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Criminal Policy on Business Offences: When Legal Excuses Are Instrumentalised to Safeguard the Economy

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Abstract. This study seeks to highlight the modern orientation of criminal policy in the field of business offences, by analysing the phenomenon of instrumentalising legal excuses as an exceptional mechanism for addressing these complex crimes. The Algerian legislator, in line with many comparative legal systems, has established both substantive and procedural legal excuses, the latter often justified by economic considerations such as encouraging investment and protecting the business environment. Through this research, we sought to shed light on these excuses while analysing the extent to which they align with the requirements of legal certainty and balance economic protection with criminal justice, in light of practical legal models and comparative approaches.

1. INTRODUCTION

Modern societies are increasingly evaluated according to the degree of their economic progress and development, which has led many states to devise comprehensive economic policies aimed at safeguarding their economic security. Financial and commercial activities, together with productive forces, have thus become the principal drivers of all aspects of life.

With industrial and technological advances, economic life has expanded to such an extent that a single, unified body of law is no longer sufficient to regulate institutions, enterprises, and commercial companies—the core activities of business actors. As a result, the legal provisions governing business activities are dispersed across several pieces of legislation. Moreover, the flexibility that characterises the drafting of business law provisions—as opposed to the rigidity typical of criminal law—has prompted the Algerian legislator to depart from general principles of incrimination and punishment. This departure aims to limit criminality in business activities and to instil ethical standards in the sector, thereby enabling it to flourish and play a constructive role.

In other words, intervention in business through criminal law provisions is dictated by both economic and criminal policy, serving as a key instrument for stimulating investment, boosting the national economy, encouraging savings, and protecting consumers, partners, and stakeholders in the sector. The legislator's objective in enacting specific punitive provisions in the field of business is not necessarily to seek out offences and offenders, but rather to pursue a preventive purpose based on the awareness of each market participant of their duties and rights, thus fostering relationships among business actors, traders, and their counterparts that are coherent and transparent[1].

It should be noted that criminal policy in the business sphere is distinguished by certain features that may challenge established legal principles—for example, the requirement of the three constituent elements of crime, or the rule prohibiting the use of criminal sanctions to enforce civil contracts concluded freely between the parties. This necessitates a degree of caution in developing criminal policy in the business environment, so that the desire for protection and prevention does not undermine those very objectives or create legal uncertainty[2].

Accordingly, the central question of this paper is: to what extent can the instrumentalization of legal excuses within the criminal policy of business offences be regarded as a means of protecting the economy, without undermining the requirements of criminal justice and legal certainty?

To answer this question, we will adopt a composite methodology combining analytical, descriptive, and comparative approaches, structured as follows:

- Section One: The Substantive Specificities of Business Offences.
- Section Two: The Procedural Specificities of Business Offences.

2. THE SUBSTANTIVE SPECIFICITIES OF BUSINESS OFFENCES – ADAPTATION OF CONSTITUENT ELEMENTS AND EXPANSION OF LIABILITY

The distinctive nature of business offences has driven the adaptation and reconfiguration of general criminal law rules, placing them at the service of the state's economic policy in order to confront crises and economic fluctuations. Accordingly, modern criminal policy has imposed significant changes on business offences with respect to the constituent elements of crime (First) and the recognition of criminal liability (Second).

[1]Anbi, Radwan .(2020) .*The policy of criminalization and punishment in business criminal law .Al-Manara Journal of Legal and Administrative Studies* ,Special Issue, Morocco, p. 72.
[2]Muller, Yvonne .(2008) .*The decriminalization of business life or the metamorphosis of criminal law: What decriminalization for criminal law ? Actualité Juridique* ,No. 2, pp. 65–66.

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2.1. The Impact of the Legal Structure of Crime in the Business Sphere

Under general rules, the concept of crime is based on three constituent elements. However, in the field of business offences, it appears that these offences have evolved in parallel with the development of modern financial and commercial institutions, which are now symbolised by glass towers rather than tonnes of concrete and steel. This evolution has imbued them with flexibility and dynamism. By way of analogy, the same modernity has influenced the legal structure of crime in the business domain, where the constituent elements have become more flexible and progressively detached from the rigidity and stability of the foundational principles established in the general rules[3].

On this basis, business criminal law is characterised by a particular autonomy in relation to the constituent elements of crime and their legal nature. We will therefore examine the specificities of each element, beginning with the legal element (First), followed by the material element (Second), and finally the moral element (Third).

2.1.1. The Legality Element – From Rigid Text to Legislative Flexibility

It goes without saying that the prevailing view is that the law constitutes the direct source of criminalisation and punishment, in accordance with the principle that no crime and no penalty exist without a legal provision. However, in light of the economic developments and transformations that the world is currently witnessing, and with the steady rise of criminal activity, the foundational cornerstones of the legality principle within business criminal law have experienced decline and alteration in their characteristics, now leaning towards safeguarding the effectiveness of economic policy and serving its phenomena.

One of the most significant aspects affected within the legality element lies in the legislator's compulsion to relinquish certain prerogatives and legislative authority in favour of the executive power. In other words, the role of the legislator has retreated in the sphere of criminalisation in economic matters, after the traditional criminal law framework proved unable to keep pace with these evolutions. This has consequently redefined the function of the principle of legality, shifting it away from its original foundation, and bestowing upon it a modern role, namely the adaptation of criminal law standards to ensure the protection of economic policy as required — primarily through the technique of legislative delegation.

Moreover, the impact on the legality element within business offences has not been limited to this alone, but has extended to numerous other outcomes, including the legal characterisation of incriminated acts, the interpretation of provisions, and the scope of application in terms of both time and place.

A. The Principle of Legislative Delegation in Business Offences

In principle, the legislative authority alone holds the exclusive competence to define crimes and penalties, given that it represents society as a whole. Consequently, neither the executive nor the judiciary may directly exercise such powers, in line with the principle of the separation of powers. However, as with every rule, there exists an exception: the executive authority may, under specific conditions and procedures, be permitted to exercise such competence[4].

For instance, certain circumstances may arise in which the executive power finds it necessary to request from the legislative authority a legal delegation that is clearly defined in both scope and duration, in order to address emergency or exceptional circumstances. Should the legislature grant such delegation, the executive authority would then be authorised to legislate and issue orders bearing the same force as law.

It is to be observed that, in the field of business law, this exception has gradually evolved into a rule, becoming one of the central principles entrenched within modern criminal policy, notwithstanding its impact upon the constitutional doctrine of the separation of powers.

It should nevertheless be emphasised that legislative delegation[5] is not intended to criminalise acts that were not already subject to prior legislative prohibition. Rather, its purpose lies in defining the constitutive elements of an offence with precision, particularly in relation to the scope of criminalisation. The delegated provision remains the principal source, whereby the legislature merely establishes the general framework of incrimination, leaving to the executive authority the task of interpreting and elaborating detailed regulatory provisions. This has led, for example, to the administrative authority being vested with the competence to criminalise certain acts within the field of business[6].

Among the legal safeguards that must govern the exercise of legislative delegation in the domain of business offences are the following[7]:

- Form of Delegation :The delegation must be prepared with precision. Laws must be issued in the form of regulations, decrees, or orders by the executive authority, in accordance with the formalities stipulated in the delegation. For instance, a ministerial decision may be required to take a specific form, or to emanate from a designated committee composed of one or several ministries. In addition, the duration of validity and the conditions for its withdrawal must be clearly specified.
- Subject Matter of Delegation: The executive authority is not permitted to create or establish an offence that contravenes the scope of the delegation or exceeds its limits.
- Conformity of Penalties with the Delegation: The executive authority may not establish a penalty, disregard a penalty provided for in the delegation, exceed the maximum penalty, reduce it below the prescribed minimum, or suspend its enforcement where the delegation explicitly prohibits such suspension.

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[3] Wahhabi, Hind. (2021, March) .*The particularity of the legal element in business crimes .Istišrāf Journal of Legal Studies and Research* ,Double Issue 7–8, Morocco, p. 82.

[4] Bouzina, Mohamed Yacine & ,Al-'Ayashi, Afaf Lamia .(2022) .*The particularity of the legal element in business crimes .Journal of Law and Human Sciences* ,Vol. 15, No. 4, p. 603.

[5] Delegation :It is a procedure by which the exercise of a specific competence is entrusted to an authority other than the original competent authority. Among the applications of this delegation are those provided for in customs legislation, where Article 30 stipulates that the customs range shall be determined by a decision of the Minister of Finance. Similarly, Article 38 of Law No. 04-02, as amended and supplemented, concerning commercial practices, allows for the establishment of forms other than those provided for by the executive authority. Numerous examples of such delegation exist.

[6] Wahhabi, Hind .(2021) .*The particularity of the legal element in business crimes .Istišrāf Journal of Legal Studies and Research* ,Double Issue 7–8, p. 86.

[7] Ibid., p. 87.

In conclusion, it may be said that the principle of delegation in business offences entails certain negative or even serious repercussions, in that the executive authority might deviate or distort the elements of criminalisation, thereby undermining the prerogatives of the legislator and the principle of legality. Moreover, the dispersion and fragmentation of legal provisions governing the field of business, and the attempt to fill the gaps therein, has generated a form of legislative inflation that has proved challenging for all actors involved—contractors, companies, investors, and even the judiciary and judicial practice.

B. Flexibility of Criminal Provisions in the Field of Business

The principle of criminal legality requires the enactment of clear and precise provisions that facilitate the adjudication of offences and the determination of penalties and sanctions. However, business offences are characterised by rapidity and dynamism, which has compelled the legislator to employ flexible and broad terms in order to adequately address such offences. In other words, wide interpretative powers have been entrusted to judges in applying the provisions, within the boundaries intended by the legislator, both territorially and in order to align with socio-economic realities.

- Expansive Interpretation of Criminal Provisions in Business Law: Judicial interpretation of criminal provisions constitutes an analytical exercise aimed at uncovering both the implicit and explicit legislative intent by scrutinising the text and its purposes, within the permissible tools of legal hermeneutics in criminal law. The judicial function in this respect is regarded as declaratory of the content of the legal norm, rather than creative of it, which necessarily entails the prohibition of recourse to analogy in matters of criminalisation. This is because analogy results in an illegitimate extension of the scope of criminalisation to acts not expressly designated by the legislator as criminal. Since the legislator is the sole authority competent to establish or amend offences, any judicial intervention that leads to the creation of a non-existent offence amounts to an overreach by the judiciary and an encroachment upon the principle of separation of powers.

While this remains the general principle, in the field of business offences—particularly those affecting contracts—and for the same reasons, an expansionist approach to interpreting criminal provisions has been adopted. This trend, particularly evident in French jurisprudence concerning offences affecting corporate assets and trust, has led the judiciary to develop a distinctive policy in this field, whereby it has departed from the strict letter of the law in order to safeguard economic life from potential risks.[8]

One illustrative example can be found in Article 1 of Ordinance No. 96-22 of 6 July 1996, as amended and supplemented by Ordinance No. 10-03 of 26 August 2010, concerning the repression of breaches of foreign exchange regulations and the movement of capital to and from abroad. This provision effectively entrusted the criminal judge with the discretion to determine the means employed in committing currency exchange offences, given the constant evolution of the techniques used to perpetrate such crimes.[9]

- Territorial and Temporal Application of Business Offences: The territorial and temporal application of criminal provisions is subject to two fundamental principles: an offence may only be punished if committed at a time when the provision was in force, and within the national territory of the state. These principles are inherent to the legality of criminal law, which prohibits retroactive application of punitive provisions or their extraterritorial enforcement, save for exceptional cases expressly provided for by law.

Nonetheless, business offences present a particular legal peculiarity that necessitates a measure of flexibility in application, owing to their complex nature, multifaceted economic dimensions, and transboundary impact. This has led to the adoption of the principle of the objective application of criminal law[10], which permits the extension of national jurisdiction to acts committed abroad where they adversely affect the state's economic interests.

From a temporal perspective, the principle of applying the more lenient law (lex mitior) has posed challenges in this context, as it is often exploited by offenders to manipulate procedures by awaiting the enactment of less punitive or decriminalising provisions. Consequently, some modern legislations have sought to restrict the application of this principle in relation to business offences, while others have excluded it altogether in order to safeguard the public economic interest.

Nevertheless, the Algerian legislator continues to adhere to the absolute application of this principle, even in the economic sphere—a position that may undermine the effectiveness of penal policy. Hence, a legislative reconsideration of this stance appears necessary to strike a balance between safeguarding individual rights and ensuring the deterrent efficiency of criminal justice in the fight against economic offences.[11]

2.1.2. The Material Element (Criminalisation of Conduct Rather than Result)

The material element of an offence constitutes its visible aspect, whereby the criminal intent is transferred from the stage of abstract thought into the realm of actual execution, given that the law does not punish mere intention or ideas unless they assume a tangible external form. Its importance lies in serving as the mechanism through which the criminally liable perpetrator is identified, as well as forming the basis upon which the liability of accomplices in the offence is determined. This element comprises three principal components: the criminal conduct, whether positive action or omission; the criminal result, where required by law; and the causal link connecting the conduct to the result.

Although business offences, which form the subject of this study, do not in principle deviate from this tripartite structure, they are nevertheless distinguished by significant particularities. Chief among these is that, in many cases, the legislator has deemed the mere occurrence of conduct sufficient for criminalisation, without requiring the production of a harmful result. Such offences are therefore classified as formal offences, in which liability attaches to abstract risk rather than to actual harm.

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[8] Ben Fariha, Rachid .(2017–2016) .*The particularity of criminalization and punishment in business criminal law (Commercial company crimes as a model)* [Doctoral dissertation, Faculty of Law and Political Science, Abou Bekr Belkaid University, Tlemcen], p. 88.

[9] Article 1 of Order No. 96-22 dated 6 July 1996, as amended and supplemented by Order No. 10-03 dated 26 August 2010 ,concerns the repression of violations of the legislation and regulations governing foreign exchange and the movement of capital to and from abroad.

[10] Article 588 of the Algerian Code of Criminal Procedure: *"Any foreigner who, outside the Algerian territory, has committed, as a principal offender or accomplice, a felony or misdemeanor against the security of the Algerian state, or counterfeiting of currency or circulating banknotes recognized as legal tender in Algeria, may be prosecuted and tried under Algerian law if he is apprehended in Algeria or if the government obtains his extradition".*

[11] Bouzina, Mohamed Yacine & ,Al-'Ayashi, Afaf Lamia, op. cit. pp. 608–609.

A. Criminal Conduct

Criminal conduct represents the most significant component of the material element of an offence, as it constitutes the external manifestation of criminal intent in breaching a legal norm. It is the vehicle by which criminal intent is transferred from conceptualisation into reality. Such conduct may take the form of a positive act, or alternatively a negative omission to fulfil a legal duty imposed by statute.

In the realm of business offences, both forms of criminal conduct are recognised. However, negative conduct, in the form of omissions, predominates. This typically manifests as the failure of the perpetrator to perform legal duties incumbent upon them, whether substantive or procedural. This feature is attributable to the specificity of business criminal law, which falls within what is termed directive criminal law ,aiming to regulate and guide economic activity in alignment with the overarching orientations of state financial policy.

As a result, and in light of the preventive philosophy underpinning criminal policy in this field, business offences are generally regarded as offences of danger rather than offences of harm. This classification explains their characterisation as formal offences, where criminal liability arises from the mere commission of the proscribed conduct, irrespective of the occurrence of an injurious result, thereby reflecting their precautionary nature[12].

B. The Criminal Result

The consequence flowing from the criminal conduct is a central element in the legal construction of an offence, as legislators typically consider it in defining the substantive structure of the proscribed act. This consequence has two interrelated dimensions: a material one, represented by the concrete external change effected by the perpetrator through their conduct; and a legal one, expressed in the violation of a right or interest protected by law. This infringement constitutes the essence of unlawfulness, conferring upon the act its criminal character and producing its legal effects[13].

Given that business offences are generally classified as offences of danger—where the legislator attaches significance to conduct involving potential risk without requiring actual harm—the scope of criminalisation extends even to attempts or preparatory acts. This orientation reflects a preventive criminal policy, intended to provide early intervention against proscribed conduct before it escalates to full-scale harmful consequences. In this way, legislators impose penalties at the preliminary stages of conduct, treating such behaviour as a serious indicator of imminent threat to protected interests.

C. The Causal Link

The causal link constitutes the element that connects the criminal conduct to the result, and it is deemed a fundamental component for attributing criminal liability, since the result cannot be taken into account unless it is legally and factually attributable to the act committed. Establishing this link in practice is considered one of the most complex tasks, due to its technical nature and the potential interplay of multiple contributing factors leading to the result.

Within the scope of business criminal law, the issue of causation does not present any distinct peculiarity, whether in result-oriented offences—where a causal connection between the conduct and the harmful outcome is required—or in pure conduct offences and offences of endangerment, where the mere commission of the act suffices without requiring a specific result.

Nevertheless, the difficulty becomes evident in offences of negligence involving actual risk, where establishing causation is complicated by its association with conduct characterised by omission or failure, which creates a realistic probability of danger without actual harm being realised. This makes the assessment of causation a subject of constant legal and judicial debate, a matter ultimately left to the discretion of the judge, who forms his conviction on the basis of objective criteria and within the bounds of his judicial authority[14].

2.1.3. The Mental Element in Business Crimes (A Legislative and Judicial Presumption):

The mental element is defined as the psychological relationship linking the criminal conduct, its outcomes, and the offender from whom such conduct emanates. This element takes two primary forms: intentional fault, based on criminal intent, and unintentional fault (negligent offence).

The general rule in criminal law stipulates that no crime can exist in the absence of the mental element; it is not sufficient for a crime to arise merely from the material element, that is, the act or omission contrary to the law, nor from the legal element, that is, the express criminalisation of the act by statute. Rather, the conduct subject to criminalisation must stem from a conscious and deliberate will, reflecting a specific psychological orientation on the part of the offender, expressed through intent, knowledge, or even negligence. This constitutes the mental element without which criminal liability cannot be properly established[15].

The distinctive feature of business-related offences lies in the diminished significance of the mental element. The legal characterisation of the offence is deemed fulfilled upon the mere commission of the material act, which is presumed to embody a wrongful criminal intent, even if such intent is not explicitly manifested. In this way, criminal legislation has shifted towards penalising intentions, even when they are bona fide, and has extended criminal liability to encompass mere forgetfulness—an explicit departure from the general principles that require the mental element as a necessary component of the legal structure of the offence.

Thus, once the law is infringed and both the legal and material elements are satisfied, the offence is deemed to exist without the need to establish the direction of the will towards the act. This reflects a form of strict liability, grounded solely in the material conduct, as though the legislator entirely excludes the psychological component[16].

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[12] Rabah, Ghassan .(2004) .*Economic criminal law (A comparative study on business crimes, commercial companies, and all traders' crimes)* (2nd ed.). Al-Halabi Legal Publications, Beirut, p. 40.

[13] Ibid., pp. 39–40.

[14] Ben Fariha, Rachid, op. cit., p. 124.

[15] Vero, Michel .(2007) .*Droit pénal des affaires* (7th ed.). Dalloz, Paris, p. 16..

[16] The legislator has established this approach in economic crimes, particularly in customs offenses, where the act of participating in smuggling or importing or exporting without authorization (Article 310 of the Customs Code) and the misuse of company funds for unlawful purposes (Articles 800 and 811 of the Algerian Commercial Code) are prominent examples. These offenses rely on liability based on the physical element (actus reus) without the need to prove intent (mens rea).

This approach is explained by the nature of business crimes, which, being artificially created offences, do not directly offend public morals but are purely material in character. They are established to safeguard the economic order and its environment, without requiring fault in the traditional sense. The presumption of the mental element in business offences is reflected through two principal forms[17]:

A. Legislative Presumption

Here, the burden of proving the mental element is shifted from the prosecuting authority to the accused, through legal presumptions that assume the existence of criminal intent, thereby obliging the defendant to rebut it. This approach is justified by the practical difficulties of proof, given that perpetrators of business crimes often deliberately conceal incriminating evidence, exploiting advanced technological means. Moreover, criminal intent remains an inherently internal element, which is difficult to ascertain directly.

B. Judicial Presumption

Although the general rule precludes judicial presumptions in the absence of statutory provision, the judge may nevertheless infer this element from tangible material indicators. This occurs in response to the need for flexible interpretation of criminal provisions and in order to address modern economic crimes. In doing so, the judiciary resorts to the technique of presuming criminal intent as a means of overcoming the inherent evidentiary difficulties.

2.2. Criminal Liability in Business Crimes (The Expansion of Accountability):

Criminal liability is founded upon attributing legal consequences to an individual as a result of committing or omitting an act, provided that such conduct is criminalised under statutory law. With the rapid developments in the business sphere, criminal liability in business-related matters has acquired distinct features that necessitated adapting the general principles to the flexible nature of this field. This evolution has produced a quasi-autonomous regime, embodied in exceptional provisions, most notably the recognition of corporate criminal liability and the accountability of one party for the acts of another. These aspects may be summarised as follows:

2.2.1. Recognition of Corporate Criminal Liability

The Algerian legislator explicitly endorsed the principle of corporate criminal liability under Law No. 04-15 of 10 November 2004, amending the Penal Code,[18] notwithstanding the doctrinal and judicial debates it provoked. The rationale for this shift lies in the practical reality where the legal personality is frequently exploited as a shield for committing crimes and evading punishment.

Nevertheless, the legislator has circumscribed such liability with specific conditions: the legal person must be subject to private law; the offence must be committed in its name, on its behalf, or for its benefit; and there must exist an express statutory provision establishing its accountability.[19] Importantly, this liability does not exclude the concurrent liability of the natural person representing the entity, since criminal conduct is inconceivable without his or her actual intervention.

2.2.2. The Criminal Liability of the Natural Person for the Acts of Others

The general principle in criminal law is that of the personal nature of criminal liability **,**which dictates that punishment may only be imposed upon the individual who has actually committed the offence; it does not extend to others, and it ceases altogether upon the death of the accused. This principle is firmly entrenched in both domestic and international legal systems.

However, the business domain—with its inherently complex economic nature—has necessitated a departure from this principle, in order to secure effective prosecution within an environment where criminal acts are not always carried out in a direct or personal manner.

On this basis, liability for the acts of others has been recognised with respect to individuals who may not have materially participated in the commission of the offence but are nonetheless considered involved, either by virtue of the material means they have provided, or due to the nature of their activities, which reflect negligence or deviation[20].

The legislator has endorsed this extension of liability by requiring two fundamental elements: first, the existence of a legal relationship of subordination between the direct perpetrator (the subordinate) and the presumed responsible party (the superior); and second, that the offence be committed in the course of, or in connection with, the performance of the function[21]**.**

3. THE PROCEDURAL SPECIFICITY OF BUSINESS CRIMES: A DISTINCT PATH IN PROSECUTION AND SANCTIONING

Business crimes impose a procedural framework distinct from that of traditional criminal justice. Classical mechanisms are insufficient in this context; instead, they necessitate a specialised procedural system where technical expertise intersects with judicial oversight, due to the complex structure of such offences, which combine the financial acumen of offenders with sophisticated techniques to conceal criminal traces. Sanctions in this domain are functionally oriented, focusing more on the recovery of assets than on conventional punitive deterrence.

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[17] Ziyoukai, Abdaty .(2020) .*The particularity of the moral element in business crimes .Journal of Legal and Judicial Affairs* ,Morocco, No. 8, p. 103.

[18] Article 5, as supplemented by Article 51 bis of Law No. 04-15 dated 10 November 2004 ,amends and completes Order No. 66/156 dated 8 July 1966 ,which contains the Penal Code.

[19] The legislator has provided for numerous specific provisions under which a legal entity may be held criminally liable, including the offense of money laundering (Article 398 bis), corruption offenses (Law 06-01) ,and Law 09/03 concerning consumer protection.

[20] Touti, Zakaria .(2019) .*Criminal liability of business: A special type of liability that meets the requirements of the field of business and enterprises . Al-Mutawassit Journal of Legal and Judicial Studies* ,Criminal Studies Series, No. 1, p. 124.

[21] Limam, Cherif & ,Djilali, Djilali Ben Tayeb .(2024) .*Attribution of criminal liability to the legal person in investment crimes: A study in Algerian legislation .Al-Ijtihad Journal of Legal and Economic Studies* ,Vol. 13, No. 1, p. 150.

3.1. The Distinct Path of Prosecuting Business Crimes

The prosecution of business crimes is marked by procedural distinctiveness, requiring the initiation of public action on the basis of both technical and legal data, while the burden of collecting evidence is exceptionally shifted onto the defendant. Cases are referred to judicial and prosecutorial bodies vested with technical competence in order to ensure efficiency. This framework seeks to achieve a delicate balance between combating crime and safeguarding the economic order.

3.1.1. Public Prosecution in Business Crimes

The Public Prosecutor's Office constitutes the primary body responsible for initiating public proceedings, in its capacity as the guardian of public order and the authority tasked with enforcing the law against criminal conduct. However, this role acquires a distinctive character in the realm of business crimes, where the initiation of proceedings and the grounds for their extinction are subject to particular considerations linked to economic expediency.

A. The Issue of Initiating Public Proceedings – Expanding the Powers of the Administration

The initiation of public proceedings is traditionally one of the core prerogatives of the Public Prosecutor's Office, which has consistently exercised this function across all offences as the representative of public authority and guardian of public order. Yet, in the domain of business crimes, this role has witnessed a relative retreat, as the Prosecutor no longer enjoys an exclusive monopoly over the initiation of proceedings. Instead, administrative and regulatory bodies have been empowered by the legislator to share this competence[22], thereby raising questions as to the extent of the Prosecutor's authority: may it still act independently in initiating proceedings, or has its intervention become restricted by statutory provisions? Does the expansion of initiation powers amount to a vertical erosion of its competence, or rather a horizontal redistribution of this function within a framework of institutional coordination?

To address the issue of whether the Public Prosecutor retains exclusivity in initiating proceedings in business crimes, one may refer to examples drawn from Algerian legislation that illustrate the overlap between judicial and administrative competences.

Article 259 of the Customs Code stipulates[23] that the Public Prosecutor exercises public proceedings for the imposition of criminal penalties, whereas the Customs Administration exercises fiscal proceedings for the enforcement of tax-related sanctions. The Public Prosecutor may also exercise fiscal proceedings as an adjunct to public proceedings. Moreover, the legislator has recognised the Customs Administration as an automatic party to all cases initiated by the Prosecutor on its behalf. This distribution reveals that the legislator did not abolish the Prosecutor's competence in initiating public proceedings but granted the Customs Administration parallel powers in relation to financial and fiscal aspects.

Similarly, the Law on the Prevention and Combating of Corruption (Law No. 06-01, as amended) [24]has entrenched this approach. Article 22 bis provides that the National Body for the Prevention of Corruption shall notify the competent judicial authorities of all information concerning acts of corruption. This confers upon it—as an administrative authority—the competence of formal notification, which constitutes an indirect form of initiating public proceedings, in departure from the principle of automatic initiation by the Prosecutor.

In conclusion, the Algerian legislator has not withdrawn from the Public Prosecutor's Office its original jurisdiction, but rather redistributed the function of initiating public action in such a way as to allow certain administrative bodies, in special cases, to play the role of initiator or advanced technical notifier. This reflects a shift from a vertical monopoly to a horizontal sharing of jurisdiction, taking into account the technical nature of business crimes and responding to the requirements of effectiveness in prosecution.

B. Constraints on Initiating Public Action and its Extinguishment

Business crimes are classified among the offenses in which the legislator has restricted the Public Prosecutor's authority to initiate public action, in connection with the protection of economic balances and the implementation of the state's public policy. In this context, the administration has been assigned a central role, as proceedings may not be instituted without its request or complaint in many cases. These constraints, in part, constitute a substantive privilege in favor of the perpetrators of this category of crimes, insofar as they grant them special avenues for resolving criminal liability—such as settlement or even prescription—outside the traditional course.

- Restrictions on Public Prosecution in Business Crimes:
- Request: The requirement of submitting a request by a competent administrative authority for the Public Prosecution to initiate criminal proceedings constitutes an exceptional measure in Algerian law, unlike what prevails in certain comparative legislations, such as French law. The Public Prosecution has been constrained by this condition in some technically oriented offences, such as customs, tax, and foreign exchange violations. This restriction reflects a legislative policy aimed at protecting economic considerations and regulating the intervention of criminal justice in these areas.[25]
- Complaint: A complaint is not merely an informative mechanism; in certain offences, it constitutes a legal prerequisite for initiating public prosecution. It is only valid if lodged by the authority legally empowered to do so and in accordance with the formal and substantive conditions prescribed by law, failing which it shall be null and void. The Algerian legislator has adopted this approach in management-related offences committed within public economic institutions in which the State owns all or part of the capital, by conditioning the initiation of public prosecution on the filing of an explicit complaint

[22] Among these administrative authorities are the Competition Council (Article 60 of Law 03-03, as amended and supplemented), the Financial Intelligence Unit (Article 18 of Law 95-07 on the prevention and combating of money laundering and the financing of terrorism, as amended and supplemented), and the National Authority for the Fight against Corruption (Article 30 of Law 06-01, as amended and supplemented), among others.

[23] Algeria. (1979, July 21). Law No. 79-07 of July 21, 1979, as amended and supplemented by Law No. 17-04 of February 16, 2017, containing the Customs Code .*Official Gazette of the People's Democratic Republic of Algeria* ,No. 11.

[24] Algeria. (2006, February 20). Law No. 06-01 of February 20, 2006, as amended and supplemented, on the prevention and fight against corruption .*Official Gazette of the People's Democratic Republic of Algeria*.

[25] Hussein, Ahmed. (n.d.) .*Introduction to the study of business criminal law in light of Algerian legislation* .Dar Al-Wafaa for Printing and Publishing &Al-Wafaa Legal Library, Alexandria, p. 116.

by the institution's governing bodies[26]. The Public Prosecution cannot override this requirement, even when the acts concern public funds, such as embezzlement, intentional damage, or negligence leading to financial loss. This approach enshrines a dual protection: for the economic entity against abusive prosecutions, and for managers against arbitrary penal control, thereby ensuring a balance between judicial oversight and the necessities of management.

- Conditions for the Extinction of Public Prosecution in Business Crimes: Public prosecution may lapse for various reasons, such as the death of the accused, the granting of a general amnesty, the repeal of the criminal sanction by law, and others that do not present particular features in relation to business crimes. However, what is distinctive in this field is the following:
- Settlement (Conciliation): Settlement constitutes an exceptional legal mechanism leading to the extinction and dismissal of public prosecution. The legislator has conferred upon it a privileged character from which the offender benefits in certain crimes, particularly in the economic and financial domains. Article 6 of the Algerian Code of Criminal Procedure explicitly includes conciliation among the legal grounds for the extinction of public prosecution. This mechanism has been established in technically oriented offences such as foreign exchange violations and customs offences, where settlement is only valid if certain substantive conditions are met. Chief among these are: that the offence belongs to the category subject to settlement, that the request is submitted by the legally competent authority, and that the minimum financial counterpart determined by the special statute is paid. In this way, settlement strikes a balance between procedural efficiency and economic interest, without undermining the principle of criminal legality.
- Prescription (Statute of Limitations): The Algerian legislator has distinguished itself in addressing the temporal effects on business crimes by instituting a special regime of prescription that takes into account the seriousness of these offences and the complexity of their detection. Article 8 bis of the Code of Criminal Procedure explicitly provides that public prosecution is not subject to prescription in felonies and misdemeanours connected with terrorist or subversive acts, transnational crimes, bribery, and embezzlement of public funds. This means that initiating prosecution against perpetrators of such acts remains open indefinitely, including in financial misdemeanours such as bribery, which are treated as felonies in terms of the exclusion of prescription.

This approach has been reinforced by Law No. 06-01 on the Prevention and Fight against Corruption, whose Article 54 stipulates that corruption-related offences are not subject to prescription, whether in terms of prosecution or the execution of punishment. As for the prescription of penalties, if the sentence is less than five years, it lapses after five years from the date of the final judgment. If the sentence exceeds this threshold, the period of prescription for its execution is equal to the length of the imposed sentence. This reflects a clear legislative intent to strengthen penal effectiveness and to ensure that there is no impunity in the field of economic and financial crimes.[27]

3.1.2. Jurisdiction Rules and the Specificity of Evidence in Business Crimes

Business crimes are characterized by special rules of jurisdiction and evidentiary standards, taking into account the technical and economic nature of these offences. This requires specialized jurisdiction entrusted to specific authorities, as well as reliance on non-traditional means of proof.

A. Rules of Jurisdiction

Within the framework of establishing an effective criminal policy to combat economic crime, including business crimes, the Algerian legislator has adopted a legislative approach centered on reorganizing the legal and institutional framework governing these offences. This was achieved along two main lines:

- Territorial and Subject-Matter Jurisdiction: In light of the escalation of economic crime and the complexity of its patterns, the Algerian legislator sought to adapt the legal and institutional framework to address it effectively. This was done through the amendment of the Code of Criminal Procedure in 2004,[28] which introduced the principle of extending territorial jurisdiction in favor of selected judicial bodies, so as to keep pace with the multi-jurisdictional nature of such crimes. In addition, specialized criminal poles were created, vested with subject-matter jurisdiction to adjudicate crimes of a complex economic nature, such as money laundering, cybercrime, terrorism, transnational organized crime, foreign exchange offences, and drug trafficking.

To reinforce this specialization, Ordinance No. 20-04 of August 30, 2020, amending the Code of Criminal Procedure,[29] established the National Economic and Financial Criminal Pole as a permanent central institution. This body is vested with comprehensive national jurisdiction, entrusted with investigation and prosecution in the most serious economic and financial crimes that go beyond the local level and require advanced technical expertise.[30] From this organization, it can be understood that the legislator did not abandon the principle of extended jurisdiction but rather consolidated it within a single centralized authority endowed with judicial competence over the entire national territory.

Articles 211 bis 2 and 211 bis 3 of the Algerian Code of Criminal Procedure specify the categories of crimes falling under the jurisdiction of this pole, including:

* All forms of corruption;

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[26] Al-Ayyeb, Nasreddine .(2023) .*Procedural particularity in business criminal law in Algerian legislation .Tabnah Journal of Academic Scientific Studies* ,Vol. 6, No. 2, p. 1211.

[27] Al-Ayyeb, Nasreddine, op. cit., p. 1214.

[28] Algeria. (2004, November 10). Law No. 04-14 of November 10, 2004, amending and supplementing Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure .*Official Gazette of the People's Democratic Republic of Algeria*.

[29] Algeria. (2020, August 30). Law No. 20-04 of August 30, 2020, amending and supplementing Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure .*Official Gazette of the People's Democratic Republic of Algeria*.

[30] The legislator has designated these as the most complex crimes when at least one of the following factors is present:

- The involvement of multiple perpetrators, accomplices, or victims.
- Their occurrence over a wide geographical area.
- The seriousness of the resulting harm.
- Their organized nature or transnational character.
- Their commission through the use of information and communication technologies.

* Crimes of embezzlement or loss of public or private funds by public officials, whenever such acts are financial in nature and affect the interests of the State, local authorities, or public institutions;
* Money laundering and the financing of terrorism;
* Customs and tax offences;
* Foreign exchange and capital movement offences;
* Banking crimes, such as fraudulent bankruptcy, accounting forgery, and false declarations;
* Crimes related to public procurement and public financing;
* Forgery of commercial or accounting documents.

This shift represents a qualitative leap in Algerian criminal policy, laying the foundation for a specialized economic judiciary capable of addressing the technical and organizational challenges of contemporary economic crime within a framework of efficiency and judicial specialization.

- Institutional Jurisdiction: Certain administrative bodies[31] play a pivotal role in addressing business crimes, particularly during the preliminary phase through investigation, inspection, and the drafting of official reports, or by filing complaints to initiate public prosecution. These bodies also contribute, under special legislation, to the imposition of administrative and financial sanctions that may reach a severity comparable to criminal penalties, reflecting the dual and distinctive nature of this category of offences. This specificity stands as one of the most notable features of the sanctioning system for business crimes in modern legislation. Examples include:
- The Court of Auditors (Conseil de la Cour des Comptes): In Algeria, the Court of Auditors is an independent supreme authority tasked with overseeing public property and funds, conducting ex post control over the finances of the State, local authorities, public services, and state-owned commercial enterprises[32].
- Although it is not a judicial criminal body, it holds decision-making powers enabling it to impose financial and disciplinary sanctions on officials found guilty of mismanagement of public resources, pursuant to Ordinance No. 95-20, as amended and supplemented.[33] These sanctions range from warnings, financial fines, and orders to reimburse misappropriated or wasted sums, to the referral of cases to the judiciary in instances where criminal offences are suspected—highlighting its role as an effective oversight mechanism in safeguarding public funds and combating certain forms of business crime.
- The Securities and Exchange Commission (COSOB): The Securities and Exchange Commission (Commission d'Organisation et de Surveillance des Opérations de Bourse – COSOB) is an independent financial regulatory authority that oversees the organisation of Algeria's securities market and enforces transparency and credibility rules.[34] The Commission has the power to impose administrative and financial sanctions on offenders, including warnings, fines, suspension or withdrawal of accreditation, and prohibitions from practising activities. These sanctions are applied in cases of stock market-related business crimes, such as insider trading or price manipulation. Furthermore, when criminally relevant acts are suspected, COSOB may refer cases to the judiciary.
- The Financial Intelligence Unit (CENTIF): The Financial Intelligence Unit (*Cellule de Traitement du Renseignement Financier* – CENTIF) is a specialised Algerian body responsible for collecting and analysing information related to financial crimes, particularly money laundering and the financing of terrorism. Although it lacks direct sanctioning authority, the Unit plays a vital role in investigation and intelligence gathering, providing essential information to judicial and law enforcement authorities. It also refers files to the Public Prosecutor for appropriate legal action, making it a key player in combating financially-driven business crimes[35].

B. The Specificity of Evidence in Business Crimes

The evidentiary system in business crimes is characterised by a distinct feature that departs from a fundamental principle of criminal justice: the principle that "the prosecution bears the burden of proving the offence."[36] The legislature adopted this exceptional departure out of pragmatic and necessary considerations, arising from the complex nature of such crimes and their connection with intricate financial and commercial activities where criminal conduct is difficult to establish through traditional means of proof. Accordingly, the law permits, in certain cases, the shifting of the burden of proof to the defendant—an exception enshrined to safeguard the national financial and economic order and to enhance the effectiveness of deterrence.

To legitimise this shift, the legislature, in some provisions, relied on objective legal presumptions, particularly in financially-oriented offences, where criminal intent is presumed automatically without the need for the prosecuting authority to prove it. This is most evident in customs offences, where Article 286 of the Customs Code stipulates that "the burden of proving the absence of the violation rests upon the interdicted party" in seizure cases. Possession of goods without authorisation or official documentation constitutes a legal presumption of smuggling, thereby transferring the burden of proof to the defendant, who must demonstrate innocence by all available means—an explicit reversal of the presumption of innocence.[37]

This approach reflects a profound shift towards the adoption of a hybrid evidentiary system, one that reconciles the guarantees of a fair trial with the heightened requirements of criminal protection for economic activities.

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[31] Economic regulatory authorities : are administrative or independent bodies granted, under specific laws, regulatory, supervisory, advisory, and in some cases punitive powers (i.e., when a provision provides for the imposition of such sanctions) within strategic sectors such as finance, the market, taxation, foreign exchange, customs, competition, energy, telecommunications, and others.

[32] Algeria. (2020, December 30). Presidential Decree No. 20-442 of December 30, 2020, regarding the issuance of the constitutional amendment ratified on November 1, 2020 .*Official Gazette of the People's Democratic Republic of Algeria* ,No. 82.

[33] Algeria. (1995, July 17). Order No. 95-20 of July 17, 1995, as amended and supplemented by Order No. 10-02 of August 26, 2010, concerning the Court of Accounts .*Official Gazette of the People's Democratic Republic of Algeria*.

[34] Algeria. (2003, February 17). Law No. 03-04 of February 17, 2003, amending and supplementing Legislative Decree No. 93-10 of May 23, 1993, concerning the Stock Exchange .*Official Gazette of the People's Democratic Republic of Algeria*.

[35] Algeria. (2002, February 7). Executive Decree No. 02-127 of February 7, 2002, establishing, organizing, and regulating the Financial Intelligence Unit .*Official Gazette of the People's Democratic Republic of Algeria* ,No. 23.

[36] Article 41 of the 2020 Constitutional Amendment: "Everyone is presumed innocent until proven guilty by a judicial authority, within the framework of a fair trial".

[37] Khemikhem, Mohamed .(2011) .*The special nature of economic crime in Algerian legislation* [Master's thesis, Faculty of Law, University of Algiers 2 – Bouzareah]. p. 140.

3.2. The Specificity of Punishment in Business Crimes: Between the Priority of Financial Sanctions and Administrative Measures

In principle, every development in criminal sciences and their rules stems from the evolution of the idea of punishment. Punishment, in this sense, displays particular characteristics in business crimes, justified by various factors and primarily economic considerations, which necessarily make it more effective in suppressing this type of crime.

However, through our examination of the penal policy adopted by the Algerian legislator in this field, we find that it varies depending on the types of business crimes and the actors involved. Although most of these policies give priority to financial penalties over custodial sentences, we also observe a procedural departure in granting certain administrative bodies the authority to impose sanctions, thereby limiting the judiciary's exclusive power in this regard.

3.2.1. The Priority of Financial Sanctions in Business Crimes

In recent years, the penal system has witnessed a remarkable shift toward adopting alternative models to custodial sentences, particularly in the field of business crimes, which are predominantly financial and functional in nature.

Legislators no longer view imprisonment as the optimal means of ensuring general and specific deterrence in such crimes, given its limited impact within the economic environment. These crimes are generally characterized by the absence of physical violence and their focus on obtaining unlawful benefits.

As a result, financial penalties have emerged as a more effective mechanism, as they directly target the offender's primary objective—illicit profit[38]. The Algerian legislator has sought to reinforce the severity of these sanctions in terms of both their amount and methods of enforcement, sometimes linking them to the principle of public benefit to ensure their effectiveness.

Nonetheless, custodial sentences have not been entirely excluded; they remain applicable in cases requiring stronger deterrence, particularly when there is serious harm to the economic public order or in cases of recidivism.

In this context, financial sanctions have occupied a prominent position in the policy of criminalization and punishment. In many instances, they are combined with custodial sentences or offered as an alternative to them, providing flexibility and effectiveness in safeguarding public trust and maintaining the balance of economic interests. The manifestations of financial sanctions in Algerian legislation are reflected in several forms, most notably:

A. Fines

Article 5 of the Penal Code stipulates that fines constitute principal penalties in felonies and misdemeanours. These fines may take the form of fixed amounts or relative amounts calculated on the basis of the value of the property involved in the offence, as is the case with smuggling crimes or violations of competition rules[39].

B. Confiscation as an In Rem Financial Sanction

Confiscation is considered one of the effective tools for stripping the offender of the benefits derived from the crime. It has been explicitly provided for in Anti-Corruption Law No. 06-01 with regard to financial crimes such as bribery and embezzlement of public funds.

C. Restitution of Illicit Gain

This is regarded as one of the most precise and stringent sanctions, as it obliges the offender to return every benefit obtained, even if it has been transferred or passed on to others[40], as expressly stated in Article 36 of the same law.

These punitive mechanisms reflect a qualitative shift in the philosophy of criminal law toward a more realistic approach that takes into account the specificities of economic crime. The focus is on dismantling the profit structure of such offences by targeting their financial impact rather than merely resorting to deprivation of liberty.

3.2.2. The Substitution of Criminal Sanctions with Administrative Sanctions

Modern penal systems have increasingly moved towards reclassifying forms of punishment in accordance with the nature and gravity of the offence. This has led to a growing reliance on administrative sanctions as an alternative to criminal sanctions in economic and regulatory offences, given their non-violent nature and limited impact on society's fundamental values.

This approach has resulted in the delegation of punitive powers to specialised regulatory authorities, which are more technically competent and closer to the relevant fields, such as economic and financial regulatory bodies. These bodies are now legally empowered to impose financial and regulatory penalties, such as fines, temporary suspension of activity, and exclusion from participation in public procurement contracts.

In Algerian legislation, this conception finds its foundation in explicit provisions, such as Article 60 of the Competition Law, which authorises the Competition Council to impose financial fines, as well as provisions of the Customs Law and the Public Procurement Law, among others, which confer upon administrative authorities the power of deterrence outside the framework of criminal justice.

Nevertheless, the exercise of this power remains bound by the principle of legality and subject to judicial review by administrative courts, thereby ensuring a balance between deterrent effectiveness and respect for rights. At the same time, it reflects a qualitative shift in the philosophy of criminalisation and punishment, consistent with the specific nature of economic crime and the requirements of speed and flexibility in repression.

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[38] Anbi, Radwan, op. cit., p. 89.

[39] Article 57 of the Competition Law No. 04-02, as amended and supplemented ,provides for fixed fines: "Any natural person who personally and fraudulently participates in organizing or implementing anti-competitive practices shall be punished with a fine of two million Algerian dinars (2,000,000 DZD)".
As for proportional fines ,see Article 325 of the Customs Code ,which provides for a fine estimated at double or triple the value of smuggled goods.

[40] Khemikhem, Mohamed, op. cit., p. 74.

4. CONCLUSION

The study of the instrumentalisation of legal excuses in the criminal policy of business offences reflects a structural shift in the philosophy of criminalisation. The legislator has moved from the rules of general law towards the particularity of adopting exceptional legal tools aimed at achieving a dual economic and legal effectiveness.

On the substantive level, a distinct legal framework emerges that departs from rigidity, with the constitutive elements of the offence characterised by flexibility and adaptability to the changing economic reality. The principle of legality itself has undergone a profound adjustment in favour of economic policy, through mechanisms such as legislative flexibility and regulatory delegation. The material element increasingly manifests in formal offences that penalise abstract risk, while the traditional role of the mental element recedes before the growing reliance on statutory and judicial presumptions. This substantive distinctiveness has necessitated a redefinition of criminal liability to encompass legal persons and extend its reach to acts committed by third parties.

On the procedural level, a particular distinctiveness is also apparent in the initiation of public action, reflected in a functional-technical distribution that balances the protection of the economic system with the enhancement of judicial efficiency, whether in terms of jurisdiction or burden of proof. Consequently, excuses—whether substantive or procedural—are no longer conceived as mere grounds for exemption from liability; rather, they have become tools for ensuring investment stability and safeguarding the national economic environment. Thus, it can be affirmed that the instrumentalisation of legal excuses, when strictly framed by precise legal safeguards, represents a legitimate option for achieving balance between punitive justice and the protection of the national economy, without undermining the principle of legal security or allowing the creation of shadow zones of criminal irresponsibility.

Finally, we recommend the necessity of unifying the legislative framework governing business offences into a single codification, by establishing a coherent and integrated legal system, updated periodically in line with the evolution of business crimes alongside technological developments. This would put an end to the dispersion and inflation of legal provisions, ensure clarity of legal rules, and promote their development in a way that enhances the effectiveness of criminal policy and reinforces legal security for investors and economic operators.

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