2 -Means of transport and movement:

Smugglers usually employ means to transport the smuggled goods and rarely carry them by hand, i.e. on foot. These means can be divided into those owned by the smugglers, those they hire, and those in which they travel.

*Means owned by the smugglers: these usually consist of:

- animals such as camels and donkeys;
- motor vehicles of all types;
- lorries;
- private vessels;
- and, in general, all means of transport that can be privately owned .

*Means of transport that they use by hire or in which they travel: These are means of transport that do not originally belong to the smugglers but which they hire or use to travel from one place to another. Examples include:

- taxis;
- buses;
- hired lorries;
- aeroplanes;
- ships and trains.

3 -Means of communication and intelligence:

Smugglers also use all available means of communication and intelligence – whether traditional or modern – such as agreeing on specific signals amongst themselves to ensure the route is clear, or using a pathfinder or a mobile phone.

4 - Some examples of the fraudulent methods used by smugglers :

Whatever the means employed, smugglers use every trick in the book to conceal their crimes or evade detection. Here we cite, by way of example, some of these tricks that have been recorded in various regions.

- 1- Using specially prepared hiding places to conceal goods: this practice has been discovered on numerous occasions in all modes of transport (cars, lorries, aeroplanes, ships, etc.);
- 2 -Leaving goods on public transport to make them appear ownerless;
- 3 -Training and using animals to cross borders unaccompanied;
- 4 -Setting up stations for changing carriers or distribution without the owner being present, in case the smuggled goods are discovered;
- 5 -Exploiting individuals to transport smuggled goods by dividing them up, so that these individuals appear as ordinary travellers or are specifically hired for this purpose;
- 6 -Exploiting border residents and their homes to pass through smuggled goods.

Fifth: Uses of Smuggling Proceeds:

1 -Ordinary uses :

Although smuggling in itself constitutes a crime, reality has shown that there are numerous cases where the funds obtained from the operation are used in an ordinary manner, i.e. for uses that are economically and socially recognised and accepted, such as purchasing a home, food or cars.

2 - Criminal uses:

To illustrate this, we have selected two excerpts from the 1997 Annual Report on Organised Crime in Canada .

Annual Report on Organised Crime in Canada 1997.

Smuggling of goods

‘Virtually all criminal organisations operating in Canada have been involved in smuggling, either independently or in collaboration with other groups’.

‘Like drug trafficking, smuggling has become a major source of revenue for organised crime’.

Consequently, the seriousness of smuggling also extends to the use of the proceeds derived from it.

VI. Investigation of Smuggling Offences :

This section will briefly outline the persons authorised to investigate smuggling offences and the evidential value of the reports drawn up during such investigations.

1 - Persons authorised to investigate smuggling offences:

The following categories of persons may investigate customs offences:

- Customs officers :Any customs officer is authorised to inspect customs offences,
- Judicial police officers as provided for in Article 23 of the Code of Criminal Procedure and judicial police officers as provided for in . .

As regards judicial police officers, this includes police service staff, officers of the National Gendarmerie, members of the National Gendarmerie, personnel of the military security services, maritime and labour inspectors, as well as coastguard officers belonging to the National Coastguard Service who do not hold the rank of judicial police officer.

- Tax officials: Any tax official is authorised to investigate customs offences.
- Officers of the National Coastguard Service.
- Officers responsible for economic investigations, competition, prices, quality and the suppression of fraud.

2 -The probative value of reports:

Two cases may be distinguished regarding the probative value of customs reports :

The case where customs reports have relative probative value: this concerns the statements and admissions contained in the customs reports, as well as the physical inspections recorded therein, when drawn up by a single officer, in which case they are deemed correct until proven otherwise, in accordance with Article 254 of the Customs Code.

- **The circumstances in which customs reports have full probative value :** customs reports have absolute probative value unless challenged on the grounds of forgery, provided that two conditions are met. The first relates to the content of the reports, namely that they record physical inspections, and the second relates to the status and number of the officials who drew them up, namely that they must be drawn

up by two officials, at least, from among the sworn officers referred to in Article 241 of the Customs Code.

Furthermore, Article 32 of the Anti-Smuggling Act confirms the absolute probative value of customs reports by stating “ :Reports drawn up by officers of the judicial police or by at least two sworn officers from among those specified in the Code of Criminal Procedure, or by two sworn officers from among customs officers, tax officials, officers of the National Coastguard Service, or officers responsible for economic investigations, competition, prices, quality and the suppression of fraud, criminal acts of smuggling referred to herein shall have the same evidential force as that recognised for customs reports with regard to the physical inspections they contain, in accordance with the rules laid down in customs legislation”.

A close examination of the wording of this article compels us to note the following:

***Regarding the status of the officers drawing up the report:** the same officers whom the Customs Law empowers to inspect customs offences are likewise empowered by this article to inspect the offence of smuggling ,

***Regarding the content of the reports:** there is no difference between the Customs Law and the provisions of this article, as in both cases the matter concerns the physical inspections contained in the reports .

With regard to the number of officials drawing up the report: as we have seen previously, the Customs Act distinguishes between the two situations, such that the reports have full probative value-meaning they cannot be challenged on the grounds of forgery-if they are drawn up by at least two sworn officials, and have only relative probative value-meaning they can be rebutted-if they are drawn up by a single official .

However, does not address this distinction and merely stipulates that the same evidential force recognised for customs reports shall be granted to judicial police officers, without specifying their number or requiring at least two sworn officers from among the other officials qualified to investigate smuggling offences .

However, a careful examination of the content of the Order and the objectives it seeks to achieve reveals that the intention is to grant the same evidential value to reports drawn up during the investigation of customs offences as to those drawn up during the investigation of smuggling offences; indeed, the failure to specify the number of judicial police officers can be interpreted as meaning that it is sufficient for the report to be drawn up by a single officer for it to acquire full probative value, which is quite reasonable given the status of these officers and the duties entrusted to them.

Section Two: Combating Smuggling

I. Legal and Institutional Measures

1 -Legal means for investigating the crime of smuggling

We shall address the means provided by the legislator to customs officers, leaving those available to other officers to the relevant experts, although I believe that the same legal means granted to customs officers are, for the most part, shared by other officers (some of which will be discussed later). Furthermore, these other officials also have other means at their disposal that do not differ significantly from those granted exclusively to customs officers by the legislator.

There are numerous legal measures that the Algerian legislator has placed at the disposal of customs officers to combat customs offences in general and the offence of smuggling in particular; however, we shall confine ourselves here to an aspect which we believe plays a fundamental role in achieving this objective, namely the powers conferred upon customs officers to investigate the offence of smuggling .

Officers authorised to carry out customs seizures enjoy extensive powers, both in relation to the seller and to individuals.

A- Officers’ powers regarding goods :

The Customs Code grants the aforementioned officers two fundamental powers in relation to goods: the right to investigate and the right to seize items.

-Right of investigation:

Customs officers alone enjoy this right, which empowers them to subject persons crossing the border to medical examinations to detect drugs, as well as to inspect goods, means of transport and persons (Article 41 of the Customs Act).

- Power to seize goods :

Pursuant to Article 241 of the Customs Act, all officers authorised to investigate customs offences may seize goods liable to confiscation and other goods in the offender’ s possession as security for fines up to the statutory limit, as well as any documents accompanying such goods.

B. Officers’ powers in relation to persons:

The Customs Code grants officers carrying out seizures two types of powers in relation to persons:

-Arrest of persons:

In cases of flagrante delicto, authorised officials may arrest offenders and bring them immediately before the public prosecutor, in accordance with legal procedures .

In practice, individuals are often arrested pursuant to Article 251 of the Customs Code, the third paragraph of which obliges civil and military authorities to assist

customs officers upon the first request, particularly to arrest the offender (or offenders), detain them and bring them before the public prosecutor.

-House searches :

Customs officers may search homes, distinguishing between inspections within and outside the customs area.

In the first case, homes may be searched for evidence of fraud in relation to any offence, regardless of whether the offender is caught in the act or not .

In the second case, however, the Customs Law restricts house searches to situations where the inspection takes place outside the customs area, specifically in cases involving the search for sensitive goods susceptible to smuggling and the pursuit of goods in plain sight, provided that the pursuit begins within the customs area (Article 47 of the Customs Law).

Furthermore, for a house search to be legally valid, it must be carried out following written authorisation from the competent judicial authority, and the officers must be accompanied by a judicial enforcement officer.

2- Institutional measures:

In addition to ensuring that the institutions to which those qualified to investigate smuggling offences belong utilise all available means to combat this phenomenon, the Algerian initiative-recognising the gravity of the situation-has established two key bodies to achieve this. The first was initially placed under the authority of the Prime Minister, but was subsequently transferred – following an amendment to the decree – to the authority of the Minister of Justice, Keeper of the Seals: the National Office for the Fight against Smuggling. The second was placed under the authority of the governors and consists of the local committees for combating smuggling.

We shall therefore briefly discuss both, naturally referring to Decree 05-06, which provided for their establishment, as well as the two executive decrees relating to them.

A. The National Office for Combating Smuggling:

***Establishment and supervisory authority :**

The National Anti-Smuggling Office was established pursuant to Article 6, paragraph 1, of Order 05-06, and with the issuance of Executive Decree No. 06-286 dated 26 August 2006, which sets out the organisation and functioning of the National Anti-Smuggling Office, supervisory authority was transferred from the Head of Government to the Minister of Justice and Keeper of the Seals.

***Functions and Organisation of the National Anti-Smuggling Office**

****Functions :**

The Office is entrusted with the following tasks:

- 1 -Establishing a secure centralised information system aimed at anticipating threats to prevent and combat smuggling, as well as contributing to ensuring the security of the international logistics network;
- 2 -Proposing measures aimed at promoting and developing international cooperation in the field of combating smuggling;
- 3 - Ensuring the coordination and monitoring of the activities of the various stakeholders involved in the prevention and combating of smuggling;
- 4 -Organising, collecting and centralising information, data and studies relating to the phenomenon of smuggling;
- 5 -Preparing a national action programme to combat and prevent smuggling;
- 6-Periodic evaluation of the legal instruments and mechanisms, as well as the administrative procedures in force in the field of combating smuggling;
- 7- Preparation of an information and awareness-raising programme on the harmful effects of smuggling;
- 8- Submission of any recommendations likely to contribute to the fight against smuggling .

****Regarding the organisation of the National Anti-Smuggling Office**

Pursuant to Articles 4 to 9 of Executive Decree No. 06-286 of 26 August 2006 establishing the organisation and functioning of the National Anti-Smuggling Office, the Office shall consist of:

****Steering and Monitoring Board**

The Steering and Monitoring Board, chaired by the Director General, comprises:

- a representative of the National Office for Copyright and Related Rights;
- a representative of the Algerian National Institute of Industrial Property;
- a representative of the General Directorate of Customs;
- a representative of the General Directorate of National Security;
- a representative of the Minister responsible for Culture;
- a representative of the National Gendarmerie;
- the Minister of Justice, Keeper of the Seals, or his representative, as Chair;

- a representative of the Minister of the Interior and Local Authorities;
- a representative of the Minister of Foreign Affairs;
- A representative of the Minister of National Defence;
- A representative of the Minister of Finance;
- A representative of the Minister of Trade;
- A representative of the Minister of Religious Affairs and Endowments;
- A representative of the Minister responsible for Health;

*****Membership of the Steering and Monitoring Council**

Members are appointed by decree of the Minister of Justice for a term of five years, renewable once, on the recommendation of the authority to which they belong; they are selected on the basis of their competence from among staff holding at least the rank of central director, and their terms of office are terminated in the same manner.

****Director-General of the National Anti-Smuggling Office**

The Director-General of the Office is appointed by presidential decree and is responsible for managing the Office; in this capacity, he is specifically entrusted with the following:

- representing the Office before national and international authorities and institutions;
- preparing estimates of revenue and expenditure;
- Exercising disciplinary authority over the Office' s staff;
- Representing the Office before the courts and in all matters of civil life;
- Carrying out the administrative management related to the Office' s objectives.

B. Local Anti-Smuggling Committees:

***Establishment of the Local Anti-Smuggling Committee:**

Where necessary, local anti-smuggling committees shall be established at the provincial level, operating under the authority of the governor , However, following the amendment of the latter by Decree 06-09, the establishment of a local anti-smuggling committee at the level of each province became mandatory, a provision which was adopted by Law 20/16, comprising the Finance Act for the year 2021, in its Article 115.

Functions and Composition of the Local Anti-Smuggling Committee

Functions of the Local Anti-Smuggling Committee :

In accordance with Article 3 of Executive Decree No. 06-287, which defines the composition of the Local Anti-Smuggling Committee and its functions, the Committee is tasked, in this context, with the following in particular:

- Determining the destination of seized or confiscated goods;
- Collecting information relating to anti-smuggling activities and forwarding it to the Office;
- Developing communication networks between the various departments responsible for combating smuggling;
- Monitoring anti-smuggling activities at the provincial level;
- Informing all stakeholders involved in the prevention and combating of smuggling of the measures taken.

As for the power to determine the destination of seized or confiscated goods, which this committee previously held, it has been abolished following the deletion of the paragraph that enshrined this power, pursuant to Article 115 of Law 20/16, which forms part of the 2021 Finance Act, thereby resolving the contradiction that previously existed between the provisions of this article and those that had authorised local committees to dispose of goods; consequently, these committees no longer have any role or jurisdiction in the disposal of goods .

It is worth noting that Article 17 of Decree 05/06 dated 23 August 2005, which prohibited the sale of goods seized in the context of combating smuggling, was amended by Article 72 of Law 06/24 of 26 December 2006, which incorporates the Finance Act for the year 2007, and it has become possible to dispose of goods and means of transport seized or confiscated in the context of combating smuggling in accordance with the provisions of the Customs Code.

For its part, Article 116 of the 2021 Finance Act sets out new procedures regarding the disposal of vehicles adapted for smuggling, such as permitting the sale of vehicles adapted for smuggling that have been seized in the course of anti-smuggling operations to public administrations and institutions, following their inspection by the relevant authorities .

****Composition of the Local Anti-Smuggling Committee**

In accordance with Article 4 of Executive Decree No. 06-287 of 26 August 2006, which defines the composition and functions of the Local Anti-Smuggling Committee, the Local Anti-Smuggling Committee, chaired by the Wali or, where appropriate, the Secretary-General of the province, shall be composed of:

- the Provincial Director of Social Affairs;

- the Commander of the National Gendarmerie Group;
- the Provincial Chief of Police;
- the Provincial Director of Taxation;
- the Provincial Director of Trade;
- the provincial-level representative of Customs.

***Authorities responsible (authorised) for combating smuggling**

These consist of: Judicial police officers or at least two sworn officers from among their staff as provided for in the Code of Criminal Procedure, or two sworn officers from among customs officers, tax officials, officers of the National Coastguard Service, or officers responsible for economic investigations, competition, prices, quality and the suppression of fraud...

Secondly: Human and material resources

Given the serious threat that smuggling poses to the national economy, appropriate resources must be allocated to tackle this phenomenon effectively, commensurate with its scale. In this regard, the tremendous efforts made by the Customs Department to curb this phenomenon must be commended .

In terms of human resources, the Customs Administration has increased the number of staff working in this field, whilst ensuring they receive thorough and regular training and improving the quality of supervision .

As for resources, the Customs Administration has sought to modernise all logistical resources that facilitate the process of curbing various customs offences, such as modern means of communication and helicopters .

Thirdly : Measures related to prevention, awareness-raising, sensitisation and motivation :

In addition to the measures mentioned above, the Anti-Smuggling Act provides for other measures, the most important of which are :

1-Preventive measures

These consist mainly of

- Informing, educating and raising consumer awareness of the risks of smuggling ;
- Establishing a system for verifying the specifications and origin of goods .
- Monitoring the flow of goods susceptible to smuggling.

- Strengthening security arrangements along the border, particularly in areas remote from checkpoints;
- Promoting the use of electronic payment methods.
- Ensuring widespread dissemination of laws relating to the protection of private property;
- Enhancing international cooperation in the fight against smuggling at both the judicial and operational levels.

2-Civil society participation :

Civil society can contribute to the fight against terrorism by reporting acts of smuggling, distribution networks and the sale of smuggled goods to the public authorities, as well as by helping to disseminate educational and awareness-raising programmes on the dangers of smuggling to the economy and public health.

3-Incentives:

In order to reduce customs offences, the customs legislator has introduced two types of incentives:

A – Incentives relating to legal proceedings and penalties :

provides for exemption from prosecution for anyone who informs or reports to the public authorities on smuggling offences before they are committed or attempted .

Article 28 of the same Decree also provides for a reduction of the sentence by half or to ten years if the prescribed penalty is life imprisonment for the perpetrator of smuggling offences or for those who participated in their commission, provided they assist the authorities, after the initiation of public proceedings, in the arrest of one or more persons involved in the smuggling offence or those benefiting from the fraud, as provided for respectively by the Tax Code and the Customs Act.

B – Financial incentives :

Financial or other incentives may be offered to persons who provide the competent authorities with information leading to the arrest of smugglers (Article 5 of the Decree on Combating Smuggling).

IV. Stricter penalties, punishment for attempted offences, settlement (prohibition of settlement) and the Customs Administration’ s pursuit of tax proceedings

1- Regarding stricter penalties:

A simple comparison between the penalties set out in Order 05-06 on combating smuggling and those in force prior to its issuance clearly shows that the Order has

tightened the penalties imposed on perpetrators of smuggling offences and has even introduced penalties that were previously unheard of in this field.

To illustrate this, we will examine some examples in the table below

The provisions of the order regarding the fight against smuggling			Prior to the issuance of the order or as provided for in the Customs Law		
The penalty	Legal	Article	The penalty	Legal	Article
Classification			Classification		
Imprisonment from one (1) year to five years and a fine equal to (5) times the value of the confiscated goods.	Smuggling of goods	10	Confiscation of the counterfeit goods and a fine of ten thousand (10,000) Algerian dinars.	Fifth-degree offense: Smuggling activities related to goods that are not prohibited and are not subject to high duties.	323
Imprisonment from one (1) to five years and a fine equal to five (5) times the value of the confiscated goods.	Smuggling of goods	10	Confiscation of goods used to conceal fraud + a fine equal to twice (2) the value of the confiscated goods + imprisonment from six (6) to twelve (12) months	Second-degree offense: Smuggling acts related to prohibited goods or goods not subject to high duties	326
Imprisonment from two (2) to ten (10) years and a fine equal to ten (10) times the value of the confiscated goods	Smuggling acts committed by three or more persons	10	Confiscation of the goods involved in the fraud and the goods used to conceal the fraud, a fine equal to three (3) times the value of the confiscated	Third-degree offense: Smuggling acts relating to prohibited or high-duty goods committed by a group of three or more persons, whether or not	327

			goods, and they all carried imprisonment the goods from twelve involved in the (12) to fraud.	
			twenty-four (24) months	
		12	confiscation of the goods involved in the fraud and the means of transport + a financial fine equal to four (4) times the combined value of the confiscated goods and the means of transport + imprisonment from four and two months (24) months to two years (60) months	328
Imprisonment from ten (10) years to twenty years and a fine equal to ten (10) times the combined value of the confiscated goods and the means of transport.	Smuggling acts committed using any means less than		Fourth-degree misdemeanor: Smuggling acts relating to prohibited goods or goods subject to high duties committed using a firearm, animal, aircraft, vehicle, or ship with a net tonnage of less than one hundred (100) tons or five hundred (500) tons gross.	
		12	Confiscation of the goods involved in the fraud and the means of transport + a fine equal to four (4) times the combined value of the confiscated goods and the means of transport + imprisonment from twenty-four (24) months to two years (60) months.	328
Imprisonment from ten (10) years to twenty years and a fine equal to ten (10) times the value of the confiscated goods	Smuggling acts committed using a firearm		Fourth-degree misdemeanor: Smuggling acts relating to prohibited or highly duty-bearing goods committed using a firearm, animal, aircraft, vehicle, or vessel with a net tonnage exceeding one hundred (100) tons or five	

hundred (500)
tons gross.

Furthermore, Articles 14 and 15 of the Decree provide for a life sentence in cases of arms smuggling or where the smuggling activities are of such a serious nature as to threaten national security, the national economy or public health.

It should be noted that Article 29 of Decree 05-06 provides for the doubling of penalties (provisional detention, imprisonment and fines) in the event of a repeat offence.

Note: The Penal Code addresses ‘repeat offences’ in Articles 54 to 59 .

2- Regarding punishment for attempted offences

In accordance with Article 30 of the Penal Code, all attempts to commit a felony, commencing with the initiation of execution or with unambiguous acts leading directly to its commission, shall be deemed equivalent to the felony itself if they are not halted or their effects are not nullified solely as a result of circumstances beyond the perpetrator’s control, even if the intended objective cannot be achieved due to material circumstances unknown to the perpetrator.

Furthermore, Article 31 of the same Code stipulates that an attempt to commit a misdemeanour is punishable only if expressly provided for by law.

As regards the Decree on Combating Smuggling, an attempt to commit the misdemeanours specified therein is punishable by the same penalty as that prescribed for the completed offence .

3- Regarding settlement

Article 265 of the Customs Act permits the settlement of cases involving persons prosecuted for customs offences, naturally at their request, subject to certain conditions and in accordance with a specific list of customs officials authorised to conduct such settlements.

There is not enough space here to address the substantive and procedural conditions for customs settlement; however, it must be emphasised that Article 21 of the Decree on Combating Smuggling initially excluded smuggling offences from settlement procedures. However, the Finance Act of 2020, in Articles 86 and 87, amended the aforementioned Article 21 and permitted settlement in certain smuggling offences, excluding only those relating to the smuggling of subsidised goods, weapons, ammunition and prohibited goods as defined in the first paragraph of Article 21 of the Customs Code.

4 -Regarding the Customs Administration’s pursuit of tax proceedings

The detection of offences entails referring the perpetrators to the courts for trial ; thus, judicial prosecution is the natural course of action for any customs offence .

The detection of customs offences generally gives rise to two types of proceedings: a customs prosecution initiated and conducted by the Customs Administration; the Public Prosecutor' s Office may also conduct the customs prosecution in conjunction with the public prosecution; and a public prosecution initiated and conducted by the Public Prosecutor' s Office .

The judicial authority with jurisdiction over criminal matters has jurisdiction over customs offences (Article 272 of the Customs Law), and the court within whose jurisdiction lies the customs office closest to the place of the offence also has jurisdiction (Article 274 of the Customs Law).

5 - Imposition of additional penalties and exclusion of mitigating circumstances

Where a conviction is handed down, the perpetrator of a smuggling offence shall be subject to one or more of the following additional penalties:

- ban on residence;
- Restriction of residence;
- Prohibition from practising a profession or activity;
- Permanent or temporary closure of the establishment;
- Exclusion from public contracts;
- Withdrawal, suspension or revocation of a driving licence, with a prohibition on obtaining a new licence;
- Withdrawal of the passport.

If, however, a conviction is handed down against a person who is not an Algerian national for committing the offence of smuggling, the competent judicial authority must issue a ruling prohibiting their residence in Algerian territory, either permanently or for a period of not less than ten years; the prohibition on residence in Algerian territory entails, as provided for in the same article, the expulsion of the convicted person be deported from the country after serving their custodial sentence.

Furthermore, Article 22 of the same decree excludes any person convicted of a smuggling offence from benefiting from mitigating circumstances under Article 53 of the Penal Code if:

- violence or weapons were used in the commission of the offence;
- they were an instigator of the offence;

-they held a public office or practised a profession related to the criminal activity and committed the offence whilst performing their duties or in connection with them.

Fifth: Recourse to special investigative methods and special procedural rules :
These consist of:

- The use of special investigative methods in accordance with the Code of Criminal Procedure for the investigation of smuggling offences (Article 33 of Decree 05-06).
- The application of the rules in force in the field of organised crime .

VI. International cooperation:

The decree on combating smuggling addresses the issue of international cooperation (taking into account ratified international conventions and the principle of reciprocity), and enshrines it at several levels :

A- Operational cooperation: The practical procedures for implementing this cooperation have been established, and reference is made to regulations to define these procedures where necessary. Referring to Article 36 of the Anti-Corruption Act, we find that it stipulates that requests for assistance in the field of combating smuggling issued by foreign authorities shall be addressed in writing or electronically to the competent authorities and shall be accompanied with all necessary information. If the request is sent electronically, it may be confirmed by any means leaving a written record; in cases of extreme urgency, the request may be made orally, provided it is confirmed in writing or electronically as soon as possible.

B - Level of judicial cooperation: Article 35 of the Order on Combating Smuggling provides for the establishment of judicial cooperation relations on the widest possible scale with other states, with the aim of preventing, investigating and combating smuggling offences, as well as ensuring the security of the international logistics network.

Note: Article 2(f) of the Order defines the logistics network as “the set of operations relating to the movement of goods across borders from their point of origin to their final destination .”

C - Level of spontaneous cooperation: The competent authorities may provide assistance to a foreign state spontaneously and without delay in cases of smuggling that may seriously threaten the economy, public health, public security, the security of the international logistics network, or any vital interest of a foreign state.

D - Controlled delivery: The competent anti-smuggling authorities may, with their knowledge and under their supervision, authorise the movement of illicit or suspicious goods out of, through or into Algerian territory for the purpose of investigating and combating smuggling, subject to authorisation by the competent public prosecutor.

E - Level of information: The Order on Combating Smuggling has enabled the competent authorities to communicate to the States concerned, either spontaneously or at their request, information relating to planned, ongoing or completed activities which constitute reasonable grounds for believing that a smuggling offence has been or is likely to be committed within the territory of the State concerned.

It should be noted, finally, that Article 41 of the Order on the Limits of Assistance has permitted the competent authorities to refuse to provide the assistance requested under this Order or to provide it subject to certain conditions, if it appears that such assistance would affect national sovereignty, laws, obligations arising from international agreements, security, public order or other important national interests, or that it would harm legitimate commercial or professional interests.

IV - Conclusion:

It is widely acknowledged that smuggling is one of the most pernicious phenomena afflicting peoples and nations; in this respect, it is akin to a virus in the body. We have therefore examined this phenomenon in terms of both understanding it (diagnosis) and combating it, and we have observed that there is no standard definition of it; nor does it affect only the geographical territory of a single state; indeed, one of its characteristics is that it is carried out across borders, and smugglers usually organise themselves to carry out this illegal activity, using every means at their disposal to achieve their aims.

We are therefore justified in questioning the relationship between smuggling and organised crime, and indeed whether it can be considered, or at least in part, a form of organised crime.

In an attempt to answer this question, we shall limit ourselves to mentioning some of the distinctive characteristics of most, if not all, smuggling operations, which are in fact the same characteristics of organised crime as defined by the United Nations. These characteristics are:

- The pursuit of financial gain.
- The involvement of multiple participants (usually).
- Their awareness of what they are doing, using all means and methods to achieve their objectives.
- The illegality of the operation.

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