

Combating Money Laundering and Terrorist Financing in Light of the Amendments Brought by Law 23-01 Analytical and Critical Study

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Abstract:

The article addresses the framework that Algeria worked to list the sources of financing for terrorist organizations, whether internally or externally. It issued Law No. 05-01 of February 6, 2005 regarding the prevention and combating of money laundering and terrorist financing, which was amended several times until Law 23-01 of 07 was issued February 2023. Thus, the Algerian legislator combined deterrent and preventive measures, emphasizing the role of financial and banking institutions in the field of contribution. In suppressing suspicious transactions and placing obligations on banks that must be fulfilled.

Keywords: Money Laundering; Terrorist; Terrorist Financing; Law 23-01.

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1. INTRODUCTION

Our era is characterized by the phenomenon of terrorism, which has taken forms of transnational organized crime as a means to finance its activities, among which the most dangerous and complex is the crime of money laundering.

Algeria was one of the countries that suffered from the scourge of terrorism, which prompted it to take practical measures to combat it.

This was embodied in several texts, including those related to terrorism and others related to money laundering, until legal texts were embodied that dealt with the crime of money laundering and combating terrorism.

Before discussing these last texts, we had to methodologically define terrorism as stated in Article 87 bis of the Penal Code and the extent of its compatibility with human rights principles. Then we turn to the definition of money laundering. This study concluded by addressing the texts combating money laundering and terrorist financing, especially in light of What Law No. 23-01 of February 7, 2023 amends and supplements Law No. 05-01 of February 6, 2005, relating to preventing and combating money laundering and terrorist financing.

2. The definition of terrorism in Algerian law and the extent of its compatibility with human rights principles

There is no universal definition of terrorism, and this is partly justified by negligible subjectivity specific to each State on the one hand, and on the other hand by the different forms that terrorism can take as well as its evolving nature, which does not allow a precise definition of this term.

However, this has not prevented the proposal of certain definitions, either by States, or by non-state organizations, or by jurists or others.

This is how the United Nations Security Council but these definitions are not uniform and, what is more, they are collared by the period during which they were promulgated, which further increases the difficulty of establishing a general definition.

This is why each State has the freedom to propose its own definition of terrorism, which cannot deviate from an element of subjectivity, hence the

risk of seeing ambiguous or broad definitions that could infringe on people's fundamental freedoms.

The problem then arises of the balance between the protection of public order through prevention and repression in order to guarantee the security of individuals and respect for individual freedoms.

2.1 - The need for a legal definition

Article 87bis of the Penal Code provides: “Any act aimed at the security of the State, national unity and stability and the normal functioning of institutions through any action aimed at:.. is considered a terrorist or subversive act. .”

A definition falling within the general framework of legal rules has advantages, but if it's too broad or ambiguous, it can be a source of excesses contrary to the individual freedoms enshrined in human rights.

2.2 definition falling within the framework of the penal code

Even if the definition given by article 87 bis of the penal code can be criticized, we can only welcome the existence of this definition in our penal code, which normally prefigures its treatment by the common law courts.

Compliance of article 87bis of the penal code with the principles of human rights there is no universal definition of terrorism, and this is partly justified by negligible subjectivity specific to each State on the one hand, and on the other hand by the different forms that terrorism can take as well as its evolving nature, which does not allow a precise definition of this term.

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Opposition to the current system of governance even by peaceful means but not fitting into the constitutional old, such as freedom of expression for example, enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR).

As for 15 of article 87 bis, it can be a source of abuse to the extent that it can be applied to people claiming to belong to a legally recognized community. Otherwise this definition covers several categories of offenses, such as:

- The act of violence which appears implicitly in § 2, 3 and 5
- The act damaging to ecology “ecological terrorist act” in § 6
- The political act in § 1, 7 and 8

It appears that it’s not easy, in such an evolving context, to effectively ensure the balance between the search for efficiency and respect for individual freedoms.

Also generally speaking, this definition emphasizes the disturbance of public order, this which is completely legitimate?

Paradoxically, the situation is different with the procedure for implementing the provisions relating to terrorism.

3. Specificities of procedural rules and non-compliance with the principles of human rights the man

The provisions of articles 87 bis 13 and 14 of the penal code establish specific procedural rules whose repercussions are serious.

3.1. Regrettable specificity of the procedure

-Article 87 bis 13 poses a problem. Indeed, people or entities can see each other registered on the list of the “classification commission of persons and entities terrorists” even though they have not been tried. The text provides “...that if he has been the subject of preliminary investigations, criminal proceedings or whose guiltiest declared by a judgment or judgment.”

Therefore a simple preliminary investigation can lead to inclusion on the list and all the criminal consequences that result from it, which violates article 14-1 of the ICCPR which provides that “every person has the right to have

their case heard fairly and publicly by a competent, independent and impartial tribunal. Just as it violates the article more sun moon to Wed Thu Fri.

14-3- a, b and d of the same pact, to the extent that the registration takes place even though the person or entity incriminated has not been informed of the procedure carried out against him such a text also violates the principle of the presumption of innocence enshrined in article 14-2 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Algeria on 16/5/89.

It also violates article 11 of the universal declaration of human rights, as well as article 7-1 b of the African charter of human rights ratified by Algeria on 1/3/1987 as well as Article 16 of the Arab Charter of Human Rights ratified by Algeria on 11/6/2006.

-Moreover, the publication of the list of persons and entities suspected or accused of terrorism constitutes notification to those concerned, which is contrary to article 14-3 a of the ICCPR which requires that any person accused of a criminal offense be< or informed, as soon as possible, in a language that she understands and in detail, of the nature and reasons for the accusation brought against there. This also violates Article 16-1 of the Arab Charter of Human Rights.

Furthermore, according to Article 15 of Executive Decree 21-384 “fixing the terms of registration and removal from the national list of terrorist persons and entities and the effects resulting there from”, the registration decisions of the commission are enforceable upon their publication in the official journal, which constitutes a violation of the adversarial principle when the decision was taken following a simple preliminary investigation ; the person or entity who has not been the subject of any judicial conviction (article 19 paragraph 5 of the decree).

This does not guarantee that this registration is justified. Moreover, the legislator seaware of this last possibility since he provides in paragraph 2 of article 20 of the executive decree « the commission may automatically move from the list the person or entity concerned if the reasons for its registration is not justified”.

Added to this, this commission, as provided for in article 4 of DE21-384, is composed of people representing exclusively the executive power, which does not guarantee any impartiality, thus violating article 14-1 of the ICCPR and article 7 -1 d of the African Charter of Human Rights, and also Articles 13 and 16-7 of the Arab Charter of Human Rights, ratified by Algeria on 11/6/2006.

Furthermore, it's the same commission which is responsible for appeals relating to the removal of these people and entities from the national list, which does not ensure any neutral control over the actions of the commission, in violation of the article 10 of the UDHR and article 7-1 of the African Charter on Human and Peoples' Rights, ratified by Algeria on 13/3/1987.

It appears that the exorbitant powers conferred on the commission by article 87 bis 14 of the penal code are not likely to ensure the balance between prevention and effective repression to guarantee the safety of people and respect for the individual freedoms of persons and entities concerned, which undermines the principle of proportionality.

This needs to be addressed by finding a balance between security needs and individual rights. (art 51 §5 al b of the first additional protocol to the Geneva Convention).

Another violation of human rights principle exists insofar as the persons and entities concerned can only exercise their appeal for removal from the list upon the expiration of a period of 30 days after publication of the decision registration in the official journal, which does not allow them to act as quickly as possible to have their rights restored. This is not in compliance with article 14-2 b of the ICCPR.

3.2. The repercussions of being included on the list

The powers conferred on the commission by article 87 bis are increased by the provisions of the decree, in particular due to the fact that the publication of the entry in the official journal constitutes notification to the enforcement officers to proceed with the confiscation and/or freezing of the funds, even when the registration on the list was made without a WWWW judgment, which violates the principle of the right to property, enshrined in

article 17-2 of the UDHR and by article 14 of the African charter of human rights.

According to article 87 bis 14, inclusion on the list "... implies the prohibition of the activity of the person or entity concerned". This text remains vague. What activity is this? of that in relation to the incriminated facts or of any activity? the text not limiting, there is no reason for limitation, which can lead to abuse of interpretation going as far as the prohibition of any activity, which is not in conformity with article 23- 1 of the UDHR and Article 6 of the International Covenant on Economic, Social and Cultural Rights ratified by Algeria on 16/5/1981 and Article 15 of the African Charter on Human Rights man and people.

In conclusion, the main challenge in terms of terrorisms to find a compromise between effective prevention and repression and respect for individual freedoms, which is not easy

4. Definition of money laundering and terrorist financing in Algerian law and the extent of compatibility of legal texts with international treaties

The crime of money laundering was not known in Algerian law. The term money laundering was introduced in Law No. 04-15 of November 10, 2010, which amends Order No. 66-156 of June 8, 1966, which includes the Penal Code.

Articles 389 bis to 389 bis 07 came to address this crime, which was not previously known in the Algerian Penal Code. The transfer and transfer of property when the person doing so knows is considered to be concealing or camouflaging the illicit source of it, and also helping people involved in the original crimes to evade legal repercussions. It is considered money laundering. In addition, concealing the true legal nature of property and acquiring, possessing or using it with the knowledge that it comes from criminal proceeds is considered money laundering. In addition, participating in the commission of the crimes stipulated in Article 389 bis or attempting to commit them, and incitement and assistance to do so, are considered money laundering same thing.

It is noted that the amendment to the Penal Code did not provide a direct definition of the phenomenon of money laundering, but rather merely

mentioned its forms in Article 389 bis. Also, this text did not address the link between money laundering and the financing of terrorism, so it was necessary for the Algerian legislator to specify that with special texts to address these crimes. Due to their connection, overlap, and seriousness of their consequences. Law No. 05-01 of February 6, 2005 was issued regarding the prevention of money laundering and terrorist financing.

In addition to the provisions contained in the Penal Code, this law aims to prevent and combat money laundering and terrorist financing. It addresses the forms of money laundering and defines some concepts and terminology to address the prevention of money laundering and terrorist financing and the obligations imposed on financial institutions. He also touched on the issue of exploration and international cooperation to conclude the penal provisions.

This law was followed by the issuance of several executive decrees related to the establishment of the bodies mentioned in Law 05-01, and several amendments were made to the latter in view of the developments and new mechanisms used in financing terrorism through money laundering. Order 12-02 was issued on February 13, 2012 to add some definitions that it was not present in Law 05-01, such as the definition of the financial institution, non-financial institutions and professions, the terrorist organization, and other definitions, as stated in the text of the section performed by the specialized body, which is the Financial Inquiry Cell.

Then another amendment came under Order 15-06 dated February 15, 2015 until the last amendment came in Law 23-01 dated February 6, 2023, which we will discuss in some detail.

This law came within the framework of Algeria's endeavor to modernize the mechanisms used in national legislation to combat money laundering and terrorist financing in light of technological development and the expansion of the geographical scope of activity of terrorist groups, which has become transcontinental, which necessitated updating national legislation and providing it with all mechanisms to confront, deter and anticipate the spread of terrorism. Criminals: This text also falls within the framework of keeping national legislation abreast of international developments and adapting the legal system in accordance with the treaties and agreements to which Algeria

has acceded. It also represents a tool to protect the national economy and the financial and banking system from the seriousness of this crime.

The most important point of the law is that it considered the crime of money laundering to occur independently of the original crime, regardless of whether the perpetrator of the original crime was convicted or not.

Considering the crime of money laundering as a predicate crime contradicts some agreements signed by Algeria and is contrary to the text of Article 389 bis of the Penal Code et seq., as the crime of money laundering is a subsequent crime to another original crime and not a precedent of it.

From the objective standpoint of the content of Law 23-01, the German legislator combined deterrent and preventive measures, emphasizing the role of financial and banking institutions in the field of contributing to the suppression of suspicious operations and placing obligations on the banks that they must fulfill.

By reviewing the articles of this law, we condemned it based on the international agreements ratified by Algeria and the recommendations of the Financial Action Task Force GATI, as well as the recommendations of the BAL Group regarding the duty of vigilance towards bank customers.

The law recognizes the responsibility of banks and non-banking financial institutions, who have the obligation to issue a notice of suspicion when it comes to verifying the subject and nature of the customer's activity, while taking all precautions that allow knowing the source of capital and monitoring it permanently, and giving the utmost importance to financial operations in terms of their source and Its direction, subject matter and control.

Violation of these procedures leads the supervisory and oversight body specified in the law to take disciplinary measures in addition to criminal prosecutions that may be taken by the judicial authorities.

It is noted that the law obligates those subject to it to be vigilant through careful monitoring of completed operations, knowing the source of funds, and verifying the documents and information obtained.

This law affirmed and strengthened the role of the National Committee to assess the risks of money laundering, terrorist financing, and financing the

proliferation of weapons of mass destruction stipulated in the applicable regulation. It may take appropriate measures to evaluate and address the risks of money laundering and terrorist financing to which Algeria may be exposed. It also obligated those subject to the necessity Take preventive measures.

Among the procedures introduced under Law 23-01 is the introduction of the term financial investigation in parallel with the criminal investigation in cases of money laundering, terrorist financing, or financing the proliferation of weapons of mass destruction, which is what, is being implemented at the level of the national economic and financial penal pole established pursuant to Order No. 20. -04 dated August 30, 2020.

This pole is established at the level of the court of the headquarters of the Algerian Judicial Council, in which the public prosecutor, the investigating judge, and the head of the same pole exercise their powers throughout the entire national territory. They also exercise joint jurisdiction with the jurisdiction resulting from the application of Articles 37, 40 and 329 of the Code of Criminal Procedure and related crimes. Research, investigation, follow-up, investigation, and adjudication of the most complex economic and financial crimes and the crimes associated with them. The most complex economic crime means that in which there are multiple perpetrators, partners, or victims, or that is due to the wide geographical area of the place where the crime was committed or the seriousness of the harms associated with them and their organized or transnational nature, or the use of media and communication technologies to commit them, which require resorting to special investigative means, technical expertise, and international cooperation.

It must also be recalled that Law No. 04-14 of November 10, 2004 extended the local jurisdiction of the Public Prosecutor, the investigating judge, and the sentencing judge in some crimes, the most important of which are terrorist crimes. For that purpose, Executive Decree No. 06-348 of October 5, 2006 was issued, including the extension of jurisdiction. Local to some Local to some courts, prosecutors, and investigating judges for the crimes referred to above, including terrorist crimes. These expanded poles

became specialized in crimes described as terrorist or sabotage acts, which allowed several files to be dealt with in a professional manner.

5. CONCLUSION

Finally, the law touched on the issue of cooperation and exchange of information between bodies charged with combating money laundering. At the national level, there is the Financial Information Cell (CTRF), which analyses and exploits the information it receives in order to determine the source and destination of capital, and within the framework of any notification of suspicion, it has the right to Requests the competent authorities for any additional information it deems appropriate to carry out its work.

The total information obtained by the Financial Inquiry Cell is recorded in the database and is the subject of a preliminary investigation through dispatches addressed to national bodies (tax administration, customs, state property and departments in charge of trade) as well as to similar external bodies.

At the international level, the Financial Intelligence Cell can provide external bodies charged with the same tasks with the information it possesses about operations suspected of being the subject of money laundering or terrorist financing. It can also obtain information from these external bodies. Within this framework, the Authority develops a policy of negotiations and bilateral administrative agreements facilitate the exchange of financial information.

It is also worth noting that Law 23-01 indicated the establishment in the Ministry of Foreign Affairs of a committee to follow up on international sanctions, whose mission is to follow up on the decisions taken by the Security Council within the framework of Article Seven of the Charter of the United Nations. The committee to follow up on international sanctions informs the specialized body of the lists prepared by the sanctions committees. It also informs it of all changes that occur to it.

The law also stipulates in its final articles that the national judicial authorities have the jurisdiction to decide on terrorist financing acts, whether committed on national territory or committed abroad by an Algerian or

foreign party, when this act for which the financing is directed takes place in Algeria or if the terrorist or terrorist organization is present in Algeria. Determine the punishments corresponding to these actions.

Law 23-01 related to preventing and combating money laundering and terrorist financing includes provisions related to prevention and deterrence, which will allow the formulation of an effective and effective policy to put an end to the financing of terrorist groups and combat the investment of funds obtained from corruption crimes, which will benefit Algeria both Security and economic aspects.

5. Endnotes

¹ The preliminary report of the Committee on Legal and Administrative Affairs, Human Rights, Local Organization, and Regional Preparation to the National Assembly on 01/10/2023.

² Law No. 23-01 of February 6, 2023.

³ Protecting the Algerian banking system from money laundering, second edition, Dar Houma, page 127.

⁴ Abdul Majbid Al-Shorabi, Bank Operations in the Light of Jurisprudence, Judiciary, and Legislation, Mansha'at Al-Ma'arif 2001, page 552.

⁵ Dr. Saed Horeya Elham, International and National Mechanisms to Combat Terrorism, Study in Legislation, Dar Houma, page 305.

⁶ Dr. Ahmed Fathi Sorour, Money Laundering and Terrorist Financing, Scientific Group for Printing, Publishing and Distribution, 2021 edition, page 48.

⁷ Moisi Abdel Moumen, an intervention entitled the substantive and procedural treatment of the crime of money laundering and terrorist financing, an applied case study, Algeria on 07/09/2023.

⁸ Law No. 21-08 of 06/08/2021 amending and supplementing Order No. 66-156 of 06/08/1966 includes the Penal Code.