



Causes of customs evasion in Algeria

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Abstract:

The legal doctrine has struggled to provide a unified definition of customs evasion due to differences in customs legislation and the diverse and expansive nature of the activity itself. However, the Algerian legislator has deviated from this principle by attempting to define smuggling in Article 2 of Ordinance No. 05-06 on anti-smuggling. Nonetheless, this attempt was unsuccessful as it merely outlined the material act constituting the crime of smuggling.

The first section of the article addresses this issue. The commission of the crime of customs evasion can be attributed to various causes, which differ from country to country and are not all equally significant. Some of these causes are fundamental, while others are supplementary or secondary. Certain reasons, however, are considered the most common causes of customs evasion. These include economic, social, political, security and geographical factors, which are discussed in the second section of the article.

Keywords: customs smuggling, customs fraud, customs offices, customs duties.

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Introduction

The economic openness witnessed globally, the evolution of trade exchanges and the conditions imposed by free competition have caused some operators to fall behind in this development. Consequently, they resort to illicit methods to achieve quick profits.

Consequently, countries implement customs oversight measures to protect national products¹, collect rights and fees, and safeguard public health, morals, heritage, and animal and plant life, among other concerns.

From the perspective that customs evasion crime encompasses any act or omission punishable by law that contravenes the state's economic policy, it is thus classified as an economic crime. The definition of this crime and the reasons for its occurrence are influenced by the economic policies adopted by different countries. Therefore, this paper

will first clarify the meaning of customs evasion (Section One), followed by a discussion of the causes of this crime (Section Two).

1. Clarification of customs evasion

The concept of customs evasion is explained through a discussion of its definition and how it differs from other related concepts that may confuse both the general public and specialists. This helps to avoid ambiguity.

1.1 Definition of Customs Evasion

There are several definitions of customs evasion from linguistic, jurisprudential and Algerian legislative perspectives.

1.1.1 Linguistic definition of customs evasion

The term 'evade' originally comes from the verb 'to flee'. To evade means to transport prohibited items discreetly from one country or place to another². The Algerian legislator has adopted this term in customs law texts, which state: 'For the purposes of the following punitive provisions, customs evasion is defined as follows...'³ It is also used in Ordinance 05-06 concerning anti-smuggling.

'Customs evasion' aligns with the nature of the penalised actions under customs law, as individuals sometimes engage in import and export operations without undergoing prior customs procedures, thereby violating provisions of the law.

1.1.2 Jurisprudential definition of customs evasion

Due to differing customs legislation across countries, legal scholars have disagreed on a unified definition of customs evasion, given the diverse and expansive nature of the activity itself. Some define it as 'any positive or negative act that constitutes a breach of customs laws and regulations, causing harm to the state's interests, for which the legislator imposes a penalty'⁴. However, this definition has been criticised for being too broad, as it encompasses all actions that violate legislation, including fraud, which differs from evasion⁵.

Consequently, some argue that customs evasion refers to import and export operations conducted outside official channels, i.e. without going through customs offices⁶. This is considered a form of customs fraud. It has also been defined as the act of smuggling goods to avoid customs duties or in violation of prohibitions, which are subject to sanctions under customs law⁷.

Additionally, some scholars argue that evasion involves the entry or exit of goods from the country in violation of applicable legislation, with either full or partial non-payment of customs duties⁸. Another group of scholars specialising in customs issues define evasion as the import or export of goods outside of customs offices, thereby breaching the legal and regulatory rules governing the possession and transportation of goods within the customs territory⁹.

While scholars attempt to formulate a unified and comprehensive definition of customs evasion that is applicable across different times and places — similar to definitions of ordinary crimes, such as those against persons, property, or public morals — there is a consensus that customs evasion involves the entry or exit of goods, and the evasion of customs duties and fees.

1.2 Definition by the Algerian Legislator

Various pieces of legislation have not provided a clear definition of customs evasion; rather, they have aimed to establish the mechanisms and procedures that govern specific matters. However, the Algerian legislator has deviated from this norm by attempting to provide a definition. Article 2 of Ordinance 05-06, dated 18 Rajab 1426 AH (corresponding to 23 August 2005) concerning anti-smuggling states: 'For the purposes of this Ordinance, customs evasion refers to the actions described as smuggling in the applicable customs legislation and regulations, as well as in this Ordinance.'

Referring to Customs Legislation No. 79-07, dated 26 Sha'ban 1399 AH (corresponding to 21 July 1979) as amended and supplemented, a series of articles specify the violations that are considered smuggling according to Article 324. 'For the purposes of applying the following punitive provisions, customs evasion refers to the following:

- Importing or exporting goods outside customs offices.
- Violating the provisions of Articles 25, 51, 60, 64, 221, 222, 223, 225 and 226 of this law;
- Disguising the unloading and shipping of goods.

Undervaluing goods placed under the transit regime.'

It is noteworthy that the Algerian legislator did not provide a definition of customs evasion, but rather specified the actions that constitute the crime of smuggling¹⁰.

2. Causes of Customs Evasion

Among researchers in the field of criminology, it is common to categorise criminal factors based on the nature of the defence related to the crime. Some classify them as internal factors related to psychological, mental and physiological disorders, while others reference external factors including economic, social, political and other influences. Another perspective divides them into environmental, individual, and factors specific to juvenile offenders¹¹.

Due to the specific nature of smuggling, we will bypass the ongoing debate and focus on the most significant factors and causes associated with this phenomenon. We will broadly categorise these factors as economic, social, political and security-related.

2.1 Economic and Social Causes of Customs Evasion

Like other criminal phenomena, the phenomenon of customs evasion is influenced by the prevailing economic and social conditions in the state.

2.1.1 Economic causes of customs evasion

Economic conditions are considered the most vital factor for customs evasion. Increased demand and limited supply due to the scarcity of consumer goods in the local market, alongside rising prices, create favourable opportunities for smugglers to import these goods. Smugglers exploit this situation by illicitly importing scarce items and selling them at attractive prices to those in need. This floods parallel markets with smuggled goods, which are sold without paying the required customs duties and fees. This is in response to consumer demand for lower prices.

The adoption of certain policies by the state has significantly contributed to the spread of criminal activity. For example, the previous state monopoly on certain goods and the reliance on a controlled economic system played a role in the proliferation of smuggling in our country.

Due to the negative consequences of implementing a controlled economy in Algeria, the state began transitioning to a liberal economic system based on market rules and free competition. This followed recommendations from the International Monetary Fund to implement two economic programmes: an economic stabilisation programme (April 1994 – March 1995) and a structural adjustment programme (April 1995 – March 1998). In order to encourage exports and local production at the expense of imports, foreign trade was liberalised from 1998 onwards, which led to a noticeable decrease in smuggling operations, particularly during exports¹².

However, the implementation of the structural adjustment programme had significantly negative repercussions, particularly at economic and social levels¹³. The unemployment rate increased, leading to a decline in living standards. This pushed unemployed young people to turn to smuggling to support themselves¹⁴.

Following the state's abandonment of its consumer goods support policy, which it had maintained during the socialist management phase, there was a relative scarcity of economic resources. Smugglers adapted their activities to focus on hard currency, precious materials and goods that are abundant in Algeria but scarce in neighbouring countries, such as livestock, dates, fuel and cigarettes¹⁵.

Smugglers' sole objective is to evade payment of duties and taxes by importing prohibited and rare items for profit, regardless of the harmful consequences this has on the national economy and society as a whole.

2.1.2 Social causes of customs evasion

The social factors associated with criminal phenomena are not rooted in the individual committing the crime, but rather in the environment in which they live, which can influence their behaviour.

The social causes of customs evasion primarily relate to how the community perceives this phenomenon and judges the act and its perpetrator. This involves the social evaluation of smuggling and smugglers, regardless of whether the act is legally classified as a crime or is prohibited.

While public outcry typically condemns criminal acts, there is an exception to this norm in the case of smuggling, especially when it involves food, clothing or widely consumed goods. Algerian society often disregards such acts and shows tolerance towards them.

Smuggling is considered an ordinary profession, particularly among border residents, who practise it as they would any other occupation. Some even inherit it from their ancestors¹⁶. The family environment plays a significant role in shaping individuals' characters and behaviours.

The tolerant attitude of society towards smuggling and smugglers, who often acquire wealth, is reflected in popular songs and stories that glorify these activities¹⁷. This makes smugglers feel supported by their community. This can also elicit sympathy from others, including judges, who view general crimes as much more socially detrimental than customs violations¹⁸.

Other significant factors contributing to the increase in smuggling activities in Algeria include rising unemployment, increased poverty and declining living standards due to low family income. Such conditions push many young people to take risks for quick profits through smuggling in order to earn a living. Likewise, drug addicts experiencing economic hardship and social exclusion also engage in smuggling to fund their drug habits.

These factors all significantly contribute to the rise and spread of customs evasion, despite Algeria's efforts to achieve the Millennium Development Goals set by the United Nations to address these social issues¹⁹.

2.2 Political and security causes

Political and security stability is considered a fundamental factor in countries' development and growth in various areas of life. Therefore, it is essential for each state to maintain stability and continue its efforts using all available means.

A weak state, particularly with regard to its capacity to exercise security oversight, can lead to the emergence of informal activities, including customs evasion. This weakness can be justified from two perspectives: Firstly, the state may be unable to raise the wages of groups involved in smuggling. Secondly, the state may lack the political will or the capacity to contain smuggling operations and bring them within the legitimate economy.

Political and security instability provides fertile ground for smugglers and criminal organisations to thrive. For example, Algeria experienced this during the 1990s due to the rise in terrorist activities that threatened people's safety and property. This also resulted in an increase in customs evasion operations. Furthermore, lax monitoring by state agencies contributed to the proliferation of this phenomenon.

However, as Algeria has gradually restored political and security stability, there has been a clear effort to combat smuggling since 2005²⁰, with an emerging strategy to address it. Consequently, smuggling activities in Algeria have declined in recent years.

2.3 Geographical causes

Geographical factors are among the natural elements that facilitate and drive crime. Customs evasion, as a criminal phenomenon, is influenced by factors exploited by smugglers to carry out their illegal operations. While some argue that geographical factors have little impact, others believe that they significantly affect the behaviours of criminals and their methods of executing criminal activities.

Algeria's vast size, proximity to numerous countries and access to the sea²¹ are among the most prominent factors contributing to the emergence and spread of smuggling, particularly in border areas which may be mountainous with hills, forests and valleys, or desert regions with sand dunes providing cover for illicit activities. These geographical features make it difficult for officials assigned to combat smuggling to do their work, resulting in limited opportunities for customs oversight and granting smugglers considerable chances to evade capture with their illegal goods²².

Conclusion:

Customs evasion is a phenomenon that many societies have experienced, particularly those engaged in trade. Efforts have been made to combat smuggling using all available means. Today, it has become one of the most serious organised crimes, driven by various factors, including economic, social, political and security considerations, as well as the geographical location of the state.

Therefore, it is imperative for legislators to adopt serious strategies to combat this crime and mitigate its impact.

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²⁰- This is due to the issuance of the following two ordinances: 05/05 and 05/06, which are related to anti-smuggling.

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