



Privacy of the Provisions Related to Customs Offences in Algerian Legislation: A Reading between Act and Effect

Dr. Nouha Chirouf¹

¹University 20 August 1955 of Skikda, Algeria.

Abstract

Customs crime is a special category of offence in Algerian legislation due to its subject matter (the movement of goods and people), the means used to commit it and the customs territory in which it occurs. It is also tied to state security and stability, making it necessary to establish legal controls aimed at protecting the national economy, ensuring the proper functioning of commercial exchanges and safeguarding public funds.

The Algerian legislator has therefore devoted distinctive legal provisions to customs offences, whether regarding the criminal act itself — its description and classification — or regarding its effects: penalties. These penalties combine criminal, financial and administrative characteristics, reflecting the specific nature of customs offences compared to ordinary crimes.

A reading of the special provisions governing customs offences in Algerian legislation therefore shows the intention of the legislator to reinforce legal protection for the customs sphere while taking into account what has been established in overlapping areas by other domestic legislations.

Keywords: customs legislation, customs offences, goods, means, customs administration, customs territory, penalties

Received: 10/09/2025

Accepted: 18/03/2026

Published: 04/05/2026

Introduction

In light of global economic changes and the resulting free-market rules and capital movement regulations governing expanded commercial exchanges based on supply and demand principles, the Algerian state was compelled to intervene by enacting legal texts. The aim is to protect the economy and guarantee security in multiple sectors — economic, social, health and security-related — in order to preserve gains, financial resources and strategic interests.

In order to adapt to new developments, the state has adopted successive reform measures aimed at qualitative and quantitative adaptation. These measures are implemented within the framework of effective monitoring and control over the movement of money, goods and people to and from abroad. This work is carried out by state institutions that are legally authorised for this purpose and are located at the borders, represented by the customs administration in all its various structures.

These structures ensure the proper functioning of monitoring and enforcement operations for all violations classified as customs crimes, the frequency of which has increased alongside technological development and the emergence of organised cross-border crimes that threaten state security and stability.

For this reason, amending and supplementing the framework law No. 79-07, which contains the Customs Law¹, with Law No. 17-04², along with the related legal texts and regulatory provisions connected to it, has affected several areas, including determining the subject matter of customs work, the scope of its application, how the customs administration is structured and organised, customs crimes, the mechanisms used to detect and prove them, related effects and disputes arising from them, and their settlement methods.

In this research paper, we will focus on the specific nature of the provisions governing customs crimes in Algerian legislation, from the act to its effects. This leads us to pose the following question:

What is the specificity of the provisions governing customs crimes in Algerian legislation, in terms of both the act and its effects?

To answer this question, we will address the following three areas:

Axis One: What constitutes a customs offence.

Axis Two: The specificity of the description and classification of offences in customs matters.

- Axis Three: Felonies and the logic behind the aggravation/strictening provided for in separate legal texts.

Axis One: What is a customs offence?

To present the nature of a customs offence, it is necessary to review a set of elements: the definition of a customs offence; its constituent elements (its 'pillars'); and the characteristics that distinguish it from other offences.

To clarify the special nature of a customs offence, it is necessary to identify the fundamental elements on which the offence is generally based:

- the legal element (the legal basis);
- the material element, and
- the moral/intent element.

Customs law plays an important role in protecting the public treasury and achieving border security by combatting offences that threaten the country in connection with the movement of goods and people, and by using deterrent measures to limit these offences.

Within this framework, we will present:

1. Definition of a customs offence

According to the customs legislator, a customs offence is defined in Article 240 bis of the Customs Law No. 79-07, as amended and supplemented, within Chapter Fifteen titled 'Customs Disputes', in Section One titled 'General Provisions', as follows:

Any breach of the laws and regulations entrusted to the customs administration for implementation, which are penalised under the Customs Law.

In contrast to what was stated in Article 5 of the same text after its amendment by Law No. 17-04, Article 2 of that law clarifies the constituent elements of what it describes as a 'customs infringement' by listing the characteristics that distinguish it from other offences, particularly with regard to:

- the nature of the goods, whether they are products or commercial or non-commercial items involving concealment and fraud;

¹ The Customs Code of 21 July 1979, containing the Customs Law, as amended and supplemented by Law No. 98-10, issued on 22 August 1998.

² (The Customs Code Amendment) of 16 February 2017; Official Gazette of the People's Democratic Republic of Algeria No. 13, dated 26 February 2017.

- the means used or prepared for use in transporting goods subject to fraud of all types;
- The customs laws and regulations that govern customs work in general, for which the customs administration ensures that all necessary measures are in place to ensure they are applied and not violated.

Therefore, in terms of verification, classification, punishment or the imposition of a penalty, a customs offence is any conduct or act that has produced an effect recognised by customs legislation — meaning it falls under the rules of customs law.

The customs legislator referred to it as an ‘infringement’ (violation) and did not label it directly as ‘a crime’, as is the case with traditional descriptions of conduct, because it is linked to the procedural rules established in customs law in cases of infringement. This infringement represents an attack on the state’s material and security interests and can take multiple forms depending on various elements mentioned above.

According to Article 2 of the Customs Law, a customs offence functions as an independent legal concept based on two essential criteria:

- The criterion of interest, and
- The criterion of the material nature of the offence.

At the same time, it overlaps with other legal texts, either through complementarity and intersection or precision and aggravation, as will be addressed in Axis Three of this paper.

From this, a customs offence can be defined as follows:

“An act or omission prohibited by law, for which the legal system imposes a penalty on the person who commits the positive or negative act.”³

2. The elements

Determining the elements of a customs offence establishes a duality between error/violation and danger, and between the resulting effect, namely harm/damage. This forms the basis of the principle of gradation in identifying the types and degrees of customs offences, which occur on a spectrum between ‘infringement’ (a general notion) and ‘crime’ (a penal concept).

It also explains the relative nature of the moral element and the certainty of the material element when describing and classifying conduct.

The first (the lower level) is grounded in a breach or non-compliance with customs legislation that does not reach the level of criminal danger required to justify aggravation.

The second reflects an organised, deliberate and serious harmful act that targets the customs system itself. This leads to a higher classification and a harsher penalty, giving customs offences their special nature (as we will see later).

Below, we focus on the three elements: The legal element, the moral element and the material element.

2.1 The legal element

In accordance with the principle of the legality of crimes and penalties in all modern legal systems — which is considered one of the legal guarantees protecting individuals, and which the state must respect by enacting and applying valid legislation and regulations — no one may be punished for an act that the law has not expressly classified as a crime before the act is committed.

This principle is enshrined in Article 1 of the Penal Code:

³ Ghania Guerri, *Explanation of Criminal Law*, Dar Qurtuba for Publishing and Distribution, Mohammedia, Algeria, 2009, p. 7.

“No crime, no penalty, and no security measure without a law.”⁴

Many legal researchers address customs offences from the perspective of customs criminal law and describe the conduct that constitutes this type of offence as having a material character. From this perspective, the main focus of customs legislation and regulations is:

The territorial scope, i.e. the borders where the customs administration, through legally authorised agents, stands to prevent any act of fraud or attempted fraud intended to undermine customs legislation and regulations.

- The movement of goods and people: the essence of the material situation, which is often sufficient to identify the offender or which may itself be the subject of proof through all methods of evidence.

As with other branches of law, Customs Law is procedural in nature, aiming not only to collect customs duties and taxes, but also to implement an economic security strategy by maintaining economic stability and preventing unlawful practices. This is achieved by protecting against all forms of fraud and smuggling that may affect goods of all types entering or leaving the customs territory, whether legitimate or illegitimate.

Additionally, customs law not only criminalises the perpetrator, but also, depending on the case, the accomplice, beneficiary and participant in the fraud⁵.

Some scholars consider customs law to be a special form of criminal law since it contains substantive and procedural rules similar to those found in criminal law, but with a limited and specific scope of application due to the particularity of its implementation. This is reflected in the text of Article 5 of Law No. 17-04 (as previously mentioned), especially paragraphs (c), (d), (e), (i) and (j), concerning:

- The object (the goods),
- The procedures, and
- The geographical scope⁶.

This becomes even clearer when we consider the nature and type of penalties provided for the different classifications of customs offences in the Customs Law, which are set out at different levels of severity. This also reflects the fact that the customs task is multi-dimensional, as indicated in the amended and supplemented provisions of Article 2 of Law 17-04, which refers to Articles 6, 5, 4 and 3 — a legal source that is both original and multi-layered, first relying on customs law provisions and second on other legal texts, in accordance with Article 3 of that law.

From reading it, we conclude that Customs Law is closely linked to several other legal texts that share the same protected interests and, together, aim to ensure individuals comply with their content and safeguard the protected interests.

Accordingly, we will present the most important legal texts that are directly and indirectly related to customs offences. This will enable us to analyse those offences and the logic of aggravation in Axis Three, which is titled ‘Felonies and the logic behind the aggravation provided for by separate legal texts’.

The legislator has summarised the legal element in Article 240 bis. This concept clearly shows two essential features:

⁴ Order No. 66-156 of 8 June 1966, containing the amended and supplemented Criminal Code, Official Gazette No. 49, dated 11 June 1966.

⁵ Anouar Talaba, *The Guide/Handbook for Explaining the Law of Evidence*, Office Universitaire Moderne, Al Azariba, Alexandria, 2010, p. 5.

⁶ Claude J. Barr, *Introduction to Customs Law* (translation by Saâdane El-Aïd), Dar TCS, Algeria, 2009, pp. 111–112.

1) The material nature of the customs offence: the customs administration ensures this by using all legal, material and human resources to detect, monitor and prove it, through the powers and legal prerogatives it holds.

2) The customs administration is the legally competent party: it is the entity empowered to monitor all violations that breach the provisions of customs law and applicable customs regulations⁷.

Therefore, it would be misleading to study the substance of a customs offence separately from the persons assigned to follow up on it. Furthermore, the customs administration is the body responsible for inspection, enforcement and repression, relying on tools that provide evidentiary force, particularly customs reports (records).

2.2. The moral element

This is based on knowledge and intention (will), which correspond to the general criminal intent of the offender or perpetrator. It reflects the psychological conception of the conduct that results when the act is committed, or when an attempt is made.

As a general rule, this is explained by the nature and/or form of intent at the time the offence is committed. However, some legal opinions consider that the core of the moral element is criminal intent, which is only legally relevant if it has legal value.

The importance of the moral element is evident in the formation of a customs offence when the two conditions of will — discernment and choice⁸ — are absent due to a defence relating to the absence of responsibility (impediments). This is particularly relevant to criminal liability concerning smuggling offences, which first rely on physical coercion (*contrainte physique*), equivalent to force majeure (*force majeure*), meaning an unforeseeable and irresistible force (e.g. the sinking of a vessel leading to an unlawful discharge onto the shore), which eliminates will.

Secondly, moral coercion (*contrainte morale*) is pressure exerted by one person on another's will to compel it towards criminal conduct, thereby defecting the will to the extent that it leads to the commission of the offence⁹.

It should be noted here that the moral element is based on the principles of good faith and bad faith, as confirmed by the circumstances and proven by evidence.

We find that a customs offence, in both its initial form of breaches of procedures and its subsequent form relating to the disposal of goods through smuggling, does not require strict or absolute reliance on the moral element. In many cases, it may be sufficient to rely on it relatively, unless the law expressly provides for it by giving the judge discretionary authority or stating it directly in the text. This is reflected in the provisions of Articles 118 and 319 of Law No. 17-04, the Customs Law, which we will address later.

According to these provisions, the accused is considered liable when found to be in one of the scenarios established by the rules on responsibility and penalties under the Customs Law. This leads the judiciary to either disregard the argument based on intent or convict on that basis, consistent with the explicit wording of Article 281, as amended by Article 118 of Law 17-04, which states that:

'The judge may not acquit the offender on the basis of intent, nor may they reduce the fiscal fines.'

⁷- Claude J. Barr, *Op. cit.* (the preceding reference), p. 7.

⁸- (Question posed in the text): What are the legal situations that prevent the perpetrator from being held criminally liable despite his guilt having been established—meaning the application of the principle of exemption from punishment in certain cases, such as:

- lack of discernment or capacity (insanity, feeble-mindedness, not reaching the legal age, coercion);
- mistake in the act or unintentional error;
- within the scope of exercising a function/official duties.

⁹- Kamal Hamdi, *Customs Smuggling Offence*, Mansha'at al-Ma'arif for Publishing, Alexandria, 2004, pp. 54–55

Moreover, Article 319 is explicit in its wording in paragraph (a), treating any mistake or lack of accuracy in the data included in customs declarations as violations of the first degree.

However, the legislator includes an exception to this rule, as set out in Articles 303 and 305 above.

Overall, under Algerian customs legislation, reliance on the moral element in customs offences remains limited and determined by the text. It can be addressed from the perspective of customs 'infringements', where the offender exceeds the obligations required for customs clearance in order to evade certain customs duties and taxes, or where it results from oversight and negligence.

In the same context, while the French judiciary recognises the 'materiality' of customs offences, it does not entirely remove the moral element from all its effects. It considers insanity, coercion, irresistible force, and minor age to be grounds for excluding criminal liability, whether the issue concerns breaches of procedures or offences related to goods.

Finally, we conclude that Law No. 79-07, as amended and supplemented, directly and clearly addresses the issue of relying on the moral element during litigation. This is stated in Article 281, in the seventh section titled 'Special Provisions Concerning Customs Claims' within the fifteenth chapter titled 'Customs Disputes', which provides that:

'The judge may not acquit the offenders based on their intent.'

2.3 The material element

The Algerian legislator provided a comprehensive and focused definition of customs legislation, from which we can infer the strength and scope of its provisions. This definition is both inclusive and restrictive, as reflected in paragraph (i) of Article 2 of Law No. 05-06 on the prevention of smuggling, as amended and supplemented. It states: 'Customs legislation: all legislative and regulatory provisions entrusted to the Customs Administration for implementation in relation to the import and export of goods, travel, transit, storage and transport, including provisions relating to prohibitions, restrictions and surveillance, as well as measures relating to money laundering.'

This definition aligns with that in paragraph (a) of Article 2 of Law No. 05-06 on the prevention of smuggling, which states that smuggling offences consist of acts described as such in the customs legislation and regulations in force. It also aligns with the text under Chapter Four, entitled 'Penal Provisions', in Articles 10-11-12-13-14-15, where the legislator determined the penalties, leaving the definition and exceptions to Customs Law 17-04, as mentioned in Article 324. Article 324 provides:

'For the purposes of applying the following provisions, smuggling shall mean the following:

- Importing or exporting goods outside customs offices.

Contravening the provisions of Articles 51-53 bis, 60, 62, 64, 221, 222, 223, 225 and 226 of this Law;

Illicit unloading and loading of goods.'

Accordingly, a customs offence is defined as any act, whether positive or negative, that involves a breach of legislative and regulatory customs rules and causes harm to the interests of the state. The legislator will then assess an appropriate penalty¹⁰.

3. Characteristics of a Customs Offence

A customs offence is distinguished from other criminal offences by a set of elements that make it more specific and distinct. These characteristics form the basis of the rules of customs law, particularly those that determine criminal characterisation and classification should a breach or infringement of public interest be proven during activity within the customs sphere.

¹⁰- Abdullah Sakhri al-Junaydi 'Customs Smuggling' (Customs Smuggling), accessed on 24 October 2025 at 16:55 (d), 'A legal study and research on the customs smuggling offence in the light of doctrine and case law — free legal consultations.'

The specificity of customs offences also appears in the rules governing proof and prosecution. Proof often relies on customs reports (official minutes) which have specific legal evidentiary value unless they are challenged for forgery. Additionally, proof may draw on legal presumptions, facilitating the Administration's efforts to combat customs offences.

In this section, we shall address the most important characteristics related to the criminal act and its effects:

3.1 Goods

Goods constitute the focal point of customs work and its subject matter. Accordingly, goods are also the subject of the customs legal rule concerned with the application of all procedures provided for in the Customs Law, through which the Customs Administration achieves its objectives. Goods are, in the same way, the object of the conduct constituting the customs offence.

In particular, the Algerian legislator highlights this subject through specific legal provisions, especially in relation to international commercial exchanges. These provisions endow goods with a distinctive character, as defined by the Customs Law through the indicative elements shown in the definitional classifications and geographical origin.

Article 2 of Algeria's Customs Law No. 17-04, as amended and supplemented by Law No. 79-07, defines the type and nature of goods subject to customs control and those that are the object of movement across the customs territory. Paragraph (d) states that 'goods' means every product and every commercial or non-commercial item, and, in general, all things capable of being traded.

Thus, the nature of the goods — in terms of their composition, value, type and country of origin — constitutes one of the essential features for establishing a breach of customs legislation and regulations during monitoring, examination, inspection and scrutiny. Where all the factual elements related to the material conduct of such goods are present, this is classified as a "customs offence" and is categorised according to the criteria reflected in the provisions of the Customs Law or other relevant legislation. This is particularly important when the matter concerns prohibited goods, whether relating to importation, exportation or customs clearance.

Alternatively, the goods may be subject to a high duty rate, as mentioned in paragraph (f) of the same article.

3.2 Means Used in the Customs Offence

Article 2 of Law No. 17-04, as amended and supplemented by the aforementioned Customs Law, also states, under paragraph (j) of Article 5, the means of transport specific to goods subject to smuggling. This increases the material (objective) element of the criminal description of the customs offence. This element has an effect at each stage of the process: monitoring, seizure and proof, and then the imposition of the penalty once all legal avenues for contestation have been exhausted.

It provides: "Any animal, machine or vehicle, or any other means of transport used or prepared for the transport of goods subject to smuggling or which may be used for that purpose."

We can infer from this that the act of transport can be carried out through the means and methods used for transport, including those particular to the smuggling of goods subject to the offence. This provision enables us to highlight several important points when discussing the means intended to transport goods subject to smuggling:¹¹

- The significance and seriousness of the place or object of the customs offence, which may constitute smuggling (of smuggled goods), regardless of the type of goods.

¹¹- Nouha Chirouf, 'Customs Smuggling Offence in Algerian Legislation', a research paper submitted for the degree of Master of Laws (Business Law specialisation), Faculty of Law, University of Constantine 1, academic year 2009–2010, pp. 35–36.

- The importance of the spatial element for the offence itself, i.e. the geographical area (whether land, maritime or air).
- The establishment of the liability of the principal, accomplice or beneficiary of the smuggling act by virtue of possession of an animal, vehicle or other means of transport specifically prepared for that purpose.
- The importance of the means used in the transport process, particularly when smuggling involves deception and concealment aimed at misleading customs officers and other persons entitled to conduct inspections, examinations and monitoring in designated areas, as discussed above.
- The procedures to be followed with respect to the means used to transport goods that are subject to smuggling, especially seizure/confiscation.

4. Purpose and result

Purpose and result refer to the actual and legal effect of material offences, where reliance on the subjective element (*mens rea*) is reduced. Such offences result from conduct that violates the law — an ‘offending act’ more specifically under the Customs Offence.

The essence of such offences is to evade customs duties and taxes, or to obtain money resulting from unlawful activities involving prohibited goods. This gives rise to a customs offence, which can be minor or more serious¹².

Second Axis: The Specificity of the Description and Classification of Offences in Customs Matters

As previously stated, a customs offence is an act committed by a natural or legal person with the intention of achieving an outcome that harms the State’s economic or security interests. The offence involves violating procedures that must be complied with as set out in customs regulations, legislation and related legal texts in the context of the movement of goods, the characteristics of which (qualitative, quantitative and valuation-related) are defined by explicit provisions. These provisions determine the extent to which such goods can be transported and traded across the national customs territory, as established under applicable legislation, within the framework of import and export operations. They also determine what rights and duties must be paid through special procedures.

This makes the customs offence a material offence *par excellence*, in which reliance on the subjective element is weakened.

Furthermore, it can be seen that, in the latest amendment to the Customs Law, the customs legislator has reorganised and arranged customs offences according to their description and classification, as well as the applicable penalties, based on what was committed by the offender — or by any direct or indirect party who caused the occurrence — during the movement of goods or the performance of related procedures within the customs territory.

For this reason, we shall address four essential points, namely:

The legal framework for customs offences within customs legislation.

Offences (contraventions) and their degrees and prescribed penalties.

- Misdemeanours, their degrees and the prescribed penalties.

- Felonies, their degrees and the prescribed penalties.

1. The legal framework for customs offences within customs legislation.

The legal definition of a customs offence is set out in Chapter Fifteen, entitled ‘Customs Disputes’, Section Nine, entitled ‘Penal Provisions’, of Law No. 97-07, which contains the amended provisions of the Customs

¹²- A. Zaarour, Guide of Customs Assistance in Customs Disputes, Directorate of Training, Directorate General of Customs of Algeria, 2012, p. 6.

Law. These were supplemented by virtue of Article 130 of Law No. 17-04, which approved the amendment and supplementation of Articles 318, 318 bis, 319, 320, 321, 324 and 325; and Article 131, which approved the amendment and supplementation of Article 325 bis.

Through the provisions amended by Article 130, the Algerian legislator clarified seven articles that were amended and supplemented. These articles are structured as set out in Article 318, which classifies customs offences as contraventions (lesser offences), misdemeanours and felonies, as defined in other legislation.

This classification determines the initial categorisation of any breach of customs legislation and regulations, whether relating to the goods themselves or the special procedures concerning them within the geographical area referred to in Article 29 of Law No. 79-07, which contains the Customs Law.

As discussed in the first section under the heading 'An Introduction to Customs Law', the customs administration's control and security over this area covers three categories:

- contraventions.
- Misdemeanours.
- Felonies.

However, it should be noted that criminalisation and aggravated penalties for misdemeanours extend to the perpetrator even in cases of attempted offences. Therefore, the legislator provided the same penalty for any act classified as a misdemeanour, regardless of its degree.

1.1 Contraventions: Their Degrees and the Penalties Prescribed

As a general rule, an act must be explicitly described and classified as a contravention in a legal text, as must the applicable penalty. In the context of customs contraventions, the legislator opted for a combination of amendments and retention. Specifically, the provisions set out in Articles 319, 320 and 321 were progressively amended, with the contravention degrees being redistributed as follows: first, second and third degrees respectively. By contrast, Article 322 of the Customs Law No. 79-07¹³ was kept unchanged. We therefore present them as follows:

1/ Contraventions of the First Degree

In Article 319, the customs legislator defined the nature of the contravention, the classification criteria, and the degree in light of the conduct that constitutes the contravening act, for which the law provides a penalty. We find that the classification criterion is based on the type of penalty applied and the level of strictness associated with the corresponding act.

Contraventions of the first degree consist of eleven categories, as follows:

Any omission, error or inaccuracy in the information contained in customs declarations, considering these declarations as the material instrument for monitoring, examining and inspecting goods imported, re-imported or exported within the customs territory and submitted to the competent border customs authority designated by the applicable legal provisions.

Any contraventions committed by natural or legal persons who are required to comply with the formalities of declaring goods during transport by sea, land or air, before authorised officers within the framework of customs monitoring.

- Failure to submit declarations relating to the cargo aboard the vessel transporting the goods (sea transport) for endorsement by authorised officers as part of the monitoring process they carry out.

¹³- (Customs Code — again): of 21 July 1979, containing the Customs Law, as amended and supplemented by Law No. 98-10, issued on 22 August 1998.

Breach by the master or agent of the vessel of the documentary obligations relating to the goods in situations recognised by law, such as transport or chartering of the vessel, in accordance with agreements ratified by Algeria. These obligations form part of the customs mission, even when the vessels are empty (e.g. declaration of cargo prepared for unloading in the customs territory, declaration of ship provisions, luggage and goods of crew members, etc.), provided the prescribed time limits are observed.

- Failure to comply with the procedure for submitting the detailed or summary declaration (itinerary/waybill document) for goods to the customs office in the case of land transport.

Failure to comply with the procedures for submitting cargo and summary declarations of goods intended for unloading, or declarations of passengers and baggage, directly to customs officers or electronically. This is a requirement for aircraft commanders upon departure or arrival, and includes clarification of the aircraft's status in the case of chartering.

- Failure to comply with the procedures for a detailed declaration for goods whose value exceeds 50,000 DZD when such goods are loaded onto a vessel or aircraft bearing Algerian nationality.

- Any contraventions involving errors in designating the consignor and consignee, as well as failure to respect the specified routes, times and time limits for examination and submission of the detailed declaration.

- Any shortfall or excess in packages for which there is no justification as stated in the accompanying documents, and loading or unloading of goods without authorisation from the customs office. This applies whether loading or unloading occurs at the level of the vessel or aircraft.

- Breach by declarants, regardless of their legal status, of the obligation to retain and preserve declarations with the customs authorities.

2. Penalties prescribed

As a general rule, a fine is a financial penalty imposed by law on any individual or organisation that commits an offence, and must be paid to the State Treasury in accordance with legal procedures. In customs matters, especially customs contraventions, the fines are predetermined.

For example, for a first-degree customs contravention, the legislator set specific amounts that are consistent with the level of breach in question. These amounts increase in successive steps.

- a fine of 25,000 DZD,

- a fine of 50,000 DZD,

- a fine of 1,000,000 DZD.

2/ Contraventions of the second degree

In Article 320, the customs legislator also defined the nature, classification and degree of contraventions. Thus, any contravention of the provisions of laws and regulations entrusted to the Customs Administration for implementation that results in the evasion of duties and taxes or their forbearance falls within this category, provided it is not punishable by the Customs Law with greater severity.

This category includes two main situations:

- Situation 1: Failure to comply with obligations, in whole or in part, that are not linked to fraudulent conduct.

- Situation 2: any incorrect declaration of goods with regard to type, value or origin.

Penalties

The penalties focus on:

- for Situation 1: a fine of at least 25,000 DZD;

- for Situation 2: a fine not exceeding one tenth (10/100) of the value of the goods at customs.

3/ Contraventions of the Third Degree

In Articles 321 and 325, the legislator defined the nature, classification and degree of third-degree contraventions, with an exception for contraventions relating to weapons, narcotics and other prohibited goods.

Accordingly, this category also covers any contravention of the provisions of laws and regulations entrusted to the Customs Administration for implementation.

The penalties prescribed for it are related to the application of confiscation, which the legislator provided for in Article 240 bis 1 of

Customs Law No. 17-04, as previously mentioned. By this, we mean confiscation that is imposed on the goods which are the subject of smuggling/fraud.

Given that the Customs legislator did not provide a definition, it is necessary to clarify the concept of confiscation here. However, they specified both the scope of confiscation and the circumstances in which it is applied, either automatically or at the discretion of the competent authority. Accordingly, the legislator did not define confiscation in legal or technical terms; rather, it treated it as a secondary penalty that follows the financial penalty, i.e. the fine¹⁴.

In contrast, other legislative texts provide a comprehensive definition. Notably, Algerian Criminal Law—through several stages of amendments—developed a definition of confiscation and clarified its nature and scope. This is reflected in Article 15, which states: ‘Confiscation is the final transfer to the State of certain property or assets, or their equivalent value, where appropriate.’

Similarly, Law No. 05-06 relating to the combating of smuggling sets out the following in Article 2, paragraph (I): ‘Confiscation in favour of the State: confiscation in favour of the public treasury, as applied in the customs field.’

Confiscation thus has two forms:¹⁵

1. Specific confiscation (in kind), which applies to the goods that are the subject of the smuggling, the means used to conceal the smuggling and/or the means of transport, depending on the degree of customs offences prescribed in customs legislation.

2. Confiscation in exchange for payment (cash equivalent).

It should be noted that the customs legislator did not list all the cases in which the customs administration, as the authority that requests it from the court, may seek confiscation. From a practical standpoint, within the framework of applying the provisions of customs legislation, there are situations in which confiscation in exchange for payment is selected.

- When the owner withdraws or abandons the means of transport and it cannot be recovered.

- When the offender dies before a final judgement is issued and it is therefore not possible to confiscate the goods in kind from the estate. In such cases, the goods may be confiscated for payment in accordance with Article 261 of the Customs Law.

- When the goods that are the subject of the offence are not seized, as well as in cases where means of transport owned by the state are confiscated.

However, the Customs Administration may lose its right to choose between the two forms of confiscation. In that event, in-kind confiscation becomes mandatory in cases where the subject of confiscation consists

¹⁴- Order No. 66-156 of 8 June 1966, containing the amended and supplemented Criminal Code, as amended and supplemented by Law No. 24-06 of 28 April 2024; Official Gazette No. 30, dated 30 April 2024.

¹⁵- Nouha Chirouf, ‘The Customs Offence in Algerian Legislation: Text and Application’, doctoral thesis, Faculty of Law, University of Mentouri—Constantine 1, Algeria, 2017–2018, p. 269.

of items seized from unknown persons, as well as in situations where no prosecution for the customs offence is pursued due to the low value of the goods that are the subject of the offence.

4. Offences of the fourth degree

These are offences that were not affected by the amendment contained in the Customs Law, Law No. 17-04¹⁶. The legislator therefore retained their content and classification, including their degree, as set out in Article 322. This provision determines the scope of the offence and the offence constituted by the breach of the procedure. It should be noted that any offences relating to goods that are neither prohibited nor subject to high duties, when committed by means of forged invoices, certificates or other documents, constitute the most serious type of offence within that category.

- The penalties prescribed for it: Here, this consists in:

- confiscation of the goods that are the subject of the smuggling/fraud, or
- payment of the value of the goods that are the subject of smuggling/fraud (calculated), in addition to a fine (of 5,000 DZD).

3. Misdemeanours — Their Degrees and the Penalties Prescribed

Unlike offences (contraventions) whose description is the act for which the law provides a stricter punishment, the customs legislator, in its second section under the title customs misdemeanours, specified the forms that these misdemeanours may take.

Thus, the standard for punishment aligns with the seriousness of the fault and the harm caused to the goods, which serve as the subject matter of the offence, or with the breach of procedures the purpose of which is to achieve an unlawful advantage, using the various means adopted and causing harm to the State's public interest—whether financial, security-related, or economic

Accordingly, the legislator set out the offence and the prescribed penalties for customs misdemeanours, as well as their classification by degree, in the amendment introduced to this area of law. This approach is also taken in the amended and supplemented Law No. 06-05 on combating smuggling.

In this context, the customs legislator offered a clear and decisive definition of customs smuggling as the fundamental rule and core of the customs offence. The first aspect concerns the subject matter of the offence (the goods), while the second aspect concerns their transport. Both elements are linked to an essential determinant, namely: possession and the geographical scope (territorial field). This determinant produces the degree and limits of responsibility in relation to the customs territory or area over which the Customs Administration extends its supervisory authority.

Within that territory, the administration ensures the application of customs regulations and legislation to goods, persons, and means of transport through the mechanisms of customs supervision. At the same time, the administration carries out monitoring as prescribed by law, granting it the authority to conduct follow-up and continuous on-site and time-based supervision linked to the entry and/or exit of goods, persons and means of transport into and out of the national customs territory/area, in accordance with their respective situation.

This will be addressed under the heading 'Customs Smuggling', in terms of both the act and the effect.

The legislator's explicit classification, as previously mentioned, was established through a degree-based order in Articles 325 and 325 bis:

- A misdemeanour of the first degree; and
- A misdemeanour of the second degree.

¹⁶- Customs Code amendment: of 16 February 2017, amending and supplementing the Customs Law (op. cit.).

Before addressing these, however, the discussion will first cover the offence of customs smuggling as provided for in Article 324.

3.1 Customs smuggling: Between Act and Effect

As previously defined in the relevant customs provisions and the specific provisions of the anti-smuggling legislation, customs smuggling is composed of a set of intersecting elements. As a result, they form an angle connecting:

- the material element of the customs offence, associated with the conduct that gives rise to it;
- the subject matter of the criminal act (the goods); and
- the spatial field, which gives specificity to the type and classification of the offence and shapes its scope of intervention and the application of the relevant legal text, namely customs legislation, which is both regulatory and deterrent.

We previously discussed the moral and material elements of the offence of customs smuggling and the general customs offence, where the moral element may be absent or weakened in terms of consideration when it comes to seizure, classification or the application of penalties.

The rule established by Article 324 is as follows:

- Importing or exporting goods outside customs offices;
- violating the provisions of Articles 51, 53 bis, 60, 62, 64, 221, 222, 223, 225, 225 bis and 226 of the Customs Law;
- unloading and shipping the goods fraudulently.

However, the goods that constitute the subject matter of the smuggling offence must not be low value (i.e. of little value).

Accordingly, we note that, when describing the offence of smuggling, the customs legislator linked it to three elements:

- Firstly, the goods, which represent the subject matter of the offence;
- Secondly, possession (holding/keeping); and
- Thirdly, the spatial field.

3.2 First-Degree Misdemeanour

A first-degree misdemeanour, as defined and categorised in customs legislation, is linked to all operations involving the movement of goods entering or exiting the customs territory without declaration. This establishes a breach of customs legislation and regulations upon inspection. This is carried out through examination and monitoring procedures, as specified in Article 325 of Law No. 17-04 in nine paragraphs, which likewise provide for the corresponding penalties.

Based on the above provisions, within the framework of the rules governing first-degree misdemeanours, the criminal act has three levels of effect, resulting in three pecuniary penalties, which are presented as follows:

1. Elements relating to the criminal act

a) The subject matter:

Goods, namely goods subject to a high duty, prohibited goods, goods subject to a lump-sum duty in each case, and goods not cleared through customs;

- means of transport; and
- goods contained in postal parcels/envelopes.

b) Conduct affecting the goods: conduct carried out by natural or legal persons with the aim of achieving unlawful profit and harming the state's public interest and public security. This conduct includes:

- deception through concealment or an attempt to deceive, and/or
- fraudulent acts in various forms.

This constitutes the material element of the offence, such as:

- reducing the quantity or value;
- substituting goods;
- failing to declare or making an incorrect declaration.
- unjustified increase,
- failing to comply with customs procedural obligations.
- transferring,
- Obtaining or attempting to obtain fraudulent documents relating to the goods.

c) Geographical scope

Pursuant to Article 325, the geographical scope is the customs territory/area within which the movement of goods takes place, whether by land, sea or air. In this context, the Customs Administration opposes any conduct that violates customs regulations and legislation during monitoring and follow-up procedures.

2. Penalties and their correspondence with what is provided for in Article 240 bis 1

a) The prescribed penalties

In this case, the penalties consist of:

- confiscation of the goods that are the subject of the deception and the goods that conceal the deception;
- a pecuniary fine equal to the value of the confiscated goods; and
- imprisonment for a term ranging from two to six months.

3.3 Second-degree customs misdemeanour

The customs legislator reformulated the classification of customs misdemeanours, which are acts that harm security, the economy and the national interest, within the limits of the application of the Customs Law, and alongside other legal provisions. The legislator distinguished between types of criminal act and introduced aggravation of the penalty according to the type of offence, the subject of which is goods moved continuously within the geographical scope indicated by the customs provisions.

Thus, Article 325 bis provides for a second-degree misdemeanour based on three main criteria:

1. Any act carried out using electronic means that results in the cancellation, modification or addition of information or programmes in the customs information system with the outcome of:

- evading or disregarding a right, duty or other amount owed;
- obtaining another advantage without justification.

2. Incorrect declarations concerning the goods referred to in the first paragraph of Article 21, with respect to type, value, or origin¹⁷.

¹⁷- Note (as stated in the text): It is observed that the prohibition measure provided for in paragraph 2 of Article 325 bis intersects with the general rules contained in Article 21 of Chapter Two, Section One, titled 'General Provisions', relating to misdemeanours of the first degree concerning the conditions for lifting the

3. Incorrect declarations with respect to the type, value or origin of goods, committed through forged or inaccurate invoices, certificates or other documents, including documents with incomplete data or documents that are not applicable.

Penalties prescribed for it:

Here, the penalties are applied by imposing:

- confiscation of the goods that are the subject of the deception, as well as the goods that conceal the deception.

Additionally, the customs legislator expressly extends confiscation to goods that constitute a customs offence as defined in paragraph one of Article 21, namely:

“...prohibited goods are all goods whose import or export is prohibited in any form whatsoever...”

As a result, the penalty of confiscation also covers:

- other goods that were declared either briefly or in detail in the name of the offender;
- goods that had not been presented or withdrawn by the date on which the offence was inspected or verified.

The penalties also include:

- a fine equal to twice the value of the confiscated goods; and
- imprisonment from six (6) to twenty-four (24) months.

Observations based on the second-degree misdemeanour:

From what has been set out regarding the second-degree misdemeanour, the following can be noted:

- With respect to the act and the instrument, the focus is on the means used to commit the violation and the customs offence.
- With respect to the goods, the legislator shifted towards specifying the type of goods, their value, and their origin.
- With respect to the penalty, the customs legislator provided for aggravation (increased severity) across its three levels — whether confiscation, the fine, or the personal (custodial) penalty — each according to the circumstances of the case.

Axis Three: Felonies and the Rationale of Aggravation under Disparate Legal Texts

The specificity of the provisions governing customs offences does not apply only to traditional acts such as smuggling or false declaration; it stems from the very nature of the criminal act itself. Rather, it extends to every violation affecting the rules governing the movement of goods across borders, whether concerning import, export or transit.

Customs crime is also characterised by the broad scope of responsibility: it may encompass the principal offender, the accomplice, the possessor/holder, the carrier and even the beneficiary of the goods that are the subject of the offence.

Regarding the effect, the Algerian legislator has established a stringent system of customs penalties combining principal penalties, such as imprisonment and fines, with supplementary penalties, such as confiscation, seizure of means of transport and closure of commercial premises.

prohibition imposed on goods subject to customs procedures. Indeed, it establishes that the act violates the applicable legislation and regulations as set out in the procedures for the goods in question; otherwise, it constitutes an offence of the second degree.

The customs fine has its own distinct character: it is often calculated on the basis of the value of the goods or the duties owed, thereby achieving financial and economic deterrence. Additionally, the Customs Law grants the Customs Administration extensive powers of inspection, detention/seizure, investigation and amicable settlement. This reflects the exceptional nature of this type of offence.

Focusing on the content of Article 3, as amended by Article 2 of Law No. 17-04¹⁸, we consider the rationale of classification and aggravation, particularly what is stated in paragraphs 7 and 8, which provide for the necessity of coordinating with the relevant authorities responsible for combating smuggling, money laundering, cross-border crime and the unlawful import and export of goods affecting security and public order.

We also refer to what is stipulated in Article 319 bis-8, as amended and supplemented by Article 130 of Law No. 17-04.

Accordingly, there are other customs offences set out in legal texts outside the Customs Law which overlap with it with respect to the subject matter, geographical scope, protected interest violated and obligation to protect, prevent and deter them. These offences are addressed by the provisions of the Customs Law and by the Customs Administration, both structurally and functionally.

Thus, the answer to the substance of the felony and the logic of aggravation can be found by relying on the framework provisions governing this type of crime. In many cases, such offences constitute organised cross-border crime, with rules designed to deter any act that threatens national security, whether economic, social, cultural or financial. This therefore requires intensified national and international efforts, as well as multi-sector cooperation, to suppress it.

Particular emphasis is placed on the prescribed penalties, particularly:

Criminal Code

Order No. 66-156 of 8 June 1966 containing the amended and supplementary Criminal Code, as amended by Law No. 24-06 of 28 April 2024, Official Gazette No. 30 dated 30 April 2024.

Law on Combating Smuggling

Order No. 05-06 of 23 August 2005 relating to combating smuggling, as amended and supplemented by Law No. 19-14 of 11 December 2019, which includes the Finance Law for 2020; Official Gazette No. 81, dated 30 December 2019.

Law on Preventing and Combating Money Laundering and Terrorist Financing

Order No. 05-01 of 6 February 2005 concerning the prevention of money laundering and terrorist financing, as amended and supplemented by Law No. 25-10 of 24 July 2025; Official Gazette of the People's Democratic Republic of Algeria No. 48, dated 24 July 2025.

Law Order No. 97-06 of 21 January 1997 concerning military equipment, arms and ammunition, Official Gazette of the People's Democratic Republic of Algeria No. 06, dated 22 January 1997.

Law No. 04-18 of 25 December 2004 concerning the prevention of illicit drugs and psychotropic substances and the suppression of their unlawful use and trafficking, as amended and supplemented by Law No. 25-03 of 1 July 2025; Official Gazette of the People's Democratic Republic of Algeria No. 43, dated 13 July 2025.

Focus and scope

The focus is on the most important acts that overlap with the customs function and law, describing and classifying them, as well as the aggravation of penalties, whether in the form of fines or personal penalties that may reach the level of life imprisonment, and ancillary/additional penalties prescribed for them. The

¹⁸- Customs Code—again: 16 February 2017, amending and supplementing the Customs Law; op. cit.

extent of multi-sector cooperation, which is practically necessary to achieve the intended objectives, is also addressed, with a particular focus on:

- smuggling high-duty and prohibited goods.
- smuggling drugs of various types.
- Counterfeiting documents related to goods.
- Smuggling currency/cash.
- Fraud in the declared value to customs, which constitutes a type of money laundering crime carried out within import and export operations (foreign trade).
- Smuggling migrants and trafficking in persons.
- Manufacturing, trading, importing/exporting, transporting and carrying military equipment, arms and ammunition.

Conclusion:

From what has been presented, it is clear that the particularity of the customs offence lies in the fact that it is primarily an economic crime. This is reflected in its three constituent elements: (i) the criminal conduct (i.e. the act, whether by commission, attempt, participation or omission); (ii) the means used, which are characterised by technical concealment, deception and manipulation of declarations relating to goods in terms of type, value and source; and (iii) the criminal result, which affects the state's economic and security interests.

Accordingly, the provisions of customs legislation affirm the material nature of the offence, as it is linked to a breach of customs procedures when transporting goods or fraud involving the goods themselves with respect to their type and source, whether lawful or not, and whether subject to a high or low tariff. This also applies to all acts described and classified as customs offences under the provisions of Articles 319, 320, 321, 324, 325 and 325 bis of the Customs Law.

Therefore, the material conduct is the basis for proving the customs offence. This functions as a legal presumption of evidence, resulting in the imposition of penalties, whether financial (fines), personal (imprisonment) or ancillary/additional, according to the degree of fault, risk and outcome (harm). This is what the legislator established particularly in Articles 329 and 330 of Law 17-04, including the amended and supplemented Customs Law. This is also reflected in other laws, under which the legislator provides for further aggravation of penalties up to the level of felony.

On the basis of the above, the following findings can be made:

1. Customs Law, as essentially procedural law relating to various customs offences at different levels, relies on two fundamental criteria: The criterion of protected interest and the criterion of the material nature of the offence.
2. The description and classification of customs offences, whether in terms of the act or its effect, as constituting a violation of customs legislation and regulations, is grounded in explicit provisions recognised by the Customs Law itself or by other related legislation, whether directly or indirectly. This depends on the nature of the goods, the means adopted, the administrative authority empowered to carry out follow-up/monitoring, and the geographic scope (the customs territory).
3. The principle of aggravation in customs matters is linked to the violated interest that must be protected, prevented and deterred. To this end, the legislator has enacted special legal rules that include references to the provisions of the Customs Law concerning:
 - offences of smuggling,
 - offences relating to money laundering,

- offences relating to illicit drugs and psychotropic substances (their unlawful use and trafficking);
- cross-border crimes, particularly the unlawful import and export of goods that threaten public security and public order, such as military equipment, arms, and ammunition.

References list:

1) Legal texts:

- Order No. 66-156 of 8 June 1966, containing the Criminal Code, as amended and supplemented by Law No. 24-06 of 28 April 2024; Official Gazette of the People's Democratic Republic of Algeria No. 30, issued on 30 April 2024.
- Order No. 66-155 of 8 June 1966, containing the Code of Criminal Procedure, as amended and supplemented by Law No. 21-11 of 25 August 2021; Official Gazette of the People's Democratic Republic of Algeria No. 65, issued on 26 August 2021.
- Law No. 79-07 of 21 July 1979 containing the Customs Code, as amended and supplemented by Law No. 98-10 of 22 August 1998 and Law No. 17-04 of 16 February 2017; Official Gazette of the People's Democratic Republic of Algeria No. 13, issued on 26 February 2017.
- Order-Law No. 97-06 of 21 January 1997 relating to military equipment, arms and ammunition; Official Gazette of the People's Democratic Republic of Algeria No. 06, issued on 22 January 1997.
- Law No. 04-18 of 25 December 2004 concerning the prevention of illicit drugs and psychotropic substances and the suppression of their unlawful use and trafficking, as amended and supplemented by Law No. 25-03 of 1 July 2025; Official Gazette of the People's Democratic Republic of Algeria No. 43, issued on 13 July 2025.
- Order No. 05-01 of 6 February 2005 concerning the prevention of money laundering and terrorist financing, and the combating thereof, as amended and supplemented by Law No. 25-10 of 24 July 2025; Official Gazette of the People's Democratic Republic of Algeria No. 48, issued on 24 July 2025.

2) Books:

- Anouar Talaba, *The Guide/Handbook for Explaining the Law of Evidence*, Office Universitaire Moderne, Al Azariba, Alexandria, 2010.
- Claude J. Barr, *Introduction to Customs Law* (translated by Saadna El-Aid), TCS Publishing House, Algeria, 2009.
- Kamal Hamdi, *Customs Smuggling Offence*, Mansha'at al-Ma'arif for Publishing, Alexandria, 2004.
- Ghania Guerri', *Explanation of Criminal Law*, Dar Qurtuba for Publishing and Distribution, Mohammedia, Algeria, 2009.

3) Master's and doctoral theses:

- Nouha Chirouf, 'Customs Smuggling Offence in Algerian Legislation', research submitted for the degree of Master of Laws (Business Law specialisation), Faculty of Law, University of Constantine 1, academic year 2009–2010.
- Nouha Chirouf, 'Customs Offence in Algerian Legislation: Text and Application', doctoral thesis, Faculty of Law, University of Mentouri—Constantine 1, Algeria, 2017–2018.

4) Lectures

- Zaarour, *Guide to Customs Assistance in Customs Disputes*, Directorate of Training, Directorate General of Customs of Algeria, 2012 (unpublished).

5) Internet sites:

- Legal study and research on 'Customs Smuggling Offence in the Light of Jurisprudence and Case Law' — free legal consultations.