

COMBATING ILLEGAL SPECULATION IN ALGERIAN LEGISLATION ANALYTICAL STUDY OF LAW N° 21-15

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Abstract:

If the legislation subjected prices to the principle of supply, demand and freedom of competition, it intervened and criminalized some behaviors that contradict the principle by approving the crime of illegal speculation in the provisions of the Penal Code.

When these texts became unable to deter the spread of some illegal practices that threatened the economic security of the state for some economic agents and were linked to creating scarcity in the markets and raising their prices, it was necessary for the legislator to confront them, which was evident by issuing a special law, which is Law No. 21. 15 dated December 28, 2021 relating to combating illegal speculation, through which preventive procedural rules and penal provisions with severe penalties were approved to deter this serious crime.

Keywords: *Illegal speculation; Economic Security; Purchasing Power; Illegal Business Practices .*

INTRODUCTION:

One of the main concerns of the State is to protect the purchasing power of the consumer and provide food security under the freedom of prices and the principle of supply and demand to maintain market stability, but to destabilize that security in illegal ways and methods is a breach of the rules of fair trading practices.

To that end, Algeria had taken many legal measures and mechanisms to ensure price stability by introducing legal provisions on consumer protection and free competition rules or criminalizing illegal speculative acts.

Since these texts have become incapable of confronting such illegal practices, which have reached the point of destabilizing the State's economic institutions, especially in recent years where the Algerian market has experienced a scarcity of commodities and consumer staples and an abnormal rise in their prices. Law No. 21-15 of 28 December 2021 on combating illicit speculation ." In its final provisions, the Committee abolished existing articles of the Penal Code and monitored a series of judicial procedures and preventive mechanisms, beginning with general provisions, It also included strict penal provisions that criminalized and punished combating such economic crime.

The problem lies in: **Are the substantive and procedural legislative texts introduced to counter illegal speculative behavior? How effective are preventive measures to reduce illicit speculative acts?**

In response to this problem, we used the inductive and analytical approach at all levels of the study, which included an explanation of the legal texts. We considered that this topic should be divided into:

THE FIRST TOPIC :MECHANISMS TO PREVENT ILLICIT SPECULATION

THE SECOND TOPIC : LEGAL STRUCTURE OF THE CRIME OF ILLICIT SPECULATION

THE THIRD TOPIC : PROCEDURAL RULES FOR THE CRIME OF ILLICIT SPECULATION

THE FIRST TOPIC :MECHANISMS TO PREVENT ILLICIT SPECULATION

Illicit speculation is defined as "manipulation in reducing and raising the price of goods and goods for sale and purchase resulting in abnormal fluctuations in the market with a view to taking advantage of emerging conditions, generating profits, quick gains, self-interest or avoiding losses

through illegal practices based on fraudulent and fraudulent methods that affect and harm the market".¹

Chapter I of Law N° 21-15 of 28 December 2021 on combating illicit speculation², entitled " "General provisions" the term "illicit speculation" In accordance with article II thereof, any storage or concealment of goods or goods for the purpose of creating artificial scarcity in the market and disruption of supply, or artificially causing their prices or in securities to be raised or reduced directly or through an intermediary or any other fraudulent means.

The same article also considered that, for example, illicit speculation, the dissemination of false news among the public or the use of manoeuvres to put on the market at high or low prices for goods, goods or securities for the purpose of raising prices in a sudden and unjustifiable manner to cause market disruption, prices and profit margins.

FIRST REQUIREMENT: MEASURES TO PREVENT ILLICIT SPECULATION

Since competition law as an effective instrument in regulating and activating the activity of the contemporary market economy has a direct impact on the State's abandonment of its role as an economic actor directly involved in this activity,

But this does not mean in parallel that it abandons its inherent role in setting the appropriate conditions for the success of this market and reinstates things in perspective if it results in this market derailing from its normal and normal course³.

Algerian legislation attaches great importance to measures to prevent illicit trade practices in order to avoid any disruption in the market, both in finance and in prices. The legislature has taken great care to do so, as reflected in competition laws and commercial practices.

Firstly: Competition Law

In Law N° 03-03 of 19 July 2003⁴, the legislator ensured the need to take the necessary measures to prevent and combat speculation in all its forms and to preserve the purchasing power of the consumer and create stability in the market .Article 04 emphasizes measures to identify, cap or certify profit margins and prices on the basis of the relevant sectors' proposals to stabilize the prices of goods and services, especially those of widespread exploitation, when there is perceived market disruption, disaster or chronic financing difficulties within a given sector of activity or in natural monopoly situations.

Article 07 also sets out the forms and images of arbitrariness and its purpose. It emphasized that any arbitrariness is the result of either a dominant position or a monopoly of the market and is aimed at reducing incomes⁵, reducing production, marketing outlets, investments or technical development, Or in order to share markets and supply sources, or to hinder the setting of prices according to market rules by artificial and false encouragement of price levels whether higher or lower

¹ Bahri Fatima, Consumer Criminal Protection, Doctoral Thesis, Faculty of Law and Political Science, Abubakar University, Belkaid, Tlemcen, p. 270.

² Act No. 21-15 of 28 December 2021 on combating illicit speculation, OJ No. 99 of 29 December 2021.

³ Thiorsi Mohamed, Legal Controls of Competitive Freedom in Algeria, Dar Homa, Algeria, 2013, p. 90.

⁴ Ordinance No. 03-03 on competition of 19 July 2003 amended and supplemented, OJ No. 43 of 20 July 2003.

⁵ Article 3/c of the Competition Act - Order 03-03 amending and supplementary - defines a dominant position "as the position that enables an enterprise to obtain economic power position in a given market, against which it would obstruct effective competition and give it the possibility to conduct considerably unilaterally against its competitors, customers or suppliers".

Article 12 of the same Act prohibits all practices that would constitute price manipulation in order to achieve special purposes such as the practice of low sale prices.⁶

Secondly Commercial Practices Act

Article 25, paragraph 2, of Act No. 04-02 of 23 June 2004,⁷ which establishes the rules applicable to commercial practices, prohibits traders from possessing any stock of products with a view to unlawfully stimulating the unjustified rise of prices or illegal price⁸ practices and punishes them with a fine of 20,000 to 10 million dinars.

The State may decide on the necessary means to prevent price manipulation. If the price is priced, the sellers must commit to it or are entitled to legal accountability for the violation of pricing in accordance with the provisions on price fixing, roofing or setting profit margins.⁹

SECOND REQUIREMENT: PREVENTION OF ILLICIT SPECULATION

Freedom of competition aims at freedom of private initiative, but this can only be done if it is framed by strong effective legal safeguards to ensure the application of mandated legal organs,¹⁰ whether in State organs, local groups or even civil society.

Firstly: State and local communities

In the forefront of the mechanisms mentioned in the Law on Combating Illicit Speculation of the State, communities and civil society,

Article 03 stipulates that the State shall take all measures to prevent illicit speculation by applying a national strategy to ensure market balance;

This is done by stabilizing prices in order to preserve citizens' purchasing power and prevent the exploitation of conditions for the purpose of raising unjustified prices, especially for essential items or materials of wide consumption, while ensuring the provision of essential goods and goods in markets.

The adoption of vigilance mechanisms to take appropriate action in order to reduce the effects of scarcity and encourage rational consumption while taking the necessary measures to refute the outbreak of any rumours promoted for the purpose of causing disruption in the market, raising prices in an indiscriminate and sudden manner and ensuring that any unjustified storage or withdrawal of goods and goods is prevented to create a state of scarcity for the purpose of raising prices

In accordance with article 05 of the Act, local communities also contribute to the prevention of illicit speculation through the allocation of points for the sale of essential materials or materials

⁶ Selling at low prices is "Every act of economic aid, especially the large distributors, either individually or collectively, focuses on the price element, dealing with prices that challenge every competition that makes it also bear the consequences of the loss by selling below the real cost price deliberately to influence and monopolize the market and thus raising prices according to its wishes" s law ", Mohamed El-Sharif Kato, *Anti-Competitive Practices in Algerian Law, Comparative Study of French Law*, Thesis for Doctorate of State in Public Law, Faculty of Law, Mevlut Maimari University, Tizi Ouzou, 2005, p. 65.

⁷ Act No. 04-02 of 23 June 2004 on rules applicable to amended and supplemented business practices, OJ No. 41 of 27 June 2004.

⁸ The priced commodity is defined as "those for which, according to the law, a price should not be exceeded, the transaction between individuals on the basis of which, as well as the indirect determination of the inviolability of the commodity, the profit of the seller on which the sale price of the commodity is determined" Ahmed Mohamed Mahmoud Khalaf, *Consumer's Criminal Protection, Comparative Study*, New University House, Alexandria, 2005, p. 112.

⁹ Thiorsi Mohammed, *op. cit.*, p. 257.

¹⁰ Thiorsi Mohammed, *ibid.*, p. 121.

with a wide consumption at prices that respond and have low incomes, especially in seasons commonly known as large consumption of such materials and exceptional cases¹¹.

Which are known as price rises, early monitoring of all forms of scarcity in goods and goods at the local level with study and analysis of local market situation and price analysis.

Secondly: Civil society

Article 06 of the same Act states that civil society and the media contribute significantly to the promotion of consumer culture. This is in order to promote the rational consumption of goods aspired by the State and local groups and to disseminate a culture of consumption and stimulate the process of rationalizing awareness in accordance with the requirements of society through civic sensitivity, in particular not disturbing the rule of supply and demand, especially in holidays, seasons and exceptional situations.

Perhaps the legislator has touched on the important role they play. Their influence is great and significant, especially since civil society is born out of society itself. The media quickly reaches all its segments, and the role they are given is to upgrade consumer culture and rationalize awareness of the sanity of consumption so that supply and demand are not affected, which leads to market security into chaos.

THE SECOND TOPIC : LEGAL STRUCTURE OF THE CRIME OF ILLICIT SPECULATION

Greed and the exploitation of exceptional conditions of society to achieve extraordinary richness and illegal profits at the expense of the latter's interest are behaviours that have been widely spread in our societies in recent years through which all countries of the world have experienced an extraordinary health crisis exploited by some economic agents using tricks, fraudulent methods and the emergence of illicit monopolistic trade practices of goods and strategic and large-consumed goods to bring unnatural scarcity, and raise prices.

What led the legislator to intervene and criminalize certain behaviors that he considered as material acts constituting the crime of unlawful speculation determines the criminal penalty prescribed for this.

FIRST REQUIREMENT: ELEMENTS OF THE CRIME OF UNLAWFUL SPECULATION

The crime of unlawful speculation, like other crimes, is based on three pillars, the legal element, the material element and the moral element, although some jurisprudence criticized the notion of the legal text as one of the elements of the crime, others tended to consider it as The "wrongful character of the act", whereby other elements are defined, has become a well-established legal principle of criminal law¹².

Firstly: The legitimate element of the crime

The offence is characterized as an offence only since it was legally criminalized, and its illegality is only as a result of such criminalization.¹³

The legislator has criminalized illegal speculation acts under articles 12 - 13 - 14 - 15 of the Law on Combating Illicit Speculation, which were criminalized and punished under articles 172, 173 and 174 of the Penal Code¹⁴.

Article 12 of the Code stipulates that perpetrators of such offences shall be punished by imprisonment for three to ten years and a fine of 1.000.000 DA to 2,000,000 DA.

¹¹ Exceptional cases are the existence of an emergency situation that threatens public order in the State and the proper functioning of public facilities, whether it be human actions such as war, or without human will such as natural disasters.

¹² Mahmoud Najib Hosni, Explanation of Penal Code, General Section, Arab Renaissance House, Cairo, 1989, p

¹³ Mohammed Zaki Abu Amer, Suleiman Abdel-Monim, Penal Code, New University House, Alexandria, 2002, p. 141.

¹⁴ The legislator repealed these articles under the provisions of the 21 - 15 Law on Combating Illicit Speculation through the text of article 24 thereof.

Article 13 increased the penalty and became 10 to 20 years' imprisonment and a fine from 2.000.000 DA to 10.000.000 DA. If the latter acts are committed, they are replaced by illegal speculation in grains and their derivatives, milk, vegetables, fruits, oil, sugar, coffee, fuels or pharmaceuticals, during exceptional cases, emergency health crisis, pandemic outbreak or disaster , The offence becomes a criminal offence and the penalty shall be 20 to 30 years' imprisonment and a fine of 10.000.000 DA to 20.000.000 DA. It shall be life imprisonment if the acts are committed by an organized terrorist group, as provided for in article 15 of the Act.

Secondly: Physical element of the crime

There is no crime without a physical element, and the legislator may require the result to be achieved but it is not achieved as if the criminal activity is stopped before its end or the result is disillusioned. The physical element of the crime of illicit speculation is achieved in accordance with the provisions of article II of the Law on Illicit Speculation in the conduct of storage or concealment of goods or goods in order to cause a scarcity of the market and disruption of supply

,or any artificial increase or reduction in the price of goods, goods or securities directly or indirectly or through an intermediary, the use of electronic means or any other fraudulent methods or means;

1- Criminal conduct

It is criminal conduct that delineates the authority of the penal legislator and it is described as unlawful and the law establishes a penalty if committed.¹⁵

The offence of unlawful speculation is based on a set of offences, one of which is defined and enumerated in the aforementioned article II. This is understood, for example, by the wording of the text of the article "and is considered as unlawful speculation: " .

a- Storage or concealment

The criminal conduct in this image is achieved by storing or concealing goods and goods with the aim of creating a scarcity in the market and

A supply disturbance, in the words of article II, means "the absence of sufficient goods or goods to meet the needs of the population due to increased demand and supply shortages."

b- Intentional manipulation of price value

Whether done directly or using a physical or electronic intermediary or any other fraudulent means:

- **Promoting fake news among the public**, hiding the truth and replacing it with rumors and false news that are disseminated and promoted among the public to cause disruption in the market and raise prices in a sudden and unjustified manner .

- **Making market offers to cause disruption**, Every economic aid is free to exercise lower prices than its competitors; However, if this practice is deceptive for the purpose of causing price disruption, it constitutes the criminal conduct of an unlawful speculation offence. Market ¹⁶ ", such as selling at low prices resulting from agreements between economic agents in order to remove competitors from the market or prevent other competitors from entering the market¹⁷.

- **Deliberately raising prices with offers on the market**, this picture is mostly when a trader offers a high price for the acquisition of certain goods at a price higher than their real price with the intention of acquiring the largest possible quantity of goods for re-placement on the market and

¹⁵ Hoda Hamid Quashquosh, Explanation of Penal Code, General Section, Arab Renaissance House, Cairo, 2010, p. 114.

¹⁶ Agreements are all alliances between two or more enterprises that engage in economic activity in a particular market aimed at distorting market rules so that they are not subject to supply and demand forces, Ahmed Mohamed Mahrez, right to legitimate competition in the areas of economic activity - industry trade and services - Arab Renaissance House, Cairo, 1994, p. 31.

¹⁷ Lowering the price of a commodity from the market price may not be considered an illicit speculation if certain circumstances such as liquidation of a business require or the goods were perishable or the execution of the judgement was judicial, Laouer Badra, mechanisms for combating crimes of business practices in Algerian legislation, Doctoral thesis, Faculty of Law and Political Science, University of Mohammed Kheidhir Biskra, 2013-2014, p. 250.

selling them at a price that he or she would like, The mere presentation of the offer results in conduct whether or not the sale and purchase process takes place.

- **Operation in the market for illegal profit means actions by economic agents normally present in the same market**, whether individually or collectively, or through profit-making agreements, without being the result of supply and demand, i.e. outside the scope of competition, such as limiting market entry or commercial activities, sharing markets or sources of supply¹⁸.

- **Use of tricks to disrupt the value of securities.** Manoeuvres are the use of all fraudulent and deceptive methods by economic agents in order to raise or devalue the value of securities. The observation we can make is that the legislature has used a general term contrary to the principle of penal legality in accordance with article 1 of the Penal Code and the narrow interpretation of the criminal provision.

By analysing the legal texts and comparing them with those contained in the abolished Penal Code, it can be seen that the legislature has expanded the range of offences and their methods and means by introducing the act of storing food and goods with a view to creating scarcity and using this to raise prices. and the introduction of the term "electronic means" as new means of committing crimes, Add to its use the use of manoeuvres aimed at raising or devaluing securities.

2- Place of crime

The subject of the offence is as stated in article II of the Law on Combating Illicit Speculation in Goods, Goods and Securities¹⁹,

The offence of illegal speculation, as stated by the Algerian judiciary, is linked to goods and goods of free price, which are subject to market fluctuations according to the law of supply and demand and not to goods of rated price²⁰.

The legislator made the offence an aggravating circumstance if the goods and goods were grains and derivatives. fruit, oil, sugar, bin, fuels law ", referring to article 13 of the Law on Combating Legitimate Speculation, aggravates the penalty for the offence of unlawful speculation to 30 years' imprisonment if replaced by such goods and goods²¹.

Securities, whether public securities, State loans or others, may also be the subject of the offence. Whether it is special such as commercial papers, cheque, stock etc²².

3- The criminal result

The result is considered to be an element of the physical element of the offence, namely the natural effect of criminal conduct.²³

The criminal consequence is that of illegal speculation offences as provided for in article 2, paragraph 1, above:

a- Creating a scarcity of goods in the market by disrupting the supply of goods or goods, which is done by storing or concealing goods or goods. As indicated in the law, scarcity means that there are

¹⁸ Laouer Badra, op. cit., p. 250.

¹⁹ In particular, goods are associated with everything traded in trade and have a fixed price. Goods are defined in their general sense as any transporter that can be weighed, agent or valued by unit, and may be the subject of commercial transactions.

²⁰ Rationed-price goods are those goods in which profit margins are specified at the time of production or distribution and are free from market volatility - and are not subject to supply and demand law.

²¹ The list enacted by article 13 of the Law on Combating Illicit Speculation of Goods and Goods is of a codified price and such goods are criminalized.

²² Public services performed by economic and commercial institutions are excluded from the scope of illicit speculation offences because article 2, paragraph 2, of the Law on Combating Illicit Speculation is not mentioned in the place of the crime. As some comparative legislation such as Tunisian legislation has done, it would be useful if the service area could also be included in the general framework of illicit speculation images.

²³ Mohamed Zaki Abu Amer, Suleiman Abdel-Monim, op. cit., p. 304.

not enough goods or goods to meet the population's needs due to increased demand and lack of supply.

b- Artificial price hike or reduction by disrupting the price of goods, goods or securities outside competition resulting in their unstable in proportion to supply and demand law.

It should be noted here that the legislature has also committed the State to the need to provide essential goods and goods in markets, to prepare a national strategy to ensure market-level balance by working to stabilize prices and to prevent the exploitation of conditions for unjustified price increases, especially those with a wide consumption.

I also commit them to adopt vigilance mechanisms to take appropriate action in order to reduce scarcity and thus encourage rational consumption of goods and goods.

It is also conceivable that this type of economic offence may be attempted as long as the offence is a positive offence. stipulated in article 20 of the Law on Combating Illicit Speculation ²⁴

The attempt is considered an incomplete offence, the material element of which is incomplete because of its suspension or disillusionment for a reason beyond the perpetrator's control. criminal offences under article 30 of the Penal Code ." and the existence of the legal provision in the offences under article 31 of the Penal Code, which is for material offences, as perceived in intentional and positive offences²⁵.

Thirdly: Moral element of the crime

The offence is not sufficient to commit a material act prescribed and punishable by law, but must be committed by the perpetrator's will. This relationship between the material act and the moral act constitutes the cornerstone²⁶.

The moral element of modern legislation is one of two forms: the intention may generally be to act and produce the result in order to understand the legal danger. The will thus takes the form of a criminal intent and the crime is intentional. The will may be to act merely without the result²⁷. The offence of unlawful speculation, as stated in article 2 above, concludes that the offence is intentional because it requires the general criminal intent, the offender's knowledge that the acts it brings are unlawful. Nevertheless, the intention of the offender is to create a criminal result and a special criminal intention of intending to achieve a specific purpose of the offence .

Any tendency of the offender's will to use the methods and fraudulent means mentioned in article II of the Act to cause disruption to the market, prices, the value of securities or legally defined profit margins.

SECOND REQUIREMENT: PENALTIES FOR CRIME

Chapter IV of the Law on Combating Illicit Speculation, entitled " "Penal provisions". The penalties prescribed for the offence of illicit speculation are individually original and supplementary in application of the general provision of the Penal Code, distinguishing between the adaptation of the offence as a minor or aggravated offence or its adaptation as a criminal offence and the distinction between the responsibility of the natural person and that of the moral person.

What is noted in the articles of this law is the tendency of the legislator to aggravate all forms of punishment.

Firstly: Criminal penalties as a misdemeanour

Multiple original and supplementary penalties:

²⁴ Article 20 of the Law on Combating Illicit Speculation stipulates that "attempted offences under this law shall be punishable by the penalties prescribed for the total offence".

²⁵ Abdellah Suleiman, Explanation of Algeria's Penal Code, General Section, Part I, Crime, University Publications Office, Algeria, 2002, p. 139.

²⁶ Ahcen Bousguia, the brief in General Penal Code, T19, Dar Homa, Algeria, 2021, p. 142.

²⁷ Samir Alia, Explanation of Penal Code, General Section, University Institution for Studies, Publishing and Distribution, Beirut, Lebanon, 2002, p. 192.

1- Original penalties

Under article 12 of the same Code, the offence is punishable by "imprisonment for three to ten years and a fine of 1.000.000 DA to 2.000.000 DA ²⁸ ", and consider it a minor misdemeanor²⁹.

However, he departed from the general provision found in article 05 of the Penal Code, whether the minimum and maximum penalties for deprivation of liberty - imprisonment - or the imposition of a fine relating to imprisonment.

Under article 13 of the Code of Criminal Procedure, the penalty is increased by consideration of the offence. If the criminal acts constituting the crime of illicit speculation occur on the citizen's essential and necessary substances of grain and its derivatives, dry pulses, milk, vegetables, fruits, oil, sugar, coffee, fuels or pharmaceuticals Pan made it from ten to twenty years and fine from 2.000.000 DA to 10.000.000. DA, this affirms the lawmaker's concern for and protection of essential and essential materials for the life of the citizen against any prejudice or manipulation ³⁰ .

The perpetrator of an offence under article 22 of the Code shall benefit from mitigating circumstances only within one third 3/1 the penalty prescribed by law, without prejudice to article 53 of the Penal Code.³¹

Provisions relating to the security period ³² apply to illegal speculation offences The duration of the security period shall be equal to half the sentence imposed, She is 15 years old if life imprisonment is imposed. The sentence may either be increased to two thirds of the sentence imposed or to 20 years' imprisonment for life imprisonment as a crime of unlawful speculation or be reduced.

Through article 20 of the same Act, the legislature also punishes the attempt on offences relating to unlawful speculation. Of course, the Act is punishable for offences relating to such offences in accordance with the general provision contained in article 30 of the Penal Code³³.

2- Supplementary penalties

The legislature approved several supplementary penalties, as well as the original penalties binding on the perpetrator of an illicit speculative misdemeanour contained in articles 16 and 17 of the Law on Combating Illicit Speculation, which consist of permissible and compulsory penalties in application of the general provision or provision.

a- Permissible penalties

The permissible penalties through which the order is subject to the discretion of the judge in question He has to judge it and adopt it and he has not to rule it. It is permissible for him. Article 16 of the Act affirms that if a conviction is handed down, the judge may sentence and punish the

²⁸ The legislator increased the penalty for the offence of unlawful speculation by raising the penalty from 06 months to 05 years' imprisonment and the fine from 5,000 DA to 100,000 DA. Article 172 of the abolished Penal Code.

²⁹ Article 05, paragraph 2, of the Penal Code stipulates that: "Original penalties in the article of offences shall be two months' to five years' imprisonment except where the law establishes other limits."

³⁰ Under article 173 of the Penal Code, the penalty is one to 05 years' imprisonment and a fine of 20,000 DA to 100 thousand DA, which was limited only to certain items, namely cereals, flour, foodstuffs, drinks, medical preparations, fuels or commercial fertilizers.

³¹ Mitigating circumstances are grounds for the judge's discretion to have the right to reduce or waive the penalty within the limits prescribed by law, i.e., to the extent that the offence is legally prescribed or to impose another penalty of a different and lighter nature, as provided for in articles 53 bis et seq. of the Penal Code.

³² The security period is defined by article 60 bis of the Penal Code "deprivation of provisional arrest measures for the application of the penalty, placement in external workshops or the open environment, leave to leave, half liberty and parole.

In the case of a sentence of deprivation of liberty of 10 years or more for offences expressly provided for a security period,

³³ Article 30 of the Penal Code stipulates: "Any attempt to commit a crime commencing with the initiation of execution or with unequivocal acts leading directly to its commission shall be deemed to be the same crime if it is not stopped or inflicted." " .

offender by prohibition of residence from two to five years. and may also prohibit the exercise of one or more of the rights set forth in article 09 bis 01 of the Penal Code ,

If the conviction relates to the offence of unlawful speculation as a misdemeanour and article 17 of the same Act affirms the judge's decision to expunge the offender's commercial registry and prohibit him from engaging in business activity, He may also order the closure of the shop used to commit the crime and prevent its exploitation for a maximum period of one year without prejudice to the rights of other bona fide persons;

That is, those persons who were not aware of the criminal prosecution and who were not found to be involved in the commission of the criminal facts.

b- Mandatory penalties

The penalty of confiscation set forth in article 18 of the same Act is such that it is mandatory, whether for the place of the crime, the means used therein or the funds obtained, as well as the publication and suspension of the sentence in accordance with article - 16 the last paragraph of the Act, which affirms that "The judge must order the publication of his judgement and suspension in accordance with article 18 of the Penal Code³⁴".

Secondly: Criminal penalties as a criminal offence

The legislator considered the crime of unlawful speculation a criminal offence in two cases in both articles 14 and 15 of the same Act. If such criminal offences consisting of the offence occur during exceptional cases³⁵, an emergency health crisis, an epidemic or a disaster, and the offence, as restricted in article 13 above, changes its penal description, it becomes a crime of unlawful speculation .The original penalty under article 14 of the same Act is 20 to 30 years' imprisonment and a fine from 10.000.000 DA to 20.000 .000.DA.

If the offences occurred in accordance with the crime's aggravated location and the perpetrators were from an organized criminal group³⁶, the legal description of the offence also changed and became a crime according to article 15 of the same law and the original penalty was life imprisonment.

With regard to complementary penalties, they are the same as those set forth in articles 16, 17 and 18 of the same Act, which are mentioned above, including confiscation, except in article 16, paragraph 02, of the Code, concerning the prohibition of the exercise of one or more of the rights set forth in article 09 bis 01 of the Penal Code and their delicts.

Thirdly : Punishment of a moral person

The legislature approved a provision in the Law on Combating Illicit Speculation concerning penal liability and punishment of a moral person who commits an unlawful speculation offence, whether a corporation, enterprise or particular body where the commission of such acts entails the criminal liability of such a moral person.

According to article 19 of the Code, a person who commits an unlawful speculative offence shall be liable to the penalties provided for in the Penal Code, and for reference to the latter, specifically article 18 bis. The penalties applicable to the legal person in the articles on crimes and offences are:

- 1- A fine equal to one to five times the maximum fine prescribed for a natural person in the law punishing the offence.
- 2- .One or more of the following supplementary penalties:
 - a -The moral person's dissolution;
 - b- The institution or one of its branches is closed for a period not exceeding 05 years;
 - c- Exclusion from public transactions for a period not exceeding 05 years,

³⁴ See article 18 of the Penal Code.

³⁵Exceptional cases are the existence of an exceptional circumstance that threatens the State's public order and the proper functioning of public facilities, whether by intervening and wanting a human being, such as war, or beyond his control, by nature, such as natural disasters of all kinds.

³⁶ The organized criminal group is a group of persons with a specific hierarchical organization aimed at achieving profit by engaging in illegal activities in its method of threatening such violence...

- d- Prohibition from engaging in any or all professional or social activities directly or indirectly, permanently or for a period not exceeding 05 years;
- e- confiscation of the object used in the commission of the offence or the result thereof;
- f- Publication and suspension of the conviction, under which the sentence shall be published in its entirety or extracted in one or more newspapers designated by the sentence or suspended in the places indicated therein, at the convict's expense and the costs of publication shall not exceed the amount specified in the conviction for that purpose and shall not exceed one month's suspension;
- g- Placing in custody for a period not exceeding 05 years and placing custody on the activity that led to the crime or for which the crime was committed.

In the event that the penalty for fines is not provided for a natural person, whether for crimes or misdemeanours, and the conditions of criminal liability of the legal person are met in accordance with article 51 bis of the Criminal Code, article 18 bis 02 of the same Code affirms that the maximum fine for a mental person is 2,000,000 DA when the offence is punishable by death or life imprisonment.

While noting that moral persons in the place of criminal accountability are private moral persons and not public, offences are committed on behalf of the moral person by his or her legitimate organs or representatives, with the possibility of holding the natural person accountable as an original actor or as an accomplice to the same acts in accordance with article 51 bis of the Penal Code.

What is worth noting at the conclusion of this requirement is that, by reference to the Law on Combating Illicit Speculation, there is no legal provision referring to exempt or mitigating excuses³⁷ for contributors who assist justice personnel in providing information to detect criminal offences constituting the crime ,

To reverse the legislature's view of crimes and offences against State security by distinguishing between the first two phases of exemption from punishment whoever reported such offences to the authorities prior to the initiation of a public action and the second is the commutation of the penalty if it is reported after the initiation of a public action; - Noting that the legislator has considered through article 10 of the Act that unlawful speculative offences such as offences against the security of the State,

The extension of the original and normal period of detention for the same periods as those provided for in offences against State security as we will see later -- should have been encouraged to report them or to assist in the detection of perpetrators by providing for exempt or mitigating excuses and determining the same provisions for their participation in the same offence.

THE THIRD TOPIC : PROCEDURAL RULES FOR THE CRIME OF ILLICIT SPECULATION

In view of the seriousness of this type of crime and the fact that it is characterized by a range of characteristics, the legislator has placed in the articles of the Law on Combating Illicit Speculation as well as its substantive rules a set of formal rules on criminal follow-up action in illicit speculation offences at all stages and has devoted a chapter entitled "Procedural Rules."

Under chapter III, entitled "Procedural Rules", of the Law on Combating Illicit Speculation, the legislator spoke of persons legally qualified to examine illicit speculative offences in order to initiate public proceedings against them and the extraordinary proceedings of those with judicial discipline.

FIRST REQUIREMENT: PERSONS CHARGED WITH INVESTIGATING AND EXAMINING THE CRIME OF ILLICIT SPECULATION

Under the provisions of the Law on Combating Illicit Speculation, anyone who commits one of the acts provided for is authorized to be the subject of judicial follow-up and in order to investigate this crime is entrusted with the task of investigating and searching for this crime by officers and

³⁷ Legal excuses are specific in the law exclusively to prevent the commission of an offence and responsibility, either not to punish the accused if they are exempt excuses or to commute the sentence if they are mitigated. The legislature provides for exempt or mitigated legal excuses for criminal and misdemeanor punishment in the text of articles 277-283 of the Criminal Code.

judicial police officers, as well as qualified agents ;This is affirmed in article 07 of the Act, which states that persons who are eligible for illicit speculative offences as well as officers and judicial police officers are qualified agents of the Department for Trade and qualified agents of the Department's fiscal interests.

Not only did the legislator not confine themselves to the ordinary officers provided for in the Code of Criminal Procedure, but also attributed qualified agents as more specialized and more frictional in the field of trade and markets:

Firstly: Officers and judicial police officers

The judicial police officers, as defined in article 15 of the Code of Criminal Procedure, are the chairpersons of the municipal people's councils, the officers of the National Gendarmerie, the officers of the special wire of observers and the governors and officers of the National Security Police, the class officers who spent at least three years in the National Gendarmerie They were appointed by a joint decision of the Minister of Justice and the Minister of National Defence after the approval of a special committee, staff members of the special wires of inspectors, keepers and police officers of national security who - spent at least three years in that capacity and who were appointed by a joint decision of the Minister of Justice, the Minister of the Interior and local groups After the approval of a special commission and officers and officers of the class of the Military Interests of Security who were appointed ad hoc - a joint decision issued by the Minister of National Defence and the Minister of Justice³⁸.

Judicial police officers are listed in article 19 of the Code of Criminal Procedure, namely, police officers, non-commissioned officers of the National Gendarmerie and employees of national security military interests who do not have the status of judicial police officers. Criminal Procedure Act ", which, according to article 20 of the Code of Criminal Procedure, assists judicial police officers in their functions, establishes the offences established in the Penal Code and collects all information on the perpetrators³⁹.

Secondly: Qualified agents

According to the aforementioned article 07, qualified agents are both qualified agents of the Department in charge of trade and the interests of the Department of Fiscal Administration and qualified agents of the Department in charge of trade.

The first category⁴⁰ is the Department's own trading wire, comprising two divisions according to the Special Organic Law⁴¹ applicable to employees belonging to the Department's own trading wire. Fraud Prevention Division and Competition and Economic Investigations Division, The second category is the category of agents of the fiscal administration's interests,⁴² which includes the service of tax inspectors wire of tax monitors, wire of inspection agents, wire of fraud analysts, wire of fraud programmers.

SECOND REQUIREMENT : CRIMINAL FOLLOW-UP ACTION

The criminalization of acts and practices in the context of illicit speculation and the imposition of severe penalties for such crimes alone shall not be sufficient to deter the perpetrators of such crimes unless accompanied by strict procedures to monitor such crimes, follow up the perpetrators, attribute the acts to the perpetrators and prove them against them and thus apply the law to them.

³⁸ Their task is limited to offences against the security of the State under article 15 bis of the Code of Criminal Procedure.

³⁹ See article 20 of the Code of Criminal Procedure.

⁴⁰ Executive Decree No. 09-415 of 16 December 2009 containing the Special Organic Law - Applicable to Employees Belonging to the Wire of the Department in Charge of Trade, JR No. 75 of 20 December 2009.

⁴¹ See articles 51-52 of Executive Decree No. 09-415 containing the Special Organic Law applicable to employees belonging to the Department's own trade-in-charge wire.

⁴² Executive Decree No. 10-299 of 29 November 2010, containing the Organic Law on Employees Belonging to the Special Wire of the Penal Administration, No. 74 of 05 December 2010.

In view of the gravity of the illicit speculative offence and its specificity, the legislator has established special procedural rules commensurate with its nature, both at the evidentiary stage and during the conduct of extraordinary proceedings by judicial discipline and during the initiation of public proceedings.

Firstly: Collection of evidence

The principle of procedural legality requires the legislature to establish a set of controls and safeguards to which judicial discipline is bound within the framework of its mandated tasks and to grant them a range of powers in accordance with the above-mentioned article 07, which will assist them in the search, investigation and inspection of these crimes.

1- Access to documents

examination of all documents - administrative, commercial, financial and accounting - and any magnetic or informational means without the owners refraining on the pretext of professional confidentiality...

2- Booking

Reserving equipment, equipment, commodities and goods according to an inventory record prepared for that, whether it is an in-kind booking or a valid reservation for the value of the bookings.

3- Access to commercial shops

including offices, accessories, storage and shipping premises or any other place except for accommodation;

4- Editing of records

Each completed investigation concludes with a report and confirms irregularities in records reported

to the competent administrative and judicial authorities.

Secondly: Inspection and arrest procedures for consideration

In view of the seriousness of the crimes of illegal speculation on the security of the State and its public order and the quiet and stability of society, as well as its threat to the lives of individuals in their lives and food, the legislator is keen to fight them in all ways and means, as it derogates from the general and ordinary rules of criminal procedure.

1- Inspection

Article 10 of Act No. 21-15 provides for an extraordinary measure which derogates from articles 47 and 48 of the Code of Criminal Procedure and relates to inspection procedures in residential shops. This article authorizes the inspection of dwellings by day or night on the basis of the prior written authorization of the public prosecutor or the competent investigating judge. Article 47 of the Code of Criminal Procedure affirms that the search and inspection of dwellings shall not take place before 5 a.m. and not after 8 a.m., while article 48 of the same law decides that any measure to the contrary shall be null and void.

It is noted that this extraordinary procedure established in article X confirms that the legislator has already deemed this offence to be of such gravity as to require constant care to address it at all times.

2- Arrest for the sight

If a judicial police officer considers it necessary to suspend any person against whom there is strong evidence of suspicion of a felony or misdemeanour, the law shall prescribe a penalty of deprivation of liberty. may be documented for a period not exceeding 48 hours by the officers of the Judicial Police of a person who has been set at 48 hours by the legislature. This person must be brought before the Public Prosecutor before this term

This period may not be exceeded except with the written authorization of the competent public prosecutor in special cases contained in articles 51 and 65, exclusively in the Code of Criminal Procedure⁴³.

⁴³ The period of detention shall be 48 hours and extended with the written authorization of the competent public prosecutor:

It should be noted that the legislature, through article 10 of the Act, considered that illegal speculative offences such as offences against the security of the State, permitting the extension of the original and ordinary period of detention to be 48 hours twice, with the written authorization of the public prosecutor or the competent investigating judge, such as offences against the security of the State.

Thirdly : Initiating Public Action

Pursuant to the principle of "no punishment without a public action", the initiation of proceedings is the inherent jurisdiction of the Public Prosecutor's Office as an indictment and follow-up body, as stipulated in article 29 of the Code of Criminal Procedure⁴⁴.

In accordance with article 08 of the Act, the legislature affirms that "the Public Prosecutor's Office shall automatically initiate public proceedings for the offences set forth in this Act". The Public Prosecutor's Office, with its appropriate authority, is the sole proprietor of the Public Prosecutor's Office .

Once the news of the crime comes to the attention of the Public Prosecutor's Office, the latter automatically initiates a public action without waiting for a complaint from the injured party, whereby the legislator removes all restrictions relating to the complaint, application or authorization, and it moves the public action unconditionally or without preconditions for offences relating to unlawful speculation⁴⁵.

It also urged article 09 of the same law to give an important role to individuals or national associations active in the field of consumer protection by granting it the right to bring proceedings before the courts to demand the cessation of such prohibited practices and the right to lodge them with a complaint and to form a civil party to claim compensation for the damages caused to it by these offences, This is all in order to encourage and sensitize civil society to the critical role of reporting and detecting these crimes as the first affected.

CONCLUSION:

Law No. 21-15 on combating illicit speculation is a very positive step by the Penal Code in order to limit all practices that are contrary to the freedom of competition that have spread in recent years and which have become detrimental to the consumer and have threatened the economy of the State as a whole in an effort to optimize the application of the Supply and Demand Law.

Through this Act, it addresses the phenomenon of illegal speculation in all its substantive, procedural, preventive and even deterrent aspects. The penalties prescribed for it are the most serious crimes against the security of the State and the right to describe the crime as a deterrent to its perpetrators and to protect the national economy and the vulnerable consumer.

SUGGESTIONS

-The legal wording to criminalize illicit speculation is characterized by broad formulations. The legislature has used elastic, vague and even general terms to determine the material element of the crime, which would leave room for diligence and interpretation of the criminal judge, which is incompatible with the spirit of criminal law and criminal legality.

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- Once when it comes to assaulting automated data processing systems,
 - Twice if it comes to attacks on the security of the State,
 - 03 times for drug offences, transnational organized crime, money-laundering and disbursement offences;
 - 5 times when it comes to terrorist and subversive crimes.

⁴⁴ See article 29 of the Code of Criminal Procedure.

⁴⁵ Abdullah Masood, Khidhawi Naim, Combating Illicit Speculation between Legal Texts and Field Work (Study in the Light of Law No. 21-15 on Combating Illicit Speculation), Al-Sadi Journal of Legal and Political Studies, vol. 4, No. 2 Joan 2022, p. 165.

- The need for the legislator to confine the images of speculative crimes and not to leave them, for example, in particular those relating to the form of manoeuvres as a form of criminal conduct, as this extends the judge's power to interpret the criminal text.
- The legislator should highlight aspects of criminal liability. Illegal speculation is a criminal liability shared by the producer, distributor and supply provider.
- Control and administrative monitoring methods must be activated and modern methods used as preventive measures before penal follow-up.
- Giving individuals and associations the right to complain and claim civilly before the judicial authorities would create fear and awe among clients, economic agents and traders.
- The need to introduce a legislative text on the issue of mitigating or exempting excuses for reporting illicit speculative crimes or exempting them from punishment to encourage reporting of such serious economic crime

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