



THE CRIME OF ILLICIT SPECULATION UNDER LAW NO. 21/15 ON COMBATING UNLAWFUL SPECULATION IN ALGERIAN LEGISLATION

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Abstract:

Algeria's Law No. 21/15 aims to curb the practice of illicit speculation, a phenomenon that disrupts economic balance by artificially raising prices and creating shortages in essential goods. This law responds to the economic and social impact of speculative activities by establishing a legal framework that criminalizes unfair pricing manipulation. The law also emphasizes consumer protection and seeks to ensure equitable market practices by enforcing penalties on individuals and entities engaging in illegal speculation. While Law 21/15 strives to protect market integrity, the extent of its effectiveness remains uncertain, especially given challenges in enforcement and market monitoring. This study examines the limitations of the law and discusses whether additional mechanisms are required to enhance its role in economic security.

Keywords: *illicit speculation, Law No. 21/15, market regulation, price manipulation.*

INTRODUCTION:

The crime of illicit speculation represents a complex economic offense that extends beyond mere price manipulation to pose a direct threat to the country's economic and social stability. This offense leads to unjustified price increases and creates an artificial scarcity of goods, depriving citizens of access to their basic needs. In response, Algerian Law No. 21/15, aimed at combating illicit speculation, highlights the dangers of this escalating phenomenon and seeks to foster a more stable economic environment by establishing stringent measures to curb speculation and lay the foundations for a fair marketplace.

Law 21/15 includes clear and rigorous provisions to prevent commercial abuses falling under the definition of illicit speculation, criminalizing specific actions and imposing deterrent sanctions that range from financial fines to custodial sentences. This approach is designed to prevent the exploitation of economic conditions. Additionally, the law enhances preventive measures by strengthening the role of market surveillance and monitoring, contributing to the early detection of speculative practices and forestalling their spread before they impact market stability and harm consumers.

Despite efforts to enforce this law, its effectiveness remains a topic of debate, particularly concerning its impact on balancing consumer protection with market freedom. This article explores the issue of whether Law 21/15 can adequately deter illicit speculation while fostering a secure and stable economic environment. Can this law sufficiently limit speculation and genuinely protect consumers, or is there a need for additional measures to strengthen its implementation?

First Section: The Concept of Illicit Speculation:

Through the Commercial Code and Competition Law, the Algerian legislator has adopted an approach that liberalizes prices, subjecting them to the principles of supply and demand and freedom of competition. In principle, speculation is a lawful activity; however, the legislator has not accepted this principle unconditionally. Instead, it has imposed restrictions by criminalizing acts that undermine this principle, especially when individuals resort to deceptive or misleading methods to artificially inflate or deflate prices, thereby constituting the crime of illicit speculation.

First: Definition of Speculation in Language:

The term "speculation" in language is derived from the verb "daraba," meaning to travel for trade in search of livelihood¹. In this context, speculation is originally permitted. Economically, speculation refers to the act of buying or selling undertaken by individuals with market expertise to

¹ - Taibi, W. (2011). *The concept of speculation between jurisprudence and banking law*. The Academic Journal of Legal Research, University of Abderrahmane Mira Bejaia, Faculty of Law and Political Science, (1), 108.

profit from price differences. The phrase "to speculate in the market" refers to purchasing goods when prices are low and waiting until prices rise or fall, which may lead to profit or loss².

Second: Legislative Definition of Illicit Speculation:

The Algerian legislator addressed the definition of speculation in Article 172 (repealed) of the Penal Code, as well as in Article 1 of Ordinance 21/15, which defines this offense by outlining its material elements and the legal components that establish the crime.

1. Definition of Illicit Speculation in the Penal Code:

Article 172 of the Penal Code (repealed)³ states: "A person is considered to have committed the crime of illicit speculation and shall be punished by imprisonment of six months to five years and a fine of 20,000 DZD to 200,000 DZD if they directly or indirectly, or through an intermediary, cause or attempt to cause an artificial increase or decrease in the prices of goods, merchandise, or public or private securities by:

1. Intentionally spreading false or malicious news or information among the public.
2. Offering market bids with the intent of causing price disruption.
3. Making offers at prices higher than those applied by other sellers.
4. Engaging in individual actions or, by agreement or collusion, taking market actions or attempting to do so to gain profit unrelated to the natural application of supply and demand.
5. Using any other fraudulent means or methods."

2. Definition of Speculation in Law No. 21/15 on Combating Illicit Speculation:

Article 1 of Law No. 21/15 defines it as: "Any storage or concealment of goods or merchandise intended to create scarcity in the market and disrupt supply, as well as any direct or indirect artificial increase or decrease in the prices of goods, merchandise, or securities, either through an intermediary, the use of electronic means, or other fraudulent methods. Illicit speculation includes:

1. Intentionally spreading false or malicious news among the public to disrupt the market and cause a sudden, unjustified price increase.
2. Offering market bids with the intent of disrupting legally regulated profit margins.
3. Making offers at prices higher than those typically applied by other sellers.
4. Engaging in market activities individually, collectively, or by agreement to secure profit unrelated to the natural application of supply and demand.
5. Using manipulative tactics aimed at raising or lowering the value of securities.

Upon examining both definitions, it is evident that the Algerian legislator, through this new law on illicit speculation, has expanded the scope and concept of the crime to include the storage and concealment of goods with the intent to create market scarcity and disrupt supply chains."

Second Section: The Material Element of the Crime of Illicit Speculation:

The material element of a crime generally refers to the act or omission through which the external manifestation of the crime is completed; a crime cannot exist without a material element⁴. The Algerian legislator has identified several actions that constitute the elements of the material element of the crime of illicit speculation:

First: Criminal Behavior in Illicit Speculation.

Article 1 of Law No. 21/15 specifies several actions that constitute the material element of the crime of illicit speculation. Therefore, we will explore the components and actions constituting the material element of the crime as follows:

Storage or Concealment of Goods and Merchandise to Create Scarcity in the Market and Disrupt Supply:

Criminal behavior in the crime of illicit speculation is realized when the offender stores goods and merchandise with the intention of creating scarcity in the market or disrupting supply. However, it is noteworthy that the Algerian legislator has not defined the term "storage," as the essence of storing goods and merchandise is lawful and aims to preserve products and organize

² - Fahd, K. I. B. (2018). *Speculation and price manipulation in the stock market: A comparative study* (Doctoral dissertation). Cairo University, p. 3.

³ - **Article 24 of Law No. 21/15** states: "The provisions of Articles 172, 173, and 174 of Ordinance No. 66-156, dated Safar 18, 1386, corresponding to June 8, 1966, and constituting the Penal Code, as amended and supplemented, are hereby repealed."

⁴ - Nigm, M. S. (2010). *The Penal Code: General Part (General Theory of Crime)*. Dar Al-Thaqafa for Publishing and Distribution, Jordan, p. 207.

their transport and distribution. Thus, does this act constitute a crime of illicit speculation? Moreover, the legislator used the term “with the aim of creating scarcity,” implying that the offender must have a criminal intent to achieve a specific outcome—namely, scarcity in goods and products. Therefore, determining the intent and purpose of storage or concealment is a complex and challenging matter. How can judicial authorities infer the offender’s intent from the act of storage, thereby proving the element of purpose and intent in the act of storage or concealment? Consequently, based on the aforementioned article, the material element of the crime of illicit speculation consists of two components, and the burden of proof lies with the judicial authorities to establish each element separately:

- **Storage or Concealment:** This represents the criminal behavior of the offense⁵.
- **Creating Scarcity or Disruption in Supply:** This constitutes the criminal outcome of the offense⁶.

2. Any Artificial Increase or Decrease in Prices of Goods, Merchandise, or Securities:

The criminal behavior of this offense is realized when the offender engages in fraudulent acts aimed at artificially raising or lowering the prices of goods and securities. This behavior must result in an actual increase or decrease in prices due to fraudulent and deceptive means, without being subject to the laws of supply and demand. The Algerian legislator has appropriately used the term to reflect the elements of the crime.

In this context, it is noted that the Algerian legislator has limited the scope of the crime to goods and commercial securities, excluding services, which could also be subject to the crime of illicit speculation. This is particularly relevant as some individuals may artificially raise or lower service prices. Therefore, it would have been prudent for the Algerian legislator to include services within the elements of this crime to provide broader legal protection.

Intentionally Spreading False or Malicious News Among the Public to Create Market Disturbance and Unjustified Price Increases:

This behavior is realized when the offender resorts to deceptive methods and malicious news, such as concealing widely consumed goods and announcing their scarcity in the market, which affects the market system and leads to irregular price fluctuations in a sudden manner⁷. It is important to note that, in the case of illicit speculation, the Algerian legislator does not require the offender to possess a specific status; thus, the crime can occur even if the individual is not a merchant or producer⁸.

Additionally, for the moral element of this crime to be established, there must be intent when promoting false or malicious news. This intent is based on prior knowledge, allowing us to assert that the offender’s will was directed toward committing the criminal act⁹.

Offering Goods in the Market to Create Disturbance in Prices or the Legally Established Profit Margin:

Some merchants may resort to offering goods and products at prices lower than the market price to influence economic participants and cause disruption in prices, affecting the profit margin, especially for goods with controlled prices or margins established by law and regulation. However,

⁵ - To facilitate the task of judicial police officers in examining and proving this element, the Algerian legislator has authorized judicial police officers to conduct searches outside of legal hours. Article 10 of Law No. 21/15 states: “Notwithstanding the provisions of Articles 47 and 48 of the Code of Criminal Procedure, residential premises may be searched based on a prior written authorization issued by the public prosecutor or the competent investigating judge, at any hour of the day or night, for the purpose of investigating crimes stipulated in this law.”

⁶ - The term "scarcity," as defined in Article ... of Law No. 21/15, refers to the insufficient availability of goods or merchandise to meet the needs of the population due to increased demand and reduced supply.

⁷ L'our, B. (2014). *Mechanisms for Combating Commercial Practices Crimes in Algerian Legislation*. Doctoral thesis submitted for the degree of Doctorate in Business Law, Mohamed Khider University of Biskra, p. 250.-.

⁸ - Ben Said, A. (2021). *State Price Regulation During the COVID-19 Pandemic Under the Provisions of Algerian Competition Law*. *Journal of Legal Studies*, 8(1), 670.

⁹ - Ben Turki, L. (2018). *Crimes Committed on the Stock Exchange in Algerian Legislation*. *Annals of University of Algiers 1*, (32), 3, 609.

if the intention behind lowering prices is legitimate, such as for the clearance of commercial activities or when the goods are perishable, then the crime of illicit speculation does not occur¹⁰.

4. Presenting Offers at Prices Higher Than Those Typically Applied by Sellers:
This behavior involves merchants purchasing a specific commodity at prices higher than the market rate to acquire the available quantities and subsequently reoffer them at elevated prices¹¹. The Algerian legislator has also classified presenting offers at inflated prices without justification as a violation of competition rules under the competition law¹².

5. Engaging Individually or Collectively in Market Transactions to Obtain Profits Not Resulting from the Natural Application of Supply and Demand:

The crime of illicit speculation is also realized through achieving or attempting to obtain profits outside the legal frameworks of competitive freedom and the rules of supply and demand, whether this behavior occurs individually, collectively, or based on a prior agreement between parties. Article 06 of Ordinance No. 03/03 specifies the forms of prohibited agreements that aim to disrupt competition rules within the market¹³.

6. Employing Maneuvers Aimed at Raising or Lowering the Value of Securities:
The phrasing in the final paragraph of Article 1 of Law No. 21/15 indicates that the crime of illicit speculation is provided by way of example, leaving the judge discretion in determining those maneuvers that could lead to raising or lowering the value of securities.

Second: The Subject Matter of the Crime of Illicit Speculation:

Referring to the law on illicit speculation, the subject matter of the crime includes goods and commodities of any kind, as well as both national and foreign securities. All acts criminalized by the Algerian legislator aim to create artificial scarcity or fluctuations in the prices of goods, commodities, and securities.

1. Goods and Merchandise:

The term "goods" refers to a combination of material and immaterial components that consumers acquire to satisfy their needs and desires¹⁴. However, it is noteworthy that Article 2 of Law 21/15 does not specify the nature of these goods and merchandise—whether they are freely priced items subject to market fluctuations according to the laws of supply and demand or whether they are items with fixed prices or margins established by law and regulation.

2. Financial Instruments:

It is observed that the Algerian legislator removed the phrase "public and private financial instruments" that was stipulated in Article 172 of the abolished Penal Code, and instead used the term "financial instruments" in Law 21/15. This indicates that the provisions of Article 172 applied only to public and private national currency, excluding foreign currency, which has been affirmed by the Supreme Court's jurisprudence¹⁵. The text of Article 2 of Law 21/15 suggests that the legislator subjected all financial instruments, whether national or foreign, to the same criminal protection, meaning that the subject of the crime encompasses financial instruments in general.

¹⁰ - L'our, B. (2014). *Mechanisms for Combating Commercial Practices Crimes in Algerian Legislation*. Doctoral thesis submitted for the degree of Doctorate in Business Law, Mohamed Khider University of Biskra, p. 250.

¹¹ - L'our, B. (2014). *Mechanisms for Combating Commercial Practices Crimes in Algerian Legislation*. Doctoral thesis submitted for the degree of Doctorate in Business Law, Mohamed Khider University of Biskra, p. 250.

¹² - Article 11 of Ordinance No. 03/03 dated July 19, 2003, concerning competition, was published in the Official Gazette No. 43 on July 30, 2003.

¹³ - Loubesne, S., & Boukhalfa, F. (2012). *Criminal Liability of Company Managers for Illicit Speculation Crimes in Algerian Legislation During COVID-19*. Journal of Judicial Jurisprudence, Mohamed Khider University, 13(28), 524.

¹⁴ - Moumeni, Abd al-Rahman. (2009). *Monopoly of Goods and Services by Discrimination and Privilege* [Master's thesis, University of Adrar]. Page 8.

¹⁵ - Decision of the Criminal Chamber of the Supreme Court dated May 31, 2000, file no. 203463. *Judicial Journal*, 2002, Special Issue 1, page 258.

Section Three: Legal Sanctions for the Offense of Illegal Speculation

Referring to the law on illegal speculation, the Algerian legislator has adopted a set of preventive measures aimed at reducing illegal speculation and addressing the causes that lead, directly or indirectly, to such practices. In this context, the state is tasked with preparing a national strategy to ensure market balance, focusing on price stability and limiting illegal speculation to maintain the purchasing power of citizens and to prevent the exploitation of circumstances for unjustified price increases, especially concerning essential goods and items of widespread consumption¹⁶.

First: Primary Penalties

According to Article 12 of Order 21/15, all behaviors constituting the offense of illegal speculation are punishable by imprisonment for a period ranging from three (3) to ten (10) years, as well as fines ranging from 1,000,000 DZD to 2,000,000 DZD. In this context, it is notable that the Algerian legislator has increased the minimum term of imprisonment from six months to three years while reducing the maximum term from five years to three years, in comparison to the provisions of the repealed Article 172 of the Penal Code.

1- Aggravation of Penalties for the Offense of Illegal Speculation

1-1- The Offense of Illegal Speculation Pertaining to Goods of Widespread Consumption

If the subject of the illegal speculation offense involves goods of widespread consumption such as grains and their derivatives, dried legumes, milk, vegetables, fruits, oil, sugar, dairy products, fuel materials, or pharmaceutical products, the penalty is aggravated, with imprisonment ranging from ten (10) to twenty (20) years and fines from 2,000,000 DZD to 10,000,000 DZD¹⁷.

1-2- The Crime of Unlawful Speculation Committed in Exceptional Circumstances:

If the acts constituting the crime of unlawful speculation are committed during exceptional circumstances, such as the emergence of a public health crisis, the outbreak of an epidemic, or the occurrence of a disaster, the penalty shall be temporary imprisonment ranging from twenty (20) years to thirty (30) years, along with a fine from 10,000,000 DZD to 20,000,000 DZD¹⁸. Additionally, the Algerian legislator has intensified the penalty for this crime if it occurs under exceptional circumstances, thus reclassifying the offense from a misdemeanor to a felony.

1-3- The Crime of Unlawful Speculation Committed by an Organized Criminal Group:

If the crime of unlawful speculation involves commodities such as grains and their derivatives, dried legumes, milk, vegetables, fruits, oil, sugar, dairy products, fuels, or pharmaceuticals, and is committed by an organized criminal group, the penalty shall be life imprisonment¹⁹. This implies that if two aggravating circumstances converge in this crime, its classification becomes a felony, resulting in a penalty of life imprisonment.

Second: Additional Penalties:

According to Articles 16 and 17 of Order 21/15, in the event of a conviction for the crime of unlawful speculation, the Algerian legislator has granted judicial authorities the power to impose additional penalties, which include:

- Prohibition from residence for a period of two (2) to five (5) years.
- Prohibition from exercising one or more rights specified in Article 9 bis 1 of the Penal Code.
- Publication and posting of the judgment in accordance with the provisions of Article 18 of the Penal Code.
- Removal from the commercial register of the perpetrator and prohibition from engaging in commercial activities according to the provisions of the Penal Code; the judicial authority may also order the immediate enforcement of this penalty.
- Closure of the premises used to commit the crime and prohibition from exploiting it for a maximum period of one (1) year, without prejudice to the rights of bona fide third parties.

In the case of a conviction for the crime of unlawful speculation, the judicial authority shall order the confiscation of the premises where the crime was committed, the means used to commit it, and any proceeds derived from it²⁰.

Mitigating Circumstances:

¹⁶ - Article 3 of Law 21/15.

¹⁷ - Article 13 of Order 21/15

¹⁸ - Article 14 of Order 21/15

¹⁹ - Article 15 of Order 21/15

²⁰ - Article 18 of Order 21/15.

The application of mitigating circumstances is primarily subject to the discretionary power of the trial judge, within the limits to which the judge can reduce the penalty when considering the defendant's situation in accordance with Article 53 of the Penal Code²¹. Notably, the Algerian legislator has deviated from the general rules established for mitigating circumstances in the crime of unlawful speculation, allowing those who committed such misdemeanors to benefit from mitigating circumstances only up to one-third (1/3) of the legally prescribed penalty²².

Attempt:

Attempting to commit a misdemeanor is not punishable by law unless there is a specific provision in this regard. This means that the legislator has not established a general rule concerning attempts, as is the case with felonies. Therefore, a specific text must exist to punish the attempt of this crime²³. Article 20 of Law 21/15 states: "Attempting to commit the misdemeanors stipulated in this law shall be punished by the penalties prescribed for the completed crime."

CONCLUSION

In conclusion, the criminalization of illegal speculation in Algerian law represents a legislative response aimed at enhancing market transparency and protecting citizens' purchasing power from exploitation by traders and speculators. While the law encourages free trade and relies on supply and demand mechanisms, it does not overlook the necessity of imposing strict constraints to prevent any artificial manipulation of prices that could threaten market stability and harm consumers. The new speculation law seeks to address previous gaps by expanding the scope of criminalization to include all means that may lead to market disruption, whether through deliberate hoarding of goods or fraudulent price manipulation.

Moreover, the emphasis on tightening penalties and raising the minimum threshold aims to deter speculators from exploiting the market, especially during crises and exceptional circumstances that may make citizens more vulnerable to price manipulation. However, this legislative direction requires greater clarity in certain terms such as hoarding, concealment, and fraudulent means to enable the judiciary to apply the provisions effectively and accurately. Furthermore, the exclusion of services from the scope of criminalization may present a loophole that can be exploited for illegal gains. Therefore, it is crucial to develop mechanisms for law enforcement and ensure close monitoring by regulatory authorities to guarantee compliance with the rules, thereby enhancing market confidence and providing better consumer protection.

FINDINGS

1. Law 21/15 provides a legal deterrent against illegal speculation through stringent penalties.
2. The law expands the definition of the crime of speculation to include the unjustified hoarding and concealment of goods.
3. The legislation regulates and sets prices while imposing additional penalties in exceptional cases.
4. Severe penalties, including life imprisonment, are imposed when the crime is associated with organized criminal groups.
5. Complementary penalties, such as removal from the commercial register, enhance the deterrent effect of the legislation.
6. The legislator has relied on providing comprehensive protection for securities against manipulation.

Recommendations.

1. There is a need to establish effective regulatory mechanisms to monitor the application of the law and ensure compliance by stakeholders.
2. Amend the law to expand its scope to include significant market services affected by speculation.
3. Raise public awareness of the importance of adhering to laws to improve market stability.
4. Create specialized units to monitor and evaluate the impact of this law on the national economy.
5. Introduce legal flexibility to address emerging economic challenges.

²¹- Bousquia Ahmed. (2014). *The Concise Guide to General Criminal Law* (14th ed.). Dar Houma for Printing, Publishing, and Distribution, Algeria, p. 389.

²² - Article 22 of Law 21/15

²³ - Hiyari, Ahmad Mohamed. (2010). *The Material Element of the Crime*. 1st ed. Halabi Legal Publications, Lebanon, p. 363.



6. Encourage cooperation with international economic organizations to exchange experiences in combating illegal speculation.

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