

THE EFFECTIVENESS OF CRIMINALIZATION PROVISIONS IN CONFRONTING THE PHENOMENON OF ILLEGAL MIGRATION IN LIGHT OF LAW NO. 24-06

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Abstract:

The Algerian legislator has established a comprehensive legal framework to combat the phenomenon of illegal migration pursuant to Law No. 24-06. This law has tightened the penalty for illegal departure from the national territory through the amendment introduced to Article 175 bis 01 of the Penal Code, making the punishment imprisonment from 06 months to 03 years in addition to a financial fine. It has also increased the penalty for the crime of migrant smuggling to imprisonment from 05 to 10 years. This crime takes the classification of a felony, with a prison sentence ranging from 10 to 20 years in the event that aggravating circumstances are present, such as the exploitation of a minor, endangering the lives of migrants, or its commission within an organized criminal group. This legal framework is further completed by imposing the obligation to report the crime of smuggling, under penalty of imprisonment from 01 year to 05 years for those who fail to do so, while providing mitigating and exempting excuses from punishment for those who cooperate with the authorities through early reporting.

Keywords: migration, human smuggling, penalties, mitigation.

Introduction:

The phenomenon of illegal migration occupies a central position on the political agenda at the national, regional, and international levels. The expansion and complexity of this phenomenon have compelled states, international institutions, and civil society components to mobilize in order to study the challenges arising from it and to formulate legal frameworks and mechanisms capable of combating it and limiting its repercussions.

In Algeria, the strategic geographical location has made it a transit point, a point of departure, and a destination for illegal migrants. Amid the aggravation of this phenomenon, the activity of organized criminal groups specializing in migrant smuggling has increased, adopting this criminal act as a source of illicit gain and substantial profit, and undertaking the transportation of illegal migrants.

In view of the gravity and danger of these practices and their growing spread, the Algerian legislator was compelled to intervene decisively to confront this highly dangerous phenomenon. This intervention took the form of adopting a set of legislative measures and procedures aimed at reducing and combating illegal migration through its criminalization and the imposition of the most severe criminal penalties on its perpetrators.

In an effort to address the repercussions of illegal migration, the Algerian legislator has established a system of legal mechanisms to confront this phenomenon, embodied in a package of legislative texts, foremost among which are Law No. 08-11 relating to the conditions of entry, residence, and movement of foreigners in Algeria, Law No. 24-06 amending and supplementing the Penal Code, in addition to labor legislation relating to the employment of foreign workers.

Based on the foregoing, the following problem is raised: To what extent are criminalization provisions effective in confronting the phenomenon of illegal migration in light of Law No. 24-06?

We will attempt to answer this issue by adopting the descriptive-analytical method, in order to examine the phenomenon of illegal migration and analyze the criminal legal texts that criminalize it, through the following:

First section: Criminalization of leaving the national territory illegally.

The Algerian legislator has established a comprehensive criminal framework targeting the act of illegal departure from the national territory, in all its forms, whether by land, sea, or air, regardless of the fraudulent or deceptive means resorted to, which include, but are not limited to, forging official documents or failing to fulfill the legal and administrative procedures imposed by the applicable legislative and regulatory texts.

In this context, the legislator has classified the act of illegal migration as a misdemeanor and has prescribed two principal penalties with the aim of achieving general and specific deterrence and combating this scourge. In order to analyze the legal dimensions of this crime, this section will address the determination of the legal concept of illegal departure from the national territory (first requirement), a review of the constituent elements of this crime (second requirement), and then the presentation of the penalties and sanctions prescribed for it under Algerian legislation (third requirement).

First requirement: Definition of illegal departure from the national territory.

Migration as a general phenomenon cannot be separated from illegal migration. To establish its terminological concept, it is necessary to consider its linguistic meaning, as the term “migration” is derived from a verb indicating separation, abandonment, and movement. According to linguistic dictionaries, migration means a person’s departure from their homeland and movement from one place to another, where “leaving a place” means abandoning it, which highlights the essential element of the phenomenon, namely the act of physical movement across borders or regions¹.

Migration, in the context of demography, is defined as the movement carried out by individuals or groups, whether individually or collectively, from an original geographical location to another geographical location, with the aim of seeking to achieve a more stable or better social, economic, or political situation².

Within the scope of public international law, legal scholars define migration as the departure of an individual from the territory of their original state on a permanent basis to another state. Another definition adopts a similar viewpoint, emphasizing that migration is the movement of individuals from one state to another for the purpose of permanent residence, provided that this new homeland is adopted as their permanent place of residence³.

Professor “Farley Lewis” defined the migrant as: “anyone who leaves his country to reside in a foreign state permanently or for a long period to fulfill needs that he deems necessary⁴.”

As for the International Labour Office (ILO), it defines an irregular migrant as: “any person who enters, resides, or works outside their home country without possessing the required legal authorizations; therefore, they are considered an irregular, clandestine, undocumented, or illegal migrant.⁵”

The European Commission considers irregular migration⁶ to mean any entry into the territory of a Member State, whether by land, sea, or air, in an unlawful manner. This includes the use of irregular documents or reliance on organized crime networks. This concept also includes cases of lawful entry (such as obtaining a visa with the approval of the authorities), followed by a breach of legal conditions by remaining after the expiry of the authorized period of stay or changing the purpose of the visit without obtaining the necessary official approval from the competent authorities⁷.

Irregular migration is defined in Algerian law, pursuant to Order No. 66-211 dated 21 July 1966 relating to the status of foreigners in Algeria⁸, as the entry of a foreign person into the national territory in a clandestine manner or with forged documents with the intention of settling or working.

Referring to the Penal Code, it defines the unlawful departure from the national territory in its eighth section entitled “Crimes Committed Against Laws and Regulations Relating to Departure from the National Territory,” under Article 175 bis 01⁹, as occurring when a person leaves the

national territory unlawfully through non-border crossings, by using forged documents, falsification of records and declarations, providing false information, or using any other fraudulent means.

Irregular or undocumented migration in general represents a series of phenomena that broadly include individuals who enter or reside in the territory of a state of which they are not nationals in violation of applicable national laws. This concept particularly includes several categories, such as migrants who enter or remain without obtaining the required official authorization, victims of illicit trafficking and human trafficking, as well as asylum seekers whose applications have been rejected and who have not complied with removal orders. It also includes cases involving circumvention of migration controls, such as the use of sham marriages as a means to obtain an undeserved legal status¹⁰.

Section Two: The Elements of the Crime of Unlawful Departure from the National Territory

It is legally established that every crime is based on constituent elements, and that these elements are traditional in most crimes, namely the legal element, the material element, and the mental element. Accordingly, we will address the elements constituting the crime of unlawful departure from the national territory by explaining these elements as follows:

First Branch: The Legal Element

There is no doubt that the legal element of any crime constitutes the bridge that links the material act committed to the applicable law. Without it, the act remains mere material conduct that entails no criminal liability, even if it is harmful to society. Hence, there is no crime and no punishment except by virtue of a legal provision.

With regard to the legal element of the act of unlawful departure from the national territory, the provisions of Article 175 bis 01 of the Penal Code stipulate that a penalty of imprisonment from six (6) months to three (3) years and a fine ranging from one hundred thousand dinars (DZD 100,000) to three hundred thousand dinars (DZD 300,000) shall be imposed on any person who leaves the national territory unlawfully through non-border crossings, or by using forged means or documents, or through falsification of documents or statements, or by providing false information, or by any other fraudulent means.

Second Branch: The Material Element

The criminal activity of the crime of unlawful departure from the national territory is represented by the act of departure, which takes several forms. By analyzing the text of Article 175 bis 01 of the Penal Code, the criminal activity consists of leaving Algerian territory unlawfully, whether through designated border crossings for land, air, or sea travel (First), or through crossings or places other than the designated border posts for the movement of persons (Second).

First: Departure through Border Crossings

The crime of unlawful departure from the national territory may be committed through designated border crossings for the entry and exit of persons. As for the status of the offender, they may be Algerian or foreign. In the case of a foreigner, it is required that they be legally resident. As for the non-resident foreigner, they are subject to the provisions of Article 44 of Law No. 08-11¹¹, which includes a criminal penalty for a non-resident foreigner who is in a legal situation in terms of residence in Algeria if they violate Article 9 of the same law. This article allows them to leave Algerian territory in accordance with the applicable legislation and regulations; failure to comply with these conditions exposes them to the penalty provided for in Article 44¹².

With regard to the means mentioned by the article when an irregular migrant crosses, these are fraudulent means contrary to the legislation in force at the borders. The law cited some of these methods by way of example, such as identity impersonation or the use of forged documents, while leaving the scope open to any other fraudulent means adopted by the irregular migrant to evade presenting the required official documents or carrying out the procedures mandated by the applicable laws and regulations. Identity impersonation refers to assuming another person's name or identity, or using forged documents. The legislator did not specify the nature of these documents,

using broad wording. The legislator employed the expression “any other fraudulent means” to leave the door open for the judge in light of any developments that may arise regarding methods of leaving Algerian territory, which may be devised by migrants or by networks involved in transporting them¹³.

Likewise, the act of evading the presentation of the required official documents or the completion of the necessary procedures is also considered. This means that the offender, when passing through the border post, attempts not to comply with the legislation and regulations governing departure from Algerian territory, as organized by Law No. 14-03 dated 24 February 2014 relating to travel documents¹⁴. Article 02 thereof obliges every Algerian citizen, when traveling outside the national territory, to carry one of the officially prescribed travel documents, namely: an ordinary passport, a diplomatic passport, a service passport, or a consular travel permit. With regard to categories of civil aviation personnel and seafarers, they are required, in addition to the above, to carry specialized professional travel documents, namely:

the pilot’s license for aircraft pilots, the safety and rescue certificate for commercial air navigation personnel, and the seaman’s logbook for sailors¹⁵.

As for the resident foreigner, they are likewise required, upon leaving Algerian territory, to present a passport issued to them by the competent authorities of their home state, or any other valid document recognized by the Algerian state as a travel document.

Second: Departure through crossings or places other than border posts

This constitutes the second form of the crime of unlawful departure from the national territory, which is committed through areas or places other than border posts. With regard to the status of the offender, paragraph two of Article 175 bis 01 does not distinguish between Algerians and resident foreigners in Algeria, but rather applies to all persons through the expression “any person.” In this case, it makes no difference whether the offender does not possess the required travel documents or does possess them. This form is subject to the same penalty prescribed in the first paragraph of the same article¹⁶.

It should be noted that the text of Article 175 bis 01 was enacted to protect the laws and regulations relating to departure from Algerian territory and to address the legislative vacuum that existed in this area, so as to provide a legal basis for prosecuting irregular migrants who violate the legislation and regulations governing departure from Algerian territory¹⁷. Previously, irregular migrants were punished in accordance with the provisions of Article 545 of the Algerian¹⁸ Maritime Code, which imposed imprisonment from six (6) months to five (5) years and a fine ranging from 10,000 DZD to 50,000 DZD for clandestinely boarding a vessel with the intention of undertaking a voyage. This was the period extending from 2005 to 2008, which was marked by an unprecedented increase in the number of irregular migrants from all national coastlines and in all directions, after migration had previously been largely concentrated along the western coasts toward Spain¹⁹.

This text was also enacted to confront the spread of the phenomenon of irregular migration by criminalizing it and seeking to eradicate it through deterring potential migrants by imposing custodial penalties (imprisonment), in addition to financial penalties (fines) that the judge may impose, either cumulatively or separately. Some consider these penalties to be proportionate to the amounts incurred by the irregular migrant, whether for forging documents or reserving a place on a boat prepared to cross the sea²⁰.

Section Three: Penalties Prescribed for the Misdemeanor of Unlawful Departure from the National Territory

In order to combat the phenomenon of irregular migration that has spread among Algerian youth and to address the large numbers of irregular migrants, the legislative response to this phenomenon came through the text of Article 175 bis 01 of the Penal Code, which established custodial penalties in the form of imprisonment and financial penalties in the form of fines against every Algerian or foreigner who leaves the national territory unlawfully. The following sets out these penalties²¹:

Article 175 bis 01 of the Penal Code provides for imprisonment from six (6) months to three (3) years and a fine ranging from one hundred thousand dinars (100,000 DZD) to three hundred thousand dinars (300,000 DZD) for any person who leaves the national territory unlawfully. The Algerian legislator, through this provision, established custodial penalties in the form of imprisonment from six (06) months to three (03) years, as well as a financial fine ranging from 100,000 DZD to 300,000 DZD. It is observed in this regard that the Algerian legislator, pursuant to the amendment introduced to the Penal Code by Law No. 24-06 dated 28 April 2024, has tightened the penalties prescribed for this offense by raising the maximum term of imprisonment to three years and converting the sanction into a mandatory cumulative penalty, obliging the judge to impose both imprisonment and a fine together, after it had previously been optional prior to the amendment.

Chapter Two: Criminalization of the Act of Smuggling Migrants Unlawfully

Law No. 24-06 amending and supplementing the Penal Code addressed the crime of migrant smuggling in Section Five bis 2, entitled “Migrant Smuggling,” which includes Articles 303 bis 30 to 303 bis 41.

In general, these articles constitute an integrated framework for combating the crime of migrant smuggling in accordance with the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (the Palermo Protocol)²², which will be detailed as follows:

Section One: Definition of Migrant Smuggling

The basic definition of smuggling is provided in Article 3, paragraph (a), of the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, which defines it as: “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”²³

Article 303 bis 30 of the Penal Code defines the crime of migrant smuggling as an offense consisting in arranging the unlawful exit from the national territory of one or more persons, provided that the purpose of such arrangement is to obtain, directly or indirectly, a financial benefit or any other benefit of a material or non-material nature.

From the two definitions above, it appears that the Algerian legislator used the expression “arranging the unlawful exit from the national territory” instead of the expression “illegal entry into a State Party” used by the Protocol, as if the Algerian legislator confined the concept of smuggling to the process of removing a citizen or a foreigner from Algerian territory toward the territory of another State. As for “illegal entry,” it is not considered by the legislator to fall within the scope of migrant smuggling, even though this act is precisely what is targeted by Article 3 of the Protocol against the Smuggling of Migrants²⁴.

It is also apparent from this definition that the Algerian legislator has limited the act of migrant smuggling to arranging the unlawful exit from the national territory, unlike the Protocol, which limited it to arranging illegal entry. However, neither of them addressed the arrangement of unlawful stay in the territory of a State to which the migrant does not belong.

It is further noted with regard to the definition provided in Article 303 bis 30 of the Penal Code that the legislator used the phrase “arranging the unlawful exit from the national territory,” which means that illegal entry is not considered by the legislator to fall within the scope of migrant smuggling. The more accurate definition is that found in Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air mentioned above. In this context, the Algerian legislator incorporated the crime of migrant smuggling as an independent and organized offense within the Penal Code, in fulfillment of Algeria’s international obligations, particularly the Palermo Protocol referred to above.

Section Two: Elements of the Crime of Migrant Smuggling

As previously mentioned, every crime is based on constituent elements. Through this section, we will address the elements of the crime of migrant smuggling, which are limited to the legal element (First Branch), the material element (Second Branch), and the mental element (Third Branch), as follows:

First Branch: The Legal Element

The legal element of the crime of migrant smuggling is provided for in Article 303 bis 30 of the Penal Code, which stipulates that migrant smuggling consists in arranging the unlawful exit of a person or a group of persons from the national territory. This act constitutes a crime whenever its purpose is to obtain, whether directly or indirectly, a financial benefit or any other form of benefit of value.

Article 303 bis 31 further provides that a penalty of imprisonment from ten (10) to fifteen (15) years and a fine ranging from one million dinars (1,000,000 DZD) to one million five hundred thousand dinars (1,500,000 DZD) shall be imposed on anyone who commits the act of migrant smuggling where one of the following circumstances is present: the presence of a minor among the smuggled persons; exposing the life and safety of migrants to actual or potential danger; or subjecting them to inhuman or degrading treatment. These circumstances also include the use of violence, threats, coercion, deception, or any other form of constraint, as well as the involvement of irregular persons, the exploitation of the vulnerable or difficult situation of migrants, and finally, the abuse of any relationship of authority, influence, or trust in carrying out the smuggling activity²⁵.

From the foregoing, the legal element of the offense of migrant smuggling is embodied in the provisions of Section Five bis 2 of the Penal Code, specifically in Article 303 bis 30, which defines the criminalized conduct and determines its basic penalty, and Article 303 bis 31, which aggravates the penalty where certain circumstances are present, such as endangering the lives of minors or subjecting migrants to inhuman treatment. This establishes the unlawful nature of the act and determines the corresponding sanction.

Second Branch: The Material Element

The material element of the crimes of migrant smuggling and unlawful departure consists in the tangible criminal conduct committed by the offender, and this conduct varies according to the applicable criminal provision. With regard to the crime of unlawful departure from the national territory, the material element provided for in Article 175 bis 01 of the Penal Code consists in the positive act of departure or the attempt thereof. This is realized through non-border crossings, or by using fraudulent means, forged documents, or by making false statements, as previously explained. As for the crime of migrant smuggling, which is considered a serious offense, its material element, pursuant to Article 303 bis 30 of the Penal Code, is manifested in the material conduct that appears to the outside world²⁶, namely, the act of arrangement, that is, preparing the necessary means and procedures to enable one or more persons to achieve the unlawful result, namely the illegal exit from Algerian territory.

However, the Algerian legislator, through its explicit wording, confined this arrangement to anyone who organizes the unlawful exit from the national territory of one or more persons for the purpose of obtaining, directly or indirectly, a financial benefit or any other benefit, thereby overlooking an essential part of the international obligation set out in the Palermo Protocol, which focuses on arranging illegal entry²⁷. Accordingly, this narrow definition adopted by the Algerian legislator has rendered the material element of the crime of smuggling insufficient to cover the conduct of smugglers who facilitate the entry of foreigners into Algeria. This constitutes a legal shortcoming that hinders comprehensive criminal prosecution of transnational criminal networks under the current provision, despite the Algerian legislator's concern with tightening penalties in order to achieve deterrence.

Based on the Algerian legislator's failure to criminalize the arrangement of illegal entry into Algerian territory, it is therefore not possible to prosecute smugglers who assist foreigners in entering the national territory clandestinely, in compliance with the principle of legality, which dictates that "there is no crime and no punishment except by virtue of a legal provision."²⁸ Although Algeria has ratified the Palermo Protocol, which thus constitutes legislation, the issue lies in the fact that this Protocol did not prescribe penalties, leaving the matter to domestic law²⁹.

Third Branch: The Mental Element

The crime of migrant smuggling is considered an intentional offense that requires the availability of its mental element in the form of criminal intent. The mere existence of the material element is not sufficient; rather, the criminal conduct constituting it must be reflected in the offender's state of mind. The offender's will must therefore be directed toward committing the unlawful act with knowledge of the nature of that activity³⁰, as criminal intent is based on two fundamental elements³¹, namely knowledge and will. The offender must be aware of the seriousness of the criminal conduct that would lead to enabling others to leave the territory of the State unlawfully and in an illegal manner³². For criminal intent to be complete, the offender's knowledge must extend not only to the basic elements of the material element of the crime of smuggling, but also to the surrounding circumstances that may lead to an aggravation of the penalty. It is required that the offender be aware that the conduct they engage in may cause harm to the victim or endanger their life³³, or results in exposing the interests of the states crossed unlawfully to a security risk. Conversely³⁴, criminal intent is negated if the accused mistakenly believes in the lawfulness of the act and that it does not violate the provisions of the law. This mistake is considered a mistake of fact, such as when a passport officer believes that the documents submitted by the persons whose entry is facilitated are valid and authentic, whereas they are in fact forged or irregular. Since this belief removes the element of knowledge of the unlawfulness of the conduct, it consequently leads to the absence of criminal intent on the part of the accused and exempts them from criminal liability for the crime of migrant smuggling. It is also required that the offender have a specific purpose (special criminal intent), namely committing the act of unlawful exit with the aim of obtaining, directly or indirectly, a financial benefit or any other benefit in return for the smuggling service³⁵. As for the Protocol, it limited the purpose to obtaining a financial benefit or other material benefit³⁶; thus, it confined the benefit to material gain only, excluding moral or non-material benefits, unlike the Algerian legislator, who broadened the concept of benefit to include both material and moral benefits³⁷.

Section Three: Penalties Prescribed for the Crime of Migrant Smuggling

In this section, we address the punitive framework for the crime of migrant smuggling. This crime is characterized by the multiplicity of sanctions prescribed by the Algerian legislator to confront it. These sanctions are divided into two main parts: the civil component and supplementary measures, which are intended to redress damage or confiscate unlawful gains, and the criminal sanction, which includes the principal and supplementary penalties imposed on the convicted person for committing this crime. These two types of sanctions will be examined in detail as follows:

First Branch: The Civil Sanction

The first sanction provided for by Law No. 08-11³⁸ with regard to the transport of migrants is of a civil nature and is set out in Article 35, which obliges the payment of a fixed civil fine ranging from 150,000 DZD to 500,000 DZD by the carrier who transports a foreigner into Algerian territory coming from another State, whether with the intention of residence or transit. The article requires that the foreigner not be in possession of lawful travel documents or the visa imposed on them by law or by applicable international agreements due to their nationality. However, Law No. 09-01³⁹ penalizes this act even if the person is in possession of documents, where their entry occurs through places not designated for crossing.

Second Branch: Criminal Penalties

In addition to the civil component established by the Algerian legislator against the carrier who transports a foreigner into Algerian territory coming from another State, whether for residence or transit, the act of migrant smuggling is subject to custodial penalties and financial penalties in the form of fines. These custodial penalties are provided for in Article 303 bis 30 of the Penal Code: "...and shall be punished by imprisonment from three years to five years and a fine ranging from 300,000 DZD to 500,000 DZD..."

From the wording of this article, it can be inferred that the Algerian legislator adopted a strict approach in assessing the penalties for the smuggling of irregular migrants. These penalties may be considered deterrent and punitive, particularly with regard to imprisonment, the maximum of which reaches five (05) years. This tightening of custodial penalties for this crime reflects the Algerian legislator's perception of the seriousness of the act and its classification as an aggravated misdemeanor due to its threat to public order and border security.

The Algerian legislator also provided, pursuant to Article 303 bis 30 of the Penal Code, for financial penalties imposed on the perpetrator of this crime in the form of a fine ranging from 300,000 DZD to 500,000 DZD. This fine constitutes a principal penalty alongside imprisonment and aims to dry up the sources of criminal financing of these networks, given that the crime is fundamentally based on a material motive⁴⁰.

Third Branch: Aggravating Circumstances of the Crime

The criminal policy adopted by the Algerian legislator, as reflected in the provisions of the Penal Code concerning the crime of migrant smuggling, clearly demonstrates the legislator's tendency to establish a deterrent and stringent punitive system. By referring to Articles 303 bis 31 and 303 bis 32 of the Penal Code, it becomes evident that the basic criminal conduct of migrant smuggling, punishable as a misdemeanor under Article 303 bis 30, may assume a different legal characterization and be classified as a felony when its commission is accompanied by a set of aggravating circumstances that increase the gravity of the harm to migrants' safety or the organized nature of the crime.

At the first level of aggravation, pursuant to Article 303 bis 31, the penalty is increased from imprisonment of five (5) years to ten (10) years and a fine of up to one million dinars (1,000,000 DZD), where the act of smuggling is accompanied by circumstances affecting the criminal protection of migrants. These include the presence of a minor among the smuggled persons, infringement of migrants' safety and dignity by exposing their lives or physical integrity to danger, or subjecting them to inhuman or degrading treatment.

The highest level of aggravation is provided for in Article 303 bis 32, under which the penalty becomes imprisonment from ten (10) years to twenty (20) years and a fine of up to two million dinars (2,000,000 DZD), where the smuggling offense is characterized by a professional or organized nature. This includes exploiting the offender's position to facilitate the crime, the involvement of multiple perpetrators, committing the offense while carrying a weapon and threatening to use it, or membership in an organized criminal group. This clearly reflects the legislator's aim of targeting the structural framework of these networks.

This stringent punitive framework established by the Algerian legislator is completed by the addition of the supplementary penalties provided for in Article 303 bis 35, which contribute to distancing the offender from the criminal environment, in addition to a mandatory ruling prohibiting the foreigner convicted of these crimes from residing in the national territory, either permanently or for a period not exceeding ten (10) years. This reinforces the State's strategy in combating this crime by imposing the most severe custodial and financial penalties and by stripping criminal networks of their tools and proceeds.

Fourth Branch: Circumstances Exempting from Punishment

The Algerian legislator, within the framework of its criminal policy to combat crime in general and migrant smuggling in particular, has adopted an incentivizing and regulatory approach that

encourages the reporting of the crime⁴², as embodied in the provisions of Articles 303 bis 36 and 303 bis 37. On the one hand, Article 303 bis 36 of the Penal Code established a system of total exemption from punishment and mitigation of penalties as one of the mechanisms for combating this crime. Any person benefits from total exemption from the legally prescribed penalty if they initiate the reporting of the crime to the administrative or judicial authorities before the actual commencement of its execution or attempt. This reflects the legislator's encouragement of abandoning criminal intent and early cooperation with State authorities. The second paragraph of the same article also provides for a reduction of the prescribed penalty by half as a form of legal mitigation in two cases following the commencement of the crime, namely: reporting after completion of the execution or attempt but before the initiation of public prosecution, or enabling the arrest of the principal offender or accomplices after the initiation of public prosecution. This constitutes a legal ground for mitigation aimed at assisting in uncovering criminal networks.

Conversely, in order to achieve general deterrence and put an end to negative collusion, Article 303 bis 37 of the Penal Code criminalized the act of failure to report the crime of migrant smuggling when knowledge thereof exists. It prescribed a custodial penalty ranging from one (1) year to five (5) years and a financial fine ranging from 100,000 DZD to 500,000 DZD, affirming that this obligation to report applies even to persons bound by professional secrecy. This demonstrates the prioritization of the public interest represented by combating crime over private confidentiality obligations. Nevertheless, taking family ties into consideration, the last paragraph of the same article exempted relatives, collateral relatives, and in-laws of the offender up to the fourth degree from the penalty for failure to report. However, this exemption does not apply at all to crimes committed against minors who have not exceeded the age of thirteen (13) years.

Conclusion:

Through our examination of the provisions of Law No. 24-06 dated 19 Shawwal 1445 corresponding to 28 April 2024, amending and supplementing Order No. 66-156 dated 18 Safar 1386 corresponding to 8 June 1966 containing the Penal Code, it appears that the Algerian legislator adopted a strict approach in dealing with the phenomenon of irregular migration from a criminal law perspective. It criminalized all acts falling within the scope of unlawful departure from the national territory and prescribed penalties combining imprisonment and fines. In this regard, it is observed that the penalties introduced by the aforementioned law are characterized by severity, as both imprisonment and fines were increased to their maximum limits. This new legislative approach came in response to the significant increase in the number of irregular migrants witnessed recently. Accordingly, the punitive sanctions established by the Algerian legislator with regard to the misdemeanor of unlawful departure from the national territory appear effective in addressing the phenomenon of "harraga." On the other hand, when criminalizing the act of migrant smuggling, the Algerian legislator adopted an even stricter stance by prescribing severe criminal penalties in terms of both the duration of imprisonment and the amount of the fine. This severity is further evidenced by the fact that persons proven to have committed the act of migrant smuggling do not even benefit from mitigating circumstances provided for under Article 53 of the Penal Code. In concluding this study, we propose the following recommendations:

First: The Algerian legislator should reconsider the wording of Article 303 bis 30 of the Penal Code so as to ensure comprehensive coverage of the scope of criminalization, explicitly including the act of illegal entry of migrants into the national territory, rather than limiting criminalization solely to smuggling outside the national territory. This would enhance the effectiveness of the legal provision in combating all forms of cross-border smuggling.

Second: It is necessary to emphasize the adoption of continuous and regular awareness programs directed at the public, based on a preventive strategy aimed at addressing the root causes of the phenomenon of irregular migration. This seeks to highlight the humanitarian, social, and legal

dangers resulting from this phenomenon and to consider awareness-raising as a fundamental pillar no less important than punitive measures in combating this criminal phenomenon.

Third: It is recommended to shift the criminal policy applied to combating the misdemeanor of unlawful departure from the national territory (Article 175 bis 01 of the Penal Code) by adopting a punitive approach that focuses on preventive measures and alternative mechanisms to custodial penalties, rather than excessive criminalization and the tightening of sanctions. This is particularly relevant given that the perpetrator of this misdemeanor is often a potential victim of smuggling networks, which calls for directing criminal focus toward punishing smugglers and crime organizers rather than the migrants themselves.

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Fourth: Conference Papers and Scientific Meetings

- Dr. (Rida Hmisi), “Mechanisms for Combating Irregular Migration in Algerian Legislation,” paper presented at the scientific symposium on Irregular Migration: Security and Human Dimensions, Settat, Morocco, 4–6 February 2015, pp. 14–15.
- Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action (Report)*, October 2005.

Fifth: Legislative Sources and International Conventions

01- International Conventions:

- United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocol), adopted in Palermo in 2000, ratified by Algeria on 24 May 2004, published in the Official Gazette No. 20 dated 28 March 2005.

02- Laws:

- Law No. 98-05 dated 25 June 1998, amending and supplementing Order No. 76-80 dated 23 October 1976 (Algerian Maritime Code), Official Gazette No. 47 issued on 27/06/1998.
- Law No. 08-11 dated 25 April 2008, relating to the conditions of entry, residence, and movement of foreigners in Algeria, as amended and supplemented by Order No. 21-09 dated 15 September 2021, Official Gazette No. 70 dated 19 September 2021.
- Law No. 14-03 dated 24 February 2014, relating to travel instruments and documents, Official Gazette No. 12 dated 4 March 2014.
- Law No. 24-06 dated 28 April 2024, amending and supplementing Order No. 66-156 dated 8 June 1966 containing the Penal Code, Official Gazette No. 30 dated 30 April 2024.

Sixth: Internet Sources

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- European Commission, Home Affairs website, access date: 01/12/2025 (estimated), link: (<https://home-affairs.ec.europa.eu/>) .

Footnotes:

1. Farid Amdachou, Moroccan Migration to Europe: The Need for Alternative Approaches, *Masalik Journal of Politics and Economics*, Issue 03, 2013, Morocco, p. 111.
2. Abdelkader Rziqa Lemkhadmi, *Irregular Migration and Political Asylum*, National Office of University Publications, Algeria, 2012, p. 15.
3. Ahmed Rashad Salam, *The Apparent and Latent Risks of Irregular Migration*, in: *Combating Irregular Migration*, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, 2010, p. 203.
4. Ghezou Mohamed Akli, *The Legal Status of Algerian Migrants in France*, Master’s thesis, Faculty of Law, University of Tizi Ouzou, Algeria, 1986, pp. 21–22.
5. Rachid Saad, *The Reality of Irregular Migration in Algeria from a Humanitarian Perspective*, Master’s thesis, Mohamed Khider University, Biskra, 2012, p. 4.

6. The European Commission and other institutions prefer to use the term “Irregular Migration” instead of “Illegal Migration.”
7. Definition available on the website: (<https://home-affairs.ec.europa.eu/>) , date of access: 14/10/2025.
8. This decree was later repealed and was initially amended by Presidential Decree No. 03-251, then definitively repealed by Law No. 08-11 of 2008, which now sets out the conditions for the entry of foreigners into the national territory and their residence therein.
9. Law No. 24-06 dated 28 April 2024, amending and supplementing Order No. 66-156 dated 8 June 1966 containing the Penal Code, Official Gazette No. 30 dated 30 April 2024.
10. Migration in an Interconnected World: New Directions for Action, Report of the Global Commission on International Migration, October 2005, p. 35.
11. Law No. 08-11 dated 25 June 2008, relating to the conditions of entry, residence, and movement of foreigners in Algeria.
12. Rachid Ben Friha, The Crime of Unlawful Departure from the National Territory, Master’s thesis in Criminal Sciences and Criminology, Faculty of Law, Abou Bekr Belkaid University, Tlemcen, 2009–2010, p. 155.
13. Abdelmalek Saish, Combating Irregular Migration: An Overview of Law 09/01 Amending the Penal Code, Academic Journal of Legal Research, Faculty of Law and Political Sciences, Abderrahmane Mira University, Bejaia, Issue 01, Algeria, 2011, p. 13.
14. Law No. 14-03 dated 24 February 2014, Official Gazette No. 12 dated 4 March 2014.
15. Rida Hmisi, Mechanisms for Combating Irregular Migration in Algerian Legislation, Scientific Conference on Irregular Migration: Security and Human Dimensions, Settat, Morocco, 15–17/4/1436 AH – 4–6/2/2015, p. 14.
16. Rida Hmisi, same previous reference, p. 15.
17. Rachid Ben Friha, The Crime of Unlawful Departure from the National Territory, Master’s thesis, Faculty of Law and Political Sciences, Abou Bekr Belkaid University, Tlemcen, Algeria, 2009/2010, p. 161.
18. Law No. 98/05 dated 25 June 1998, amending and supplementing Order No. 76/80 dated 23 October 1976, Official Gazette No. 47 dated 27/06/1998.
19. Saish Abdelmalek, Combating the Smuggling of Irregular Migrants, Doctoral dissertation, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2014, p. 256.
20. Abdelmalek Saish, Combating Irregular Migration, previously cited reference, p. 14.
21. The Algerian legislator addressed the provisions of this article in Section Eight, which was added pursuant to Law No. 09/01, entitled: “Crimes Committed Against the Laws and Regulations Relating to Departure from the National Territory.”
22. It was adopted in the city of Palermo, Italy, in 2000 and entered into force in 2004. Algeria ratified the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air on 24 May 2004, and Algeria’s instrument of ratification was published in Official Gazette No. 20 issued on 28 March 2005.
23. (<https://www.ohchr.org/ar/instruments-mechanisms/instruments/protocol-against-smuggling-migrants-land-sea-and-air>) , date of access: 14/09/2025, time: 14:30.
24. Saish Abdelmalek, Euro-Maghreb Cooperation in Combating Irregular Migration, Badji Mokhtar University of Annaba, Algeria, Master’s graduation thesis, 2006–2007, pp. 12, 79.
25. The scope of aggravating circumstances was expanded in the amended text pursuant to Law No. 24-06 amending and supplementing the Penal Code, to include additional aggravating circumstances such as the use of violence and the abuse of influence, in addition to the tightening of the penalty prescribed for this crime.

26. Mamoun Mohamed Salama, Penal Code, Dar Al-Fikr Al-Arabi, Cairo, Egypt, n.p., 1979, p. 113.
27. The definition provided by the Protocol focuses on the act of arranging the illegal entry of a person into the territory of another State, whereas other definitions focus on the element of arranging the illegal exit of a person from the territory of a State. This difference leads to a divergence in determining the constituent elements of the crime of migrant smuggling. According to one law, the criminal conduct consists in arranging illegal entry, while under another law, the criminal conduct consists in arranging illegal exit into the territory of a State. This discrepancy raises the issue of criminal prosecution of smugglers.
28. Article 3 of the Palermo Protocol defines it in its paragraph by stating: "...the term 'illegal entry' shall mean crossing borders without complying with the necessary requirements for lawful entry into the receiving State...".
29. Pursuant to Article 01 of the Penal Code.
30. This is provided for in Article 06 thereof under the heading "Criminalization," which states: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the following acts, when committed intentionally and in order to obtain, directly or indirectly, a financial benefit or other material benefit...".
31. Abdelrahman Khalfi, Criminal Liability of Legal Persons for Money Laundering Crimes: A Study in Algerian Legislation with Reference to Doctrine and Comparative Legislation, Abderrahmane Mira University, Bejaia, Issue 32, 2003, p. 01.
32. Mahmoud Naguib Hosni, Explanation of the Penal Code – General Part, Dar Al-Nahda Al-Arabiya, n.p., Cairo, Egypt, 1988, p. 300.
33. Mohamed Sghir Qara, Criminal Provisions of the Crime of Migrant Smuggling in Algerian and Comparative Legislation, Dar Houma for Printing, Publishing and Distribution, 3rd ed., Algeria, 2019, p. 150.
34. Ahsan Bousqi'a, Al-Wajiz fi al-Qanun al-Jaza'i al-'Am (The Concise Guide to General Criminal Law), Dar Houma for Printing, Publishing and Distribution, Algeria, 2014, pp. 411–412.
35. Pursuant to Article 303 bis 31 of the Penal Code.
36. Fattouh Abdallah Al-Shadhili, Explanation of the Penal Code – Special Part: Crimes Harmful to the Public Interest, Property Crimes, and Crimes Against Persons, Vol. 1, University Publications House, Alexandria, Egypt, 2005, p. 355.
37. Article 3, paragraph (a), of the Protocol.
38. Maghni Dalila, A Reading of the Provisions of the Crime of Migrant Smuggling in Algerian Legislation, African Journal of Legal and Political Sciences, Ahmed Deraya University, Adrar, Algeria, Vol. 03, Issue 01, June 2019, p. 213.
39. Law No. 08-11 dated 25 April 2008, relating to the conditions of entry, residence, and movement of foreigners in Algeria.
40. The provision penalizing the act of departure (exit) through crossings or places not designated for that purpose, introduced by Law No. 09-01 and later amended by Law No. 24-06, is paragraph two of Article 175 bis 01 of the Penal Code, which provides that: "...the same penalty shall apply to any person who leaves the national territory through crossings or places other than border posts."
41. Modern criminal policy in combating organized crime, as adopted by Algeria, is based on two pillars: punishing individuals (imprisonment) and confiscating tools and funds (fines/confiscation) in order to undermine the financial structure of criminal networks.
42. Zainab Shami, The Culture of Reporting Crime in Algerian Society, Al-Hikma Journal for Philosophical Studies, Vol. 12, Issue 03, Al-Hikma Center for Research and Studies, Algeria, 2024, p. 04.