

NEW MECHANISMS FOR COMBATING THE CRIME OF ILLEGAL SPECULATION IN ALGERIAN LEGISLATION (STUDY IN LIGHT OF LAW 21/15 ON COMBATING ILLEGAL SPECULATION)

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Abstract - The Algerian legislator has sought to protect consumers from dishonest commercial practices, which have increasingly threatened the national economy on one hand and harmed purchasing power on the other. This is especially true after the global health crisis caused by the COVID-19 pandemic, which resulted in price manipulation and shortages of goods. In response, a specific law was introduced to criminalize actions deemed illegal speculation—Law 21/15—which defines this crime, outlines its forms and elements, and makes its prevention a joint effort between the state, local authorities, and consumer protection associations. This law has introduced preventive measures and strict punitive mechanisms, including the possibility of life imprisonment

.Keywords: Illegal speculation crime, goods, commodities, consumer, purchasing power protection, national economy.;

INTRODUCTION:

The rise in prices and manipulation of them has become a source of concern for consumers and has caused anxiety within Algerian society, especially when it comes to essential goods. The situation is exacerbated by shortages of these materials, resulting from illegal practices adopted by some traders, which have no basis in fair commercial customs. This leads to market instability and undermines the stability of the state's economic institutions. Therefore, it is necessary for commercial activities to respect honest trade practices and avoid any actions that aim to profit at the expense of consumer welfare through fraud and deceit. Any behavior contrary to this must prompt intervention from the relevant authorities to protect consumers' purchasing power from illegal speculation.

To address this, the Algerian legislator intervened through Law 21/15¹, which repealed Articles 172, 173, and 174 of Order 66/156, amended and supplemented by the Algerian Penal Code², as these provisions became inadequate to counter the risks of such illegal commercial practices. This came at a time when Algeria, like the rest of the world, was experiencing a difficult period due to the COVID-19 pandemic and the resulting economic crises, exacerbated by the specter of lockdowns. Thus, it is crucial to examine the mechanisms introduced by this law to combat illegal speculation. Hence, the following problem is proposed:

What are the newly introduced mechanisms for combating illegal speculation under the provisions of Law 21/15?

To answer this question, the research will be divided into two main sections: The first section will discuss the concept of illegal speculation, while the second section will explore the specifics of the procedures related to illegal speculation and the measures introduced for its regulation.

1. The Concept of Illegal Speculation

The rules and regulations governing competition and the practice of commercial activities are no longer sufficient on their own to address illegal commercial practices and ensure fair competition. This gap prompted the Algerian legislator to introduce a specific law to combat the crime of illegal speculation.

¹ Law 21/15 of 28/12/2021 regarding combating illicit speculation, published in Official Gazette No. 99, dated 29/12/2021.

² According to Article 24, the provisions of Articles 172, 173, and 174 of Ordinance 66/156 dated 08 June 1966, constituting the Penal Code, are repealed concerning the crimes stipulated in this law.

Not only did this law criminalize such practices, but it also defined them under Article 2, breaking with the usual tradition of leaving the definition to legal doctrine. Therefore, we will address this concept through both doctrinal and legal definitions.

1.1. Definition of Illegal Speculation

Some legal scholars have defined illegal speculation as: *"Acts of manipulating rights and raising prices, leading to abnormal fluctuations in the market in order to benefit from new conditions and achieve personal profits and interests."*³

It has also been defined as: *"The use of illegal means to influence the price of a security, either higher or lower than the price resulting from supply and demand under normal conditions"*⁴. *Any commercial or financial agreement between a speculator and a financial or commercial entity, whether in the form of a natural or legal person, where the subject of the agreement is the trading of goods, money, or services with high risks or linked to financial market indicators, with the aim of obtaining exceptional profits resulting from price fluctuations."*⁵

As for the Algerian legislator, a definition was provided under Law 21/15, which emphasizes that all operations involving the storage and concealment of goods aim to create scarcity⁶, leading to chaos and disruption, and ultimately to insecurity and the spread of crimes within society. Thus, the crime of illegal speculation is reflected in any fraudulent practice aimed at creating market fluctuations to achieve the highest possible profits as a direct result of the scarcity of goods and services, rather than production capacity⁷. Article 20 of the law stipulates that illegal speculation is: *"Any storage or concealment of goods and merchandise with the aim of creating scarcity in the market and disruption in supply, and any increase or decrease in the prices of goods, merchandise, or securities, either directly or indirectly, through intermediaries, the use of electronic means, or any other fraudulent method or means."*⁸

Therefore, we see that the legislator has provided a definition closely tied to the concept of scarcity, as this is one of the primary causes for illegal speculation and the unjustified increase in the prices of goods.

Based on this, it is clear that illegal speculation takes several forms:

1. Spreading false rumors or news deliberately among the public in order to create market disruptions and artificially raise prices.
2. Offering products in the market with the intention of disrupting prices or profit margins that are legally determined.
3. Offering goods at prices higher than those typically charged by sellers.

³ Sjeri Fatima, Criminal Protection of Consumers, Doctoral Thesis, Faculty of Law and Political Sciences, Abou Bekr Belkaid University, Tlemcen, 2012-2013, p. 107.

⁴ Farouk Abdel, Criminal Protection of the Stock Exchange: A Comparative Study, New University Publishing, 2007, p. 122.

⁵ Talbi Wahiba, "The Concept of Illicit Speculation between Jurisprudence and Banking Law," Academic Journal for Legal Research, Issue 01, Faculty of Law and Political Sciences, Abdel Rahman Mira University, Bejaia, 2001, p. 110.

⁶ Houria Souiki, "Combating Illicit Speculation under the Provisions of Law No. 21/15," African Journal of Legal and Political Studies, Faculty of Law and Political Sciences, University of Adrar, Issue 06, No. 01, 2022, p. 416.

⁷ Scarcity is defined in Article 02, final paragraph, as follows: "The insufficiency of goods or merchandise to meet the needs of the population due to increased demand or reduced supply."

⁸ Refer to Article 1 of Ordinance 66/156, as amended and supplemented, constituting the Algerian Penal Code.



4. Engaging in individual or collective actions, or based on market agreements, with the goal of obtaining profits that do not arise from the natural application of supply and demand.
5. Using maneuvers to artificially raise or lower the value of securities.

It is notable that the Algerian legislator used vague and imprecise phrases in defining illegal speculation. Additionally, while the legislator specified the object of speculation to be goods, merchandise, and securities, there was no mention of services, which are also subject to commercial transactions. Moreover, the legislator did not include in the enumeration of forms of illegal speculation that a trader who fails to report to the relevant authorities about the locations of storage and refrigeration rooms where such goods are kept should also be considered engaged in illegal speculation.

1.2. The Elements of the Crime of Illegal Speculation

Illegal speculation is considered a crime, and thus, the following elements must be present for it to be constituted: the legal element, the material element, and the mental element.

1.2.1. The Legal Element:

The legal element is the first pillar of the criminal act. There must be a legal text that criminalizes the committed act in accordance with the principle of legality. As the principle states: *"No crime, no punishment, and no security measures without law"*⁹. Additionally, *"Everyone is presumed innocent until proven guilty by a judicial body in a fair trial."* This principle is one of the fundamental guarantees ensuring the right to a fair trial, which has been enshrined in many legal systems around the world¹⁰.

The **legal element** of the crime of illegal speculation refers to the legal text that criminalizes this behavior, represented in Article 172 of the Algerian Penal Code, which was repealed by Article 24 of Law No. 21/15 related to combating illegal speculation.

Referring to Law No. 21/15, it appears in several legal articles, specifically Articles 7 to 25¹¹. Therefore, this law can be described as having a penal nature, with seven (7) articles being purely regulatory. This distinction arose because the President of the Republic assigned the Minister of Justice to prepare the law instead of the Minister of Commerce and Export Promotion, which contradicts the state's economic direction toward decriminalization.

1.2.2. The Material Element:

The material element is represented by the criminal act of the perpetrator, regardless of their role. This is understood from Article 02 of Law No. 21/15, which lists several examples of the crime of illegal speculation, including:

- Storing or concealing goods with the intent to create scarcity or disrupt the market and supply chains.
- Artificially raising or lowering the prices of goods, merchandise, or securities, by any means, whether through intermediaries, directly, using electronic methods, or other fraudulent means.
- Spreading and promoting false information with the aim of disturbing the market and raising prices suddenly and fraudulently, as seen during periods of scarcity of certain consumer goods, such as semolina, milk, and oil.
- Offering products in the market with the aim of disrupting the market or the legally set profit margins, such as the price of bread, which is legally set at 7.5 DZD but is currently being sold for 10 DZD.

⁹ Tawati Nassira, Lectures in General Criminal Law, Faculty of Law and Political Sciences, Abdel Rahman Mira University, Bejaia, 2014-2015, p. 06.

¹⁰ See Articles 12 to 23 of Law No. 21/15 of 28-12-2021 concerning combating illicit speculation.

¹¹ Article 02 of Law No. 21/15 of 28-12-2021 defines scarcity as "The insufficiency of goods or merchandise to meet the needs of the population due to increased demand or reduced supply," the same definition found in Chapter IV of Decree No. 14 of 2022, dated 20 March 2022, related to combating illicit speculation.



- Offering prices higher than those usually provided by sellers, often by resorting to monopoly where all available goods in the market are bought at prices higher than their actual value to take control of the market, then resold at the price desired by the perpetrator of illegal speculation.
- Engaging individually or through agreements in market transactions with the goal of obtaining quick profits that do not align with the principles of supply and demand.
- Using maneuvers aimed at increasing or decreasing the value of securities¹².

This is a good idea by the Algerian legislator, but it would have been better to first establish the necessary procedures to activate the stagnant stock exchange, which has negatively impacted the stock and securities market. We are still far from reaching the crime of illegal speculation in securities, which indicates that the Algerian legislator has transferred this article from Article 172 of the Algerian Penal Code as well as Article 435 of the Jordanian Penal Code, which states that "anyone who, by fraud, causes an increase or decrease in goods or securities, whether public or private, traded in the stock exchange, shall be punished by imprisonment for a term not exceeding one year and a fine not exceeding one hundred dinars."

1.2.3. - The Mental Element:

This involves criminal intent, meaning the perpetrator deliberately aims, through their actions, to create a shortage in the market¹³ and disrupt supply, thereby artificially raising or lowering the prices of goods and the value of securities.

2. Legal Means to Combat Illegal Speculation

Due to the seriousness of this crime and its detrimental effects on consumers' purchasing power on one hand, and the market economy on the other, the legislator has addressed it with a specific law that includes a series of deterrent measures, including strict penalties, alongside preventive mechanisms to curb its spread. This will be discussed in the following sections:

2.1. Specific Procedures in the Prosecution of Illegal Speculation Crimes

We will divide this section into two parts: the first will address preventive measures, while the second will focus on the penalties established for this crime.

2.1.1. Preventive Measures to Limit the Spread of Illegal Speculation

The Algerian legislator, within the framework of Article 2 of Law 21/15¹⁴, emphasized the need for the state to combat illegal speculation in order to protect the purchasing power of consumers and address any exploitation of special or emerging circumstances that may occur within the country, aimed at unjustifiably increasing prices, particularly in relation to essential and widely consumed goods.

To achieve this, specific measures have been adopted to limit the phenomenon of scarcity, using what are called "monitoring mechanisms" and encouraging rational consumption. These mechanisms are handled by specialized bodies to combat illegal speculation.

First: Monitoring Mechanisms to Limit the Scarcity of Goods in the Market

To combat illegal speculation, the state has implemented a range of specific measures. The Ministry of Trade and Export Promotion has issued strict instructions to its regional offices nationwide even before the issuance of Law 21/15. Special committees were established in this regard, including Decision No. 95 dated 22/03/2020, which established a monitoring and oversight committee for illegal speculation

¹² As stated in Article 05 of Law No. 21/05.

¹³ Imane Souqal, "The Role of Media in Promoting a Culture of Consumption Rationalization," *Journal of Human Sciences*, University of Constantine, Vol. A, Issue 47, p. 328.

¹⁴ Examples include initiatives by the National Office for Pulses and Dry Cereals in coordination with municipal services to establish points of sale offering goods at affordable prices for ordinary citizens.



and hoarding in the Tiaret province, and Decision No. 34 dated 10/03/2021, which established a monitoring cell tasked with following up on the supply situation of basic goods.

Second: Encouraging Rational Consumption of Goods

This is achieved by intensifying awareness and educational campaigns to promote a culture of consumption that aligns with the needs of society. In this context, the role of active community associations, particularly the Consumer Protection Association, is crucial. The media also plays an important role in guiding consumption culture by ensuring the accuracy of the information and news it conveys to the public¹⁵.

Third: Prohibiting Unjustified Hoarding or Withdrawal of Goods

The law places significant importance on local communities in this regard by emphasizing their active contribution to combating illegal speculation, through:

- Studying and analyzing the local market situation and prices.
- Early detection of any forms of scarcity in goods and products at the local level.
- Designating sales points for essential goods or widely consumed items.

In this context, the Directorate of Trade and Export Promotion plays a critical role through monitoring teams that oversee goods warehouses. They urge economic operators to declare their warehouses, register them in the commercial register, and report their contents.

2.1.2. Bodies Authorized by Law to Combat the Crime of Illegal Speculation

The Algerian legislator, under Law 21/15, has defined the individuals authorized by law to detect the crime of illegal speculation, as outlined in Article 07 of this law. These include judicial police officers and agents, qualified agents from the monitoring bodies under the Directorate of Trade and Export Promotion, as well as qualified agents from tax services.

First: Judicial Police Officers and Agents

According to the provisions of Article 07 of Law 21/15, the responsibility for investigating and searching for this crime has been assigned to judicial police officers and agents as stipulated in the amended and supplemented Code of Criminal Procedure, which includes the following as outlined in Article 02 of Law 19/10:

- Heads of municipal people's councils.
- National Gendarmerie officers.
- Employees from specialized monitoring bodies, police officers, and national security officers.
- Non-commissioned officers who have served in the National Gendarmerie for at least three years and have been appointed through a joint decision by the Minister of Justice and the Minister of National Defense, with special approval.

Additionally, some judicial police officers include employees from police services, non-commissioned officers of the National Gendarmerie, and personnel from the national security military services who do not hold the title of judicial police officers.

Second: Qualified Agents of the Directorate of Trade and Tax Administration

1. Qualified Agents from the Monitoring Bodies of the Directorate of Trade:

¹⁵ Therefore, it is strictly prohibited to store goods in unauthorized warehouses or withdraw goods with the intention of creating scarcity in the market.

The specialized departments within the Directorate of Trade¹⁶ include the Consumer Protection and Economic Investigations branches¹⁷. These agents are entrusted with the task of investigating and monitoring illegal speculation due to their knowledge of the market, commercial practices, and traders' behavior. They are granted several powers, including the ability to examine commercial, administrative, and financial documents, seize equipment, goods, and products subject to speculation, and access commercial establishments and storage locations. They are also authorized to prepare reports that are submitted to the relevant authorities¹⁸.

2. Qualified Agents from Tax Administration Services:

These include officials from various tax inspection and monitoring departments, as defined by Executive Decree 10/299. This includes inspectors, tax controllers, field agents, tax analysts, and tax programmers.

2.1.3. Special Procedures for Prosecuting the Crime of Illegal Speculation

Article 08 of Law 21/15, which pertains to combating illegal speculation, assigns the responsibility for initiating legal action automatically to the Public Prosecution. The prosecution can also initiate proceedings based on a complaint from national associations active in consumer protection or any individual harmed by this crime, as outlined in Article 09 of the same law.

Article 10 of the same law states that inspections of establishments and residences can occur at any time, day or night¹⁹, highlighting the seriousness of this crime and the necessity to address it at all times. This provision deviates from the general rule in the Algerian Criminal Procedure Code regarding residential searches. **Article 11** grants the possibility to extend the initial detention period twice, with written permission from the public prosecutor, compared to the previous provisions of the Criminal Procedure Code²⁰.

2.2. Penalties for the Crime of Illegal Speculation

The Algerian legislator has established a series of penalties to confront the crime of illegal speculation and curb its spread. These include both primary severe penalties and supplementary penalties, which may deprive offenders of certain rights. The penalties are divided into two sections: the first section addresses primary penalties, and the second focuses on supplementary penalties.

2.2.1. Primary Penalties for Illegal Speculation

Article 12 of Law 21/15, related to illegal speculation, states: "Anyone who stores or keeps goods or products to create a shortage in the market, disrupt supply, or unlawfully raises or lowers the prices of goods, products, or securities, whether directly or indirectly, through an intermediary, electronic means, or any other fraudulent methods, shall be punished with imprisonment from 3 to 10 years and a fine of 100,000 DZD to 200,000 DZD."

¹⁶ Soudrati Wafaa, "Illicit Speculation Crime in Algerian Legislation under Law 21/15," Journal of Legal and Social Sciences, Issue 01, No. 08, p. 1327.

¹⁷ Executive Decree 10/299 of 29 November 2010, concerning the special status of employees belonging to the special tax administration corps, Official Gazette No. 74, dated 29 November 2010.

¹⁸ Article 08 of Law 21/15 stipulates that the Public Prosecution Office initiates proceedings automatically for crimes outlined in this law.

¹⁹ Article 10 of Law 21/15 states: "Regardless of Articles 47 and 48 of the Code of Criminal Procedure, residential premises may be searched with prior written authorization from the Public Prosecutor or the competent investigating judge at any time of day or night to investigate crimes stipulated in this law."

²⁰ Article 11 specifies: "Regardless of Articles 51 and 65 of the Code of Criminal Procedure, the original duration of custody may be extended twice with written authorization from the competent Public Prosecutor when it concerns crimes stipulated in this law."

Article 13 increases the penalty if the illegal speculation acts involve goods that the state considers to be of strategic importance. The punishment is raised from 10 to 20 years of imprisonment, and the fine increases from 1,000,000 DZD to 2,000,000 DZD²¹. Additionally, the legislator has enhanced the penalty if the illegal speculation occurs during health or epidemic crises or in emergency circumstances, as stated in **Article 14** of the same law²².

Furthermore, **Article 15** of the law stipulates that if the acts described in **Article 13** are committed by a criminal organization, the punishment is life imprisonment.

2.2.2. Supplementary Penalties for Illegal Speculation

Articles 16, 17, and 18 of Law 21/15 outline the supplementary penalties that can be applied to natural persons for committing the crime of illegal speculation. **Article 19** addresses the criminal liability that may apply to legal persons.

First: Penalties for Natural Persons

According to **Articles 16, 17, and 18**, the penalties for natural persons who commit the crime of illegal speculation are as follows:

1. **Prohibition from Residency:** The judge, at their discretion, may impose a penalty of prohibition from residing in a specific area. This penalty, as per **Article 16**²³, may last from two to five years.

2. **Prohibition from Exercising One or More Rights Outlined in Article 09 Bis 01 of the Penal Code:**

The perpetrator can be prohibited from exercising one or more of the rights listed in **Article 09 Bis 01** of the Penal Code, which include:

1. **Dismissal or exclusion** from all public offices and positions related to the crime.
2. **Deprivation of the right to vote or stand for election** and to hold any honor or decoration.
3. **Ineligibility** to act as a sworn assistant, guardian, or witness to any contract or in court, except for the purposes of giving evidence.
4. **Deprivation of the right to carry arms**, teach, manage a school, or serve in an educational institution as a teacher, professor, or supervisor.
5. **Ineligibility to serve as a guardian** or tutor.
6. **Loss of parental authority**, either partially or fully.

Third: Publication of the Judgment or Its Announcement:

²¹ Article 13 of Law 21/15 regarding combating illicit speculation states: "If the acts referred to in Article 12 above concern grains and derivatives, dry pulses, milk, vegetables, fruits, oil, sugar, coffee, fuel materials, or pharmaceutical products, the penalty shall be imprisonment for 10 to 20 years and a fine ranging from 10,000.00 DZD to 20,000.00 DZD."

²² Article 14 of the aforementioned law states: "If the acts referred to in Article 13 above occur during exceptional circumstances, the emergence of a health crisis, the outbreak of an epidemic, or a disaster, the penalty shall be temporary imprisonment for 20 to 30 years and a fine ranging from 10,000.00 DZD to 20,000.00 DZD."

²³ Article 16 of Law 21/15 states: "The perpetrator may be penalized with a ban on residence for a period ranging from two (02) to five (05) years."

Article 16 (paragraph 3) ²⁴of Law 21/15 stipulates that the judgment can be published and displayed in specified locations as indicated in the ruling. Additionally, the costs of the publication will be borne by the convicted person, as outlined in **Article 18** of the Penal Code.

Fourth: Removal from the Commercial Register:

If the crime of illegal speculation is committed, the court may order the removal of the perpetrator's name from the commercial register. The offender will also be prohibited from engaging in any commercial activity under any name or in any other location²⁵.

Fifth: Closure of the Business Used in the Crime:

If the court issues a conviction, it may order the closure of the commercial establishment used in the commission of the crime. The business will be prohibited from operating for a maximum period of one year²⁶.

Sixth: Confiscation:

The court that issued the judgment may also order the confiscation of the premises where the crime occurred, the means used to commit it, and any assets obtained as a result of the crime.

Second: Penalties for Legal Entities:

Article 19 of Law 21/15 explicitly states that legal entities may also be criminally liable for committing the crime of illegal speculation. It refers to the application of the Penal Code, particularly **Article 18 Bis**²⁷, and outlines the following penalties for legal entities:

1. **Financial Fine:** A fine ranging from one to five times the maximum fine imposed on individuals under the law.
2. **Supplementary Penalties:** These include:
 - **Dissolution of the legal entity.**
 - **Closure of the entity or one of its branches** for a period not exceeding five years.
 - **Exclusion from public contracts** for a period not exceeding five years.
 - **Prohibition from engaging in one or more professional or social activities**, either directly or indirectly, permanently or for a period not exceeding five years.
 - **- Confiscation of the object used to commit the crime or obtained as a result of the crime.**
 - **- Publication and posting of the conviction judgment.**
 - **- Placing under judicial supervision for a period not exceeding 5 years and imposing supervision on the activity that led to the crime or during which the crime was committed.**

CONCLUSION:

Illegal speculation is one of the most dangerous crimes that threatens both the purchasing power of consumers and the national economy. This crime involves price manipulation and the monopolization of goods and products, leading to economic and social instability. In response, the Algerian legislator enacted a specific law to combat this crime and mitigate its consequences by introducing new mechanisms. These include preventive measures aimed at curbing the spread of illegal speculation and reducing its effects by ensuring goods remain available in the market, encouraging rational consumption, and combating excessive demand. Additionally, the law calls on civil society and the media to inform

²⁴ This is stipulated in Article 16 of Law 21/15 mentioned above.

²⁵ Refer to Article 17/03 of the same law.

²⁶ Confirmed in Article 18 of the same law.

²⁷ Article 18 bis of the Penal Code stipulates the following:

the public and combat misleading and false information. Furthermore, deterrent mechanisms have been established, including severe penalties, with sentences that can reach life imprisonment in certain cases.

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