



Procedural Specificity of Illicit Speculation According to Law N°: 21-15

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Abstract:

Special Law n°: 21-15 on combating illicit speculation consists of two parts. The substantive part includes the criminalisation of illicit speculation in all its forms, as well as the penalties provided for therein, and the procedural part includes a series of measures and procedures before and after the initiation of public action. The enactment of the Act allowed Parliament to adopt a criminal policy that was entirely different from that which was usually practised. Therefore, the measures taken are geared towards the prevention of the commission of the crime on the one hand, and on the other hand, the special procedures permit the prosecution of perpetrators linked to illicit speculation, according to specific procedures adapted to the scale and gravity of the crime, given that the latter is classified as a serious economic crime that can cause scarcity and undermine the food security of the state, as well as the purchasing power of citizens by creating market disturbances and disturbing the balance of supply and demand.

Keywords: criminal policy, illicit speculation, measures, procedures, public action.

Introduction:

The legislator has adopted a penal policy in the post-independence phase, completely different from the one in which we currently live, to fight crime in general and crime related to illicit speculation in particular, as provided for in the 1966¹ Penal Code and amended only in 1990², in Section Seven, under the heading of industrial, commercial and public auction offences. Only three articles namely 172, 173 and 174 organized this offence related to illicit speculation, which were later repealed by the special law on illicit speculation.

This new law contains two parts, the criminal part which included the crime of illicit speculation in its various forms, and the punitive part, which included the penalties provided for this crime without addressing the procedural aspect that the legislator at this stage was supposed to include at least the follow-up and investigation procedures for this offence, given the seriousness of the offence that could have caused the creation of instability within the country.

¹- Ordinance N°: 66-156 of 8 June 1966 (o.j, n° : 49) of 11 June 1966 containing the Penal Code.

²- Law N°: 90-15 of 14 July 1990 (o.j, n° : 29) of 18 July 1990 amends and supplements Ordinance N° : 66-156 of 8 June 1966 containing the Penal Code.



With the enactment of Special Law N^o: 21-15³, which contains 25 articles, it became quite contrary to what it was, so the legislator dealt with the procedural part, by adopting a variety of measures to prevent crime in its various forms and a set of procedures related to the prosecution of perpetrators, and thus accomplices of an offence.

These measures and procedures therefore made this crime specific. Especially in the procedural aspect, taking into account the circumstances, the crime intensified in exceptional circumstances after the emergence of the coronavirus pandemic in Algeria and the rest of the world; which prompted the legislator to reconsider what was provided for and punished in the penal code, both in terms of incrimination and punishment, as well as in terms of proceedings.

Since the crime of illicit speculation is essentially linked to the food security of the citizen, on the one hand, and to national security, on the other hand, legislator intervention has been very important and very effective in developing measures and procedures that are consistent with the seriousness of the crime.

From this point of view, and taking into account the importance of this theme, through which we seek to examine its procedural process, in which the legislator has dealt with a number of measures relating to the preventive aspect, which defines the positive role of the State entrusted to it would contribute to the stability of the market by providing all the necessary goods and commodities to the citizen; in addition to involving the local authorities⁴, the legislator has recognized its active role in the implementation of the state's criminal policy.

To reduce the intensity of this crime on the one hand, and to involve civil society and the media in raising consumer awareness of the risks of excessive consumption of substances on the other.

The legislator also approved several procedures, including the competence of judicial police officers to research and investigate the crime of illicit speculation in all its forms, in addition to specifying procedures for initiating public action.

Accordingly, and to study this subject, we have chosen to pose the following problematic: are the measures and procedures adopted by the legislator in Law N^o: 21-15 to combat the offence of illicit speculation sufficient to give it a character of specificity?

To answer this problematic, the analytical approach was adopted, because it is the most appropriate to analyze the articles stipulated in the Law N^o:21-15. In this regard, in our study we will rely on various legal articles related to measures and procedures to emphasize the specificity of the procedures adopted by the legislator to deal with the crime of illicit speculation, based primarily on the following plan:

I- Procedural specificity in terms of preventive measures.

II- Procedural specificity in terms of monitoring procedures.

³ - Law N^o: 21-15 of 28 December 2021 (o.j, n^o : 99) published on 29 December 2021 on the fight against illicit speculation.

⁴ - Article 17 of Presidential Decree N^o: 20-442 of 30 December 2020 provides for the promulgation of the constitutional amendment ratified in the referendum of 1 November 2020 (o.j, n^o :82)of 30 December 2020 states: "The regional communities of the State are the municipality and the State. The municipality is the basic community".



I- Procedural specificity in terms of preventive measures:

On the basis that illicit speculation is classified among the most serious offences that threaten the national economy by disrupting the rule of the citizen's purchasing power, as well as the rule of supply and demand, which would take on different dimensions if fully realized, the legislator gave it great importance.

The procedural aspect, by assigning preventive measures, represented by the approved control mechanisms, by involving local groups in the fight against illegal speculation, and by involving civil society and the media in promoting consumer culture. Based on what has been mentioned, we will discuss each measure in this Act separately as follows:

1-Approved control mechanisms:

The legislator has introduced several mechanisms to prevent the infringement from occurring, some of which are related to the prospective aspect, and others are related to the field aspect through what the citizen needs to satisfy his desires, and to identify what is included in the law N° 21-15 of proactive measures. To deal with the crime before it occurs, the legislator relied on several mechanisms that go to the heart of criminal policy adopted by developed countries, relying on expectations and prospective studies, with the intention of not falling into rarity, in this point the mechanisms are as follows:

A-The national strategy⁵ elaborated by the state:

The state has prepared a national strategy aimed at ensuring balance at the market level, through its commitment to providing all the goods, services and liquidity that citizens need, which will guarantee price stability and limit illicit speculation to preserve the purchasing power of citizens, as well as prevent exploitation.

The circumstance aimed at unjustifiably increasing the prices of essential and widely consumed products⁶, in anticipation of the appearance of shortage which would harm the national economy and interests of citizens, and subsequently lead to instability within the state and create an atmosphere of tension between the state and the individual.

By extrapolating what the legislator has affirmed in the text of section 3 of that Act, we see that he tried, from the first glance, to rely on the preventive aspect before resorting to the deterrent aspect, so that it developed a national strategy that would manage such crises and prevent the occurrence of crime, and this approach was adopted by the legislator in its policy.

In our view, criminal policy is seen as a rational policy that prevails in the developed world that would play an important role in eradicating crime before it occurs, on the one hand, and by providing very severe penalties, up to life imprisonment on the other, so that speculators do not dare think about committing this crime.

⁵ - The strategy is defined as the science and the art of using available means and capacities in an integrated process to be prepared and planned to create a margin of freedom of action that will help decision-makers achieve their main political objectives in times of peace and war. Abdekader mohamed fahmi, *The Introduction to the Strategic Study*, house Majdalawi for Publishing and Distribution, Amman, 2014, p 18.

⁶- The legislator did not exclude any substance or commodity from illegal speculation But he specified exclusively the necessary products concerning the offence of illegal speculation in which the penalty is aggravated in Article 13, about the occurrence of acts on cereals and their derivatives, dried legumes, milk, vegetables, fruit, oil, sugar A, coffee, fuel or pharmaceuticals.



B- Measures on the ground:

The state has taken a number of measures, concretized on the ground, to limit illicit speculation and deal with everything related to market destabilization, as follows:

- To ensure the availability of necessary goods and products on the market.
- To adopt vigilance mechanisms to take appropriate measures to reduce the shortage.
- To encourage rational consumption.
- To take the necessary measures to refute the spread of any rumours promoted to cause a market disruption and a sudden and random price increase.
- To prevent any unjustified storage or removal of goods which create a state of scarcity to increase prices⁷.

Based on what was discussed, and in anticipation of any urgency. The State through these legal texts, agreed on a policy of combating perinatal crisis before it occurs, and this is considered as one of the obligations of the State to provide the necessary products on the market to the citizen to satisfy its needs. the rational consumption of the products available on the market becomes systematic, and the consumer culture of the citizen is also acquired by activity and consciousness. It can be said that the positive results obtained by the work carried out by the associations are based on a scientific study and not on a random study.

The legislator has included territorial collectivities to fight against illicit speculation by developing a series of measures that would play a primordial role in the fight against these crimes, the allocation of points of sale of essential products or widely consumed during holidays, national and religious celebrations seasons and in exceptional situations corresponding to low-income people.

Early monitoring of all forms of local shortages of goods and commodities.

- Early monitoring of all forms of local shortages of goods and commodities.
- Study and analysis of the local market situation (Article 05).
- To emphasize, that the legislature has involved territorial collectivities in the fight against the crime of illicit speculation in order to reduce the illegal practices that affect citizens as stipulated in the municipal law 11-10 and ensure the application of the State policy aimed at reducing the scarcity which mainly affects the consumer.

2-The contribution of civil society to the promotion of a culture of consumption:

The state's involvement of civil society in the fight against speculative crime⁸ is constant enshrined in the Constitution of 2020, and in re-knowledge of the constitutional foundation of civil society in the conduct of public affairs through its work, whether through neighbourhood activity, or in awareness days, or even in meetings broadcast

⁷ - See Article 04 of Law n° : 21-15.

⁸- Civil society is defined as: "A range of political, economic, social and cultural institutions and various voluntary organizations established by the free will of members to protect and defend their interests, for example: political parties, cultural organizations, professional associations, interest groups, associations and non-governmental organizations." Abdenour Nadji, introduction to political science, Maison des Sciences, Annaba, 2007, p 170.



through the media, by various associations active in the field of consumer protection, or not active in this field, because the legislator has not defined the competence of the activities of associations, it has included civil society in all areas.

It should be mentioned that the legislator has involved the civil society, especially in the case of economic offences. particularly in the case of economic offences. taking the example of the offence of smuggling is stipulated and punishable by is stipulated and punishable under ordinance N°: 05-04⁹ in article 4, and the offence of prevention and fight against corruption stipulated and punishable by Law N°: 06-01¹⁰ in Article 15.

3-The media's contribution to consumer awareness:

As regards the media, its activity is all the work done by the media, whether written or audiovisual, which aims to raise consumer awareness in normal and exceptional circumstances, such as the spread of epidemics and natural disasters (Art. 06). This work is carried out with great professionalism as required by the ethics of the profession of journalist¹¹, collecting information from its sources, processing it in an artistic form and displaying it in an interesting and attractive form, by making it subject to public possibility¹².

II- The specificity of the prosecution procedures for the offense of illicit speculation:

On the basis of the above, we will address all the procedures provided for in Law No 21-15, in order to underline the specificity of the prosecution procedures for the crime of illicit speculation in all its forms. In Law N°: 21-15, the legislator established a series of procedures, that we will examine in the articles of the penal procedure code, which identified the persons legally authorized to inspect and prosecute the crime of speculation. The law involves judicial police officers and special wire agents exercising their jurisdiction to inspect and investigate ordinary crimes and also in cases where there acts of research and examination of crimes created.

⁹- Article 04 of Ordinance N° : 05-06 of 23 August 2005 (o.j, n° :59) of 28 August 2005, as amended and supplemented in particular by Ordinance n° : 06-09 of 15 July 2006 (o.j, n° : 47). of 19 July 2006 on the fight against smuggling: "The participation of civil society in the prevention and fight against smuggling is encouraged through, in particular, by: - the promotion of educational programmes, education and awareness on the dangers of contraband to the economy and public health, reporting to public authorities, smuggling and the distribution and sale of contraband goods,....."

¹⁰- Article 15 of Law N° : 06-01 of 20 February 2006 (o.j. n° : 14) of 8 March 2006, concerning the prevention and control of corruption, supplemented by Ordinance n° : 10-05 of 26 August 2010 (o.j, no° : 20), of 1 September 2010, signed and supplemented by Law N° 11-15 of 2 August 2011 (o.j, n°: 44) of 10 August 2011: "The participation of civil society in the prevention and fight against corruption is encouraged, in particular by the transparency of decision-making processes and the promotion of citizen participation ‡ public affairs management, education programmes, education and awareness of the dangers of corruption to society

¹¹- The ethics of the journalism profession and the rules and principles of media work are distinguished by a prestigious status if applied by journalists in the exercise of their functions, and thus becomes a duty to act in words and deeds, not to make them as written slogans in the form of written charters. . Mohamed allaoua, Journalism Ethics and Principles of Media Action in Algeria, "Analytical Reading of Media Law 2012, Audiovisual Law 2014, Journal of Researcher in Humanities and Social Sciences, University of the Valley, vol. 12, n° : 04, December 2020, p. 282.

¹²- Asma Reggie, Professional and Academic Competence of Audiovisual Liaison, Maghreb Journal of Historical and Social Studies, Sidi Belabas University, vol. 06, n° : 02, December 2015.



To this end, article 16 bis of the same law specifies the cases where judicial police officers have resorted to the extension of their jurisdiction.

1- In terms of qualified agents:

Article 19 of Ordinance N°: 95-10¹³, which contains the penal procedure code, exclusively specifies those responsible for judicial control. Article 20 of law N°: 85-02 specifies the duties of such officers¹⁴. the Code of Criminal Procedure stipulates that the research and investigation of crimes, including the crime of illicit speculation, must be carried out in the public interest. On the occasion of the adoption of Law N°21-15¹⁵.

On the basis of the aforementioned Article, reference is made to Article 07 of Law No 21-15, which contains the fight against illicit speculation in its second and third paragraphs, which defines qualified agents as follows: "Qualified control agents of the Department of commerce, qualified tax administration agents" We find that the legislator has not contravened the code of criminal procedure and has not limited the correctness, when it conferred the status of the judicial police on quality control officers belonging to the qualified trade directorate and qualified officers of the customs directorate, because it is an offence that was provided for and punishable in the penal code to which the legislator has passed a special law that contains two aspects, the substantive aspect and the procedural aspect. and thus the approval of the legislator has this category certain powers of judicial control, in order to mitigate the offence of illicit speculation according to the conditions and within the limits set out in this law.

2- About the functions of judicial police officers:

When searching and examining the offence of illicit speculation, judicial police officers perform certain procedures, which are one of the tasks that these officers are legally mandated to perform. This is the custody and inspection procedure. fails to carry out these procedures in accordance with Law n. 21-15 in the same way as the penal Procedure code, thereby invalidating the procedure. We will therefore consider the following two measures:

A-In terms of regards custody proceedings:

According to the provisions of Article 65 of Law No. 15-02, if a preliminary investigation is necessary, judicial police officers must keep in custody the person against whom there is evidence that he is suspected of committing an offence, that the law provides for a sentence of deprivation of liberty. Therefore, the officer must inform the person concerned of the procedure and immediately inform the Public Prosecutor of his rights by informing him of the reasons for the use of the procedure¹⁶.

On this basis, the legislator has set the initial period of custody at forty-eight hours (48), which can in no case be exceeded, in accordance with the provisions of Article n°:51 of the

¹³- Ordinance N°: 95-10 of 25 February 1995 (o.j, n° 11), issued on 1 March 1995, amends and supplements Ordinance n°: 66-155 of 08 June 1966, which contains the penal Procedure code.

¹⁴- Law N° : 85-02 of 26 January 1985 (o.j, n° 5) 27 January 1985. Amends and supplements Ordinance n° : 66-155 of 8 June 1966 containing the penal Procedure code.

¹⁵- In this regard, Article 63 of Law N° : 06-22 states: "Judicial police officers, under the supervision of judicial police officers, conduct preliminary investigations as soon as they become aware of the crime, either on the instructions of the public prosecutor or on their own initiative".

¹⁶- Mohamed hazit, the origins of criminal proceedings in Algerian law, in the light of the latest amendments to the Code of Criminal Procedure and jurisprudence, Dar Homah, Algeria, 2018, p. 182.



penal Procedure code, and Article n°: 45 of the Constitution 2020. However, at each can have an expectation. The exception approved by Parliament is that the detention may be extended twice (02) with the written authorization of the competent public prosecutor, if the offences provided for in this Act are concerned (art. 11).

It should be noted that the Algerian legislator has granted except to the judicial police that the use of the custody procedure for offences classified as crimes or delicts, on the one hand, and that they are prohibited from arresting the author who commits a contravention, on the other hand.

the legislator has approved for officers the extension of the initial period of forty-eight (48) hours of custody (Article N°: 51) penal procedure code, which stipulates that this crime is as serious as offences against the security of the State.

B- In terms of research and investigation procedures:

The legislature approved the inspection of residential stores even though their protection is guaranteed by the Constitution. The legislator therefore submitted this procedure to the prior authorization of the public prosecutor or the investigating judge competent to investigate the offences provided for in this Law.

However, taking into account the gravity of the crime of speculation, the holder of such authorization, which is a prerequisite for the full exercise of his functions by the judicial police officers, and under the pretext of cancelling this procedure in the event of a violation, the legislator lifted the restrictions provided for in Article 47 in its first paragraph, such as the time limit which fixes the hours of research of the fifth (5) hour of the morning to twentieth (20) of the evening, and the owner's request is registered; as well as the limitation of domestic remedies in the cases provided for by law and, therefore, legislator approved research during the day and night 24/24 hours for all illicit speculative images, under penalty of invalidity if article 44 is violated¹⁷.

The recourse of the legislator to this procedure in the conditions provided for by the law N°: 21-15 is a case of necessity in the sense of the exceptional situation, which the legislator decided to resort, by making arrangements to deal with it so that it is not contrary to procedural legality¹⁸.

On this basis, it can be said that the legislator added the crime of illicit speculation to the offences provided for in article 47 in its third paragraph, relating to drug offences, transnational organized crime, crimes against data automation systems and money offences-money laundering and terrorism, as well as offences related to exchange crimes legislation, given their weight and seriousness.

It should be noted that Article 2, paragraph 1, of the law N°: 21-15 refers to the commission of the crime of illicit speculation by electronic means. Therefore, inspection in this form is governed by code 09-04, which contains special rules for the prevention and control of crimes related to information and communication technology, in particular in its fifth article.

¹⁷- Abdelrahman khalfi, Criminal Procedure in Algerian Law and Comparative Law, 5th revised and agended, edition, Dar Balkkis, Algeria, 2021, p 83 .

¹⁸- Abdallah Ouhaibia, Explanation of the Algerian Code of Criminal Procedure, V 01, 8^{eme} , Dar Homah, Algeria, 2018, 428.



C-With regard to the implementation of public action:

Because of the seriousness of the offence and the circumstances that led to the enactment of this Act, the legislator has imposed no limit on the setting in motion of the public action, and we will therefore examine in this element those who have the right to bring a public action, highlight the specificity of this procedure.

C1- The public prosecutor:

The public prosecutor shall automatically set the public action in motion, either by notification of the agents referred to in Article 07 or by any notification of any party whatsoever; the public prosecutor shall therefore carry out the public action. Within the meaning of the offence, there are no restrictions on the Office of the Prosecutor in the exercise of its functions; thus, the restrictions provided by the legislator in the penal Procedure Code¹⁹, and so on the permission, or at the request of a particular body²⁰, or by written authorization of a service concerned, which is known to give the administration the right to trace, does not prevent the Public Prosecutor from putting into operation and exercising the public action²¹.

In this sense, public action for the offence of illicit speculation in all its forms is in no way subject to the restrictions previously discussed. Thus, it can be said that the offence of illicit speculation is distinct from other economic offences since it accounts for its own actions.

C 2- Civil society:

The legislator authorizes civil society, through national associations active in the field of consumer protection²², or any person concerned, to file a complaint with the judicial authorities, either by filing a complaint with the prosecutor's office or by filing a complaint with the investigating judge accompanied by a civil allegation (Art. 09).

It can be argued that this section is characterized by the specificity of its wording and content in relation to section 23 of Act 09-03²³, which reads as follows: "When consumer is the victim of individual damages caused by the same common-origin stakeholder, consumer protection associations may do so".

Conclusion:

We concluded our study of the procedural specificity of the offence related to illicit

¹⁹- Abdelrahman khalfi, Criminal Procedure in Algerian Law and Comparative Law, 6th revised and agended, edition, Dar Balkkis, Algeria, 2022, p p 233-237 .

²⁰- Mohamed Khamikham, Special Nature of Economic Crime in Algerian Legislation, Master's Thesis in Law, University of Algiers, 2011, p 77.

²¹- According to Article 21 of Law N°: 09-03 of 25 February 2009 (o.j, n° :15) of 8 March 2009 on consumer protection and the suppression of fraud, amended and supplemented, in particular by Law N° 18-09 of 10 June 2018 (o.j, n° :35), of June 13, 2018, Consumer Protection Association: Each association is established in accordance with the law, aimed at ensuring consumer protection by informing, raising awareness, directing and representing the consumer.

²²- Law N° :06-22 of 20 December 2006 (o.j, n° :84) 24 December 2006, amends and supplements Ordinance N° : 66-155 of 8 June 1966 containing the penal Procedure code.

²³ - Law N° : 09-03 of 25 February 2009 (o.j, n° :15) of 8 March 2009 on consumer protection and the suppression of fraud as amended and total, in particular by Law n° : 18-09 of 10 June 2018 (o.j, n°35) dated June 13, 2018.



speculation in light of Law N^o: 21-15, which focuses on the measures and procedures adopted by legislator for the finding and prosecution of the crime. The problem was solved on the ground that the measures and procedures adopted by the legislator in Law n^o: 21-15 to combat the offence related to illicit speculation have a specificity, compared to the measures and procedures set out in the general rules.

Therefore, in this document, we have tried to highlight all the measures approved by Parliament to combat this offence. Which remains an offence unlike other economic offences, given its seriousness and the exceptional circumstances in which it has been propagated, which led the legislator to invoke a special law, rather than maintaining it in the penal code, in sections 172, 173 and 174.

To this end, it was concluded that the measures and procedures approved by the legislator gave rise to a specificity that made the offence related to illicit speculation, not like other offences. The results therefore covered the following points:

- The prevention policy of the state before resorting to repressive means by providing all the goods, and products necessary for citizens in their daily lives.
- The state is pursuing prospective studies and vigilance methods to prevent any risk of scarcity affecting market stability.
- It involves local authorities in the fight against speculative crime by implementing state policy.
- It involves civil society and the media in promoting citizens' consumer culture.
- The legislator authorizes the judicial police, as well as qualified agents belonging to the Ministry of Commerce, and agents belonging to the tax administration to inspect, to investigate the various offences provided for in this Act.
- The legislator has increased the duration of the search 24/ 24 hours, taking into account the seriousness of the crime affecting the security and food stability of the state on the one hand, and the consumer who constantly seeks to satisfy his wishes at the lowest cost under food safety and stability on the other hand.
- Extension of the period of custody twice for the initial period not exceeding forty-eight (48) hours in normal circumstances, taking into account the seriousness of the offence.
- The legislator approved the automatic setting in motion of the action public by the public prosecutor's office.
- The legislator has not restricted any of the restrictions provided by the Penal Code for certain offences, as well as the penal Procedure code, which hinders the action of the prosecution.
- Allow associations active in consumer protection to present themselves as civil parties in the judicial system.

It should be mentioned that the legislator always follows the pace to create social and economic stability. Thus, it can be said that the legislator was right when he foresaw the crime of speculation in a special law to reduce the negative practices exploited by vulnerable people in order to create scarcity and sow sedition in society.

Accordingly, proposals may be limited to the following:

1-We call on the legislator to set up a national vigilance body composed of several ministries (interior, defence, trade, finance, health) to monitor everything that happens in the market,



prepare prospective studies and propose short and long-term solutions.

2-Involve all associations, and not just the Consumer Protection Association, in the work of raising awareness; which mainly aims to raise awareness of the risks of irrational consumption, which negatively affects the national economy and the consumer.

3- Organize school days according to an annual program that affects all aspects of the consumer.

4- Awareness of the risks of misuse of social networks and other electronic means, which contribute to the culture of propaganda in the public, and direct the consumer to practice practices that will cause scarcity.

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