

Privacy of the offence of embezzlement in the banking sector Algerian according to order No 03-11

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ABSTRACT

The crime of embezzlement in the banking sector has special characteristic no other embezzlement crimes, as the person who runs a public or private sector entity. The anti-corruption law contained special criminal provisions embezzlement of property, which was specifically designed to eliminate corruption in public life, mainly trafficking in public office.

The Algerian legislator attempted to adopt a new criminal policy aimed at the effective protection of public property through the adoption of preventive mechanisms against this crime through the establishment of the accounting council.

Keywords

embezzlement, control, corruption, prevention, protection.

Introduction

1.1. Overview of re-education institutions

The crime of embezzlement is one of the most common crimes committed by the managers of the joint-stock company. The purpose of determining penalties for it, while stressing that the embezzler believes that the seizure of its funds is very easy and illegal, and enables him to escape from the aftermath if discovered.

The crime of embezzlement in the public sector in general and in the banking sector in particular has several peculiarities in terms of criminalization, criminal prosecution, and criminal punishment, which made it appear distinctive and deviating from the general rules of the Penal Code.

Therefore, the Algerian legislator gave the latter great attention, adding special provisions in the Law on Preventing and Combating Corruption, because it is of great importance as it affects one of the pillars of the state, namely banks, financial institutions and major companies that take the form of a joint-stock company as the artery of the national economy.

The crime of embezzlement in Algerian legislation has been legally established in two basic stages:

- First, the stage of development of the crime of embezzlement in light of the provisions of Article

119 of the Penal Code, where this stage witnessed the fluctuation of the Algerian legislator in controlling the presumed element of the crime of embezzlement, which is the character of the employee. This resulted from the various amendments made to the Penal Code, which in turn reflected the rubberiness of Article 119, which expanded the concept of those who are the employee to other people.

As for the criminal description of the crime of embezzlement stipulated in Article 119, we find that the legislator has included in making the act of attacking public or private property between a misdemeanor and a felony, with the aim of protecting money to ensure the confidence of members of society in the bodies entrusted with the task of disposing of it in a way that supports confidence more and more in the national economy.

- The second, which is the stage that witnessed the abolition of Article 119 of the Penal Code and its compensation in Article 29 of the Anti-Corruption and Prevention Law, the latter expanded the concept of public official in terms of the presumed element. As for the criminal description, it made most of the crimes of embezzlement a misdemeanor with a felony penalty, in addition to a legal provision dealing with embezzlement in the private sector (Article 41).

Dr. Malika Hanan's definition of embezzlement came toⁱ describe the case in which the embezzlement process is carried out where things of value are illegally entered into the employee's private property.

The crime of embezzlement of property is the act stipulated and punished in Article 29 of the Law on Preventing and Combating Corruptionⁱⁱ, which replaced the repealed Article 119ⁱⁱⁱ of the Penal Code^{iv}.

In fact, this text protects both public and private money when entrusted to a public official by virtue of or because of his functions, in addition to the text of Article 41^v of the same law, which focused on this crime in the private sector.

Article 132^{vi} of Order No. 03-11 of August 26^{vii}, 2003, concerning the Money and Loan Law, also specified who was the embezzler, and what the act of embezzlement was^{viii}.

The legislator also tightened the penalty in the text of Article 133^{ix} of Order No. 03-11 related to cash and loan according to the value of the embezzled funds.

The French legislator stipulated in the Penal Code the crime of embezzlement under the text of Article 432-15^x, according to its last amendment in accordance with Law No. 2020-1672 dated December 24^{xi}, 2020, and the supplementary penalties were stipulated in Article 432-17 of the same law.

Through the above, the following problem can be raised:

How did the Algerian legislator organize the crime of embezzlement in the banking sector?

To answer this problem, we decided to divide the subject of our research into two parts, the specificity of the crime of embezzlement in terms of criminal follow-up (**first demand**) and its specificity in terms of the penalties prescribed for the perpetrator of the crime (**second demand**) under Algerian law.

The specificity of the crime of embezzlement in terms of criminal follow-up

This follow-up has particularity in terms of initiating public action (**first branch**), in terms of search and investigation procedures (**second**

branch), as well as freezing and seizing funds and international cooperation in the field of asset recovery (**third branch**).

1-1-The specificity of the crime of embezzlement in terms of initiating public action:

As soon as the Public Prosecution becomes aware of the occurrence of the crime, it automatically and unconditionally initiates public prosecution, which was the case before the repeal of Article 422 of the Penal Code under Article 12 of Law No. 01-09^{xii}, and the transfer of its content to Article 119 bis of the Penal Code under Article 04 of Law No. 01-09.

However, the crime of embezzlement is characterized by a kind of restriction and privacy in the initiation of public lawsuits, through the text of the penultimate paragraph of Article 119 repealed from the Penal Code^{xiii} because it does not move except on the basis of a complaint from the organs of the company concerned stipulated in the Commercial Code and in the law relating to the management of the commercial capital of the state, if one of the persons mentioned in it commits this type of crime.

As for the last paragraph of Article 119, which was repealed from the Penal Code^{xiv}, it clarified the penalties prescribed for members of the company's organs who do not report the criminal acts stipulated in this article and in Articles 119 bis, 128 bis, and 128 bis 1, which are the penalties stipulated in Article 181 of the Penal Code.

What is noticeable on Law No. 01-09 is that it restricts the initiation of public lawsuits when it comes to public and economic institutions whose capital is wholly owned by the state, or institutions with mixed capital, except on the basis of a complaint from the bodies of the concerned institution stipulated in the Commercial Law. However, in the absence of a complaint from the concerned bodies, members of the bodies of the company who do not report these criminal acts shall be subject to the punishment stipulated in article 181 of the Penal Code.

The Algerian legislator did not adhere to this restriction for long, as it converted the texts of Articles 119 bis, 119 bis 1, 128 bis and 128 bis 1 of the Penal Code, even after its amendment (Law No. 01-09 dated 26/06/2001), to the Anti-

Corruption Law, and what supports this is the text of Article 132 of the Monetary and Loan Law (Order No. 03-11), until Order No. 15-02 amended and supplemented the Code of Criminal Procedure^{xv}, which introduced Article 06 bis^{xvi} by virtue of Article 03 of it, as the public lawsuit against the managers of public economic institutions whose capital is owned by the state or with mixed capital does not move from the acts of management that lead to theft, embezzlement, damage, or loss of public or private funds except on the basis of a prior complaint from the social bodies of the institution stipulated in the Commercial Law and in the legislation in force.

Hence, we note that the Algerian legislator, under Article 6 bis mentioned above, was limited to restricting the public lawsuit by the Public Prosecution to the managers of public economic institutions whose capital is owned by the state or with mixed capital for management work, without the rest of the employees or workers, as was the case under Law 01-09^{xvii}.

Thus, the right of the Public Prosecution to exercise its powers was wasted with this restriction. This article came to encourage the commission of the crime of embezzling public property, by creating a kind of discrimination between the classes of society, between the official and the employee or the simple worker, because this restriction does not fall on him in addition to the fact that it violated the generally accepted rules, which are the priority of protecting the public interest over the private one, because the Code of Criminal Procedure is a constitution for public and private freedoms alike, and not for individual freedoms at the expense of public freedoms, which is the fight against corruption.

It has also violated international conventions ratified by Algeria in the framework of combating corruption, the most important of which is the United Nations Convention against Corruption by encouraging it^{xviii}.

However, the Algerian legislator corrected this error by repealing this article under the text of Article 03^{xix} of Law No. 19-10^{xx} dated December 11, 2019 amending Order No. 66-155 dated June 8, 1966, containing the Code of Criminal Procedure, thus returning the powers of the Public Prosecution to freely initiate public lawsuits in

accordance with the common law, which is the Penal Code.

As for the **statute of limitations**, it is stated in the text^{xxi} of Article 54 of the Law^{xxii} on Preventing and Combating Corruption 06-01 that the statute of limitations and the penalty for the crimes stipulated in the Code of Criminal Procedure is neither statute of limitations, in the event that the proceeds of crime are transferred outside the country.

The provisions stipulated in the Criminal Procedure Law shall apply in other than these cases, but for the crime stipulated in article 29 of this law, the limitation period of the public action shall be equal to the maximum penalty prescribed for it.

Since the maximum period of punishment is 10 years, the statute of limitations for public prosecution in the crime of embezzlement in the public sector is equal to 10 years, although it is recognized in the general rules that felonies are limited to 10 years and misdemeanors to 03 years. However, the Corruption Prevention Law distinguished the crime of embezzlement in the public sector by the statute of limitations in it by departing from the general rules and stipulated that it must be limited to the same period as the statute of limitations for felonies, although it is a misdemeanor.

However, the Corruption Prevention Law does not stipulate in its articles the beginning of the statute of limitations period, and therefore it is necessary to refer to the Criminal Procedures Law, in its article 7, which states that the statute of limitations applies from the date of the commission of the crime or from the date of the last procedure.

As for the period of limitation of the lawsuit in the private sector, Article 41^{xxiii} of the Law on Preventing and Combating Corruption stipulates that the adaptation of the crime to a misdemeanor on the basis of the penalty period specified by imprisonment from 06 months to 05 years, and accordingly the provisions of the Code of Criminal Procedure apply based on the second paragraph of Article 54 of Law 06-01 with regard to the statute of limitations. With reference to Article 08 of the Code of Criminal Procedure, the public lawsuit is limited to the crime of

embezzlement committed in the private sector by the passage of three (03) years, starting from the date of the commission of the crime or from the date of the last action. However, the public lawsuit is not limited to all corruption crimes, including embezzlement in the public and private sectors if the proceeds of crimes are transferred abroad in accordance with the first paragraph of Article 54 of the Law on Preventing and Combating Corruption^{xxiv}.

1-2- Specificity of the crime of embezzlement in terms of search and investigation procedures:

The Anti-Corruption Law included special provisions on research and investigation to detect corruption crimes, where a central bureau for the suppression of corruption was established in charge of this task, as well as international cooperation in the field of investigations, follow-ups, judicial procedures, and others.

Article 56 of the Law on Preventing and Combating Corruption No. 06-01 allowed resorting to investigative techniques, which were limited to: controlled delivery, electronic surveillance and penetration:

1- Controlled delivery: Article 20, paragraph (k),^{xxv} defines it as the procedure that allows illegal or suspicious shipments to leave, pass through or enter the national territory with the knowledge of the competent authorities and under their supervision in order to investigate an offence and reveal the identity of the persons involved in its commission. This definition is largely consistent with what is stated in Article 40 of Order No. 05-06 dated August 23, 2005, related to combating smuggling, but this requires permission from the Attorney General^{xxvi}.

The text of Article 20 of the United Nations Convention against Transnational Organized Crime, dated 15 November 2000, provided examples of controlled delivery.

2- Electronic surveillance: It has no effect in Algerian law, but the French legislator included it in the French Code of Criminal Procedure dated 19/12/1997. In order to implement it, it is necessary to resort to a transmitter that is often an electronic bracelet through which the movements of those involved in the investigation and follow-up are monitored^{xxvii}.

3- Penetration: Leakage and penetration are two terms with the same meaning, the first is 'infiltration, which is mentioned in the Code of Criminal Procedure (Article 65 bis 12 by virtue of Amendment No. 06-22 dated 20/12/2006), and the second is mentioned in the Law on Preventing and Combating Corruption No. 06-01.

Article 65 bis 12 defines it as^{xxviii} the surveillance of persons suspected of committing a felony or misdemeanor by deluding them that he is an actor or an accomplice. The penetration procedure can only be carried out in accordance with the procedures stipulated in Article 65 bis 11 to Article 65 bis 18 of the Code of Criminal Procedure.

4- Interception of correspondence, recording of votes and taking of photographs: The competent public prosecutor may authorize the use of these means if the necessities of investigating the crime of embezzlement require, and this can only be taken through the procedures stipulated in Article 65 bis 5 to Article 65 bis 10^{xxix}.

1-3-Freezing and seizure of funds and international cooperation in the field of asset recovery:

As a precautionary measure (Article 51 of the Prevention of Corruption Law), judicial authorities and competent authorities can order the freezing or seizure of proceeds and funds looted from the commission of corruption offences.

Law No. 06-01 on preventing and combating corruption also devoted a full chapter to international cooperation, which is the fifth chapter of Articles 56 to 70 thereof, which included a set of procedures and measures to prevent the commission of these crimes, and thus the recovery of the proceeds from them in the event of the opposite (direct recovery stipulated in Article 53 of the United Nations Convention and Article 62 of Law 06-01, while international cooperation in the field of recovery was stipulated in Article 54 of the United Nations Convention and Article 66, paragraph 3 of Law 06-01), among these procedures:

- Obliging banks and financial institutions to take preventive measures regarding the opening and maintenance of accounts,
Financial Information

- The competence of the Algerian judicial authorities to adjudicate civil cases submitted to them by member states of international conventions.

The specificity of the crime of embezzlement in terms of the penalties prescribed for the perpetrator of the crime

3.1. Teamwork skills development

The United Nations Convention against Corruption does not set a specific penalty for corruption crimes, and this is natural because it is left to domestic legislation to do so. The first paragraph of Article 30 of the Convention stipulates that: "Each State Party shall make the commission of an offence established in accordance with this Convention subject to penalties that take into account the gravity of that offence^{xxx}."

In this regard, the penalties prescribed for a natural person (**first branch**) differ from those prescribed for a legal person (**second branch**).

2-1- Penalties imposed on a natural person:

A natural person convicted of misdemeanor embezzlement shall be subject to the following original and supplementary penalties:

1- Original penalties: The Algerian legislator in corruption crimes has abandoned criminal penalties and replaced them with misdemeanor penalties, regardless of the offender's status and rank, except if he occupies a leading position in the general administration of a bank or financial institution.

The penalty for the offender in Article 29 of the Prevention and Combating of Corruption Law in the crime of embezzlement was imprisonment from two years from 02 to ten years 10 and a fine from 200,000,00 DZD to 1,000,000,00 DZD.

If the perpetrator is a chairman, member of the board of directors, or general manager of a bank or financial institution, the law relating to cash and loan, issued by Order No. 03-11 dated 26/08/2003, which provides for harsher penalties than those prescribed in the aforementioned article 29, shall apply to him:

- Imprisonment from one year to ten years 10, and a fine from 5.000.000,00 DZD to 10.000.000,00 DZD if the value of the funds subject of the crime, i.e. embezzled, is less than 10.000.000,00 DZD (Article 132).

- Life imprisonment and a fine from 20.000.000,00 DZD to 50.000.000,00 DZD if the value of the embezzled funds is equivalent to or exceeds 10.000.000,00 DZD (Article 133).

It is noted from the above that the Algerian legislator in corruption crimes as a whole, especially the crime of embezzlement of property, has adopted a misdemeanor policy, which is intended to convert the description of some crimes from a felony to a misdemeanor, while maintaining the application of felony penalties to the misdemeanor in order to deprive the accused in these crimes of personal conviction, which may benefit from it as if the crime was a felony.

The legislator has adopted this policy in order to reduce corruption crimes, and the basis of this policy requires reference to the rules of trial in the articles of misdemeanors and felonies. The Criminal Court is a court of personal conviction, even if this personal conviction became restricted by causation after the amendment of the Criminal Procedure Law No. 17-07 of 2017 because the judge derives evidence of innocence or guilt in it from the exhibition of pleadings in which the discussion took place in front of the hearing. The accused may be acquitted even if all the evidence convicts him, but the judge was not convinced of this evidence.

As for the Misdemeanor Court, which is considered a court of conviction of evidence - and not a court of evidence as it is said - the personal conviction of the judge decreases in it. If the evidence is available, the judge directly sentences the accused, which makes it impossible for him to escape punishment, under the pretext of personal conviction^{xxxi}.

The legislator, in Article 119 of the repealed Penal Code, was gradual in determining the punishment according to the material value of the property subject of the crime, and the crime is punishable by death if embezzlement, squandering, or seizure are of a nature to harm the supreme interests of the homeland.

The penalty of imprisonment from ten to twenty years is also increased according to the text of Article 48 of the Law on Preventing and Combating Corruption for the categories mentioned therein.

Article 49 of the same law exempts from punishment the perpetrator or accomplice who informs the authorities before initiating the follow-up procedures, with the exception of the perpetrator or accomplice who, after initiating the follow-up procedures, assisted in the arrest of one or more persons involved in the commission of the crime (Article 49, paragraph 01).

The penalty in accordance with the provisions of Article 54, paragraphs 01 and 02, shall not be limited in the case of corruption crimes in the event that the proceeds of the crime are transferred abroad. According to Article 614 of the Code of Criminal Procedure, the remaining penalties for misdemeanors shall be limited to five (05) years from the date on which the judgment becomes final, with the exception of the crime of embezzlement, in which the penalty exceeds five (05) years, the period of limitation shall be equal to this period (Article 29).

2- Complementary penalties: They are penalties that impose a original criminal penalty on the perpetrator, and he may be sentenced to one or more penalties (Article 50 of the Penal Code).

These penalties are stipulated in Article 09^{xxxiii} of the Penal Code, which corresponds to the text of Article 432-17 of the French Penal Code.

The Monetary and Loan Law also included in the text of Article 132, paragraph 2, a provision stipulating that the perpetrator is subject to deprivation of one or several national rights and a ban on residence from one to five (5) years.

The text of Article 50 of Law No. 06-01 on the Prevention and Combating of Corruption includes the possibility of punishing an offender convicted of one or more complementary punishments, as follows:

Article 51, paragraph 01: Funds resulting from the commission of the crime of embezzlement may be frozen or seized by order of the competent authority.

Article 51, paragraph 02: In the event of conviction, the judicial authority shall order the confiscation of the illicit proceeds and funds.

Paragraph 03 of Article 51: The competent judicial authority may order the restitution of what has been embezzled or the value of the benefit or profit obtained, even if it is transferred to assets, branches, and even in-laws, even if it remains the same or is transferred to other gains.

The text of article 55 of the aforementioned law added that it is permitted to invalidate every contract, deal, patent, concession, or license obtained from the commission of the crime of embezzlement, and this is within the jurisdiction of the competent judicial authority, and thus invalidate its effects.

2-2-Penalties imposed on the legal person:

The text of Article 52^{xxxiii} of Law No. 06-01 on the Prevention and Combating of Corruption includes the criminal liability of the legal person for the crimes stipulated in this law in accordance with the rules prescribed in the Penal Code.

With reference to the Penal Code, as well as articles 18 bis and 18 bis 3 of the Code of Criminal Procedure, and in accordance with the text of article 15 bis of the Penal Code, a legal person subject to private law is criminally liable, such as public economic institutions, institutions with mixed capital, and private institutions that provide a public service, thus excluding the state, local groups, and legal persons subject to public law.

We conclude that the Algerian legislator has directly taken the criminal responsibility of the legal person, but in practice it is inconceivable that a hypothetical person does not have an actual presence on the ground due to embezzlement except through his legal and legitimate representative, such as the director who has the authority to express the will of the legal person, provided that the crime is committed within the jurisdiction of the legal representative of the legal person and for his account, such as the president, the general manager of a bank and its board of directors, and thus the application of original and supplementary penalties^{xxxiv}.

A legal person convicted of misdemeanor embezzlement shall be subject to the penalties prescribed in Article 18 bis of the Penal Code, which are as follows: The first shall be considered as original penalties and the second as supplementary penalties:

fine equal to 01 to 05 times the maximum legally prescribed fine for the crime when committed by a natural person, i.e. a fine ranging from 1,000,000,00 DZD (which is the maximum prescribed penalty for misdemeanor embezzlement) and 5,000,000,00 DZD (which is equivalent to five times the maximum).

One or more of the following penalties :

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- Closing an institution or one of its branches for a period not exceeding 5 years,
- Exclusion from public deals for a period not exceeding 5 years,
- Prohibition from practicing a professional or social activity, directly or indirectly, permanently or for a period not exceeding 5 years,
- Confiscation of the object that was used in the commission of the crime or resulted from it,
- Suspension and publication of the guilty verdict,
- Placing under judicial custody for a period not exceeding 5 years, and the custody is focused on practicing the activity that led to the crime or for which the crime was committed.

The punitive value approved by the Algerian legislator in this case is highlighted as a penalty of the gender of the work, because the crime of embezzlement is one of the crimes committed against funds, through graft, so the fine is the best deterrent to these abuses.

It should be noted that the penalty of the fine applied to the local or national legal person is the same as that applied to the foreign legal person, who does not have Algerian nationality, provided that these actions fall within the scope of application of Algerian law.

According to jurisprudence, the fine is the most correct penalty as it is non-hazardous and can be reversed and its effects erased, if it is found that it was committed by mistake, so it is not unique to any privacy, and this may be due to the recent determination of criminal responsibility on the legal person^{xxxv}.

However, there is an important problem raised by the multiplicity of legal texts, or as it is said, the multiplicity of descriptions in the crime of embezzlement, in the sense of a form of embezzlement (money, bonds, securities or any other documents that include an obligation or discharge), squandered or unjustly detained, by

the president, members of the board of directors or general managers of a bank or public financial institution.

This act constitutes, on the one hand, the misdemeanor of embezzlement of property by a public official, which is the act stipulated, mentioned and punished under the text of Article 29 of the Law on Preventing and Combating Corruption, on the basis that the public official is an official of public banks and they are the managers of a joint-stock company of the traditional type, whether public or private banks.

This act, on the other hand, constitutes the misdemeanor of embezzlement, misappropriation, or wrongful detention provided for and punishable under Articles 132 and 133 of Order No. 03-11 dated August 23, 2003, containing the Monetary and Loan Law.

What is the applicable provision?

The principle in this case is to adhere to the most severe description, pursuant to the provision of Article 32 of the Penal Code, and by applying this rule, the answer to the question posed about the applicable text differs according to the value of the funds embezzled, wasted, or unlawfully seized.

Law No. 06-01 shall be applicable, within the meaning of the text of Article 132, in the event that the value of the embezzled funds is less than DZD 10,000,000, according to which this act shall be punishable by imprisonment from six (6) months to ten (10) years, whether the perpetrator is an ordinary public official in the public and private sectors (the value of the fine varies from DZD 50,000 to DZD 1,000,000 according to the text of Articles 29 and 41) or if he is a chairman, a member of the board of directors or the general manager of a bank (the value of the fine here shall be from DZD 5,000,000 to DZD 10,000,000).

The Monetary and Loan Law shall be applicable, within the meaning of Article 133 thereof, in the event that the value of the embezzled funds equals or exceeds DZD 10,000,000, according to which this act shall be punishable by life imprisonment and a fine of DZD 20,000,000 to DZD 50,000,000, if the perpetrator is a chairman, a member of the board of directors or the general manager of a bank.

However, if he is an ordinary public official, the provisions of Article 29 of Law 06-01 shall apply as a public asset if the value of the embezzled funds equals or exceeds DZD 10,000,000.

Conclusion

This topic presented as mentioned above cannot in any way be considered a comprehensive knowledge of all its aspects, as these lines are not enough to take note of it, due to its breadth and rapid development through the development of the crime itself, and the development of the implications of this, including laws at the national, international and even global levels.

Due to the depth of due study on this topic, we cannot limit the results of it, but we can refer to a number of them:

- The Algerian legislator has paid great attention to criminalizing embezzlement in general in all sectors, especially in the banking sector, and its purpose is to protect money in both the public and private sectors.

- As a result of the distinction of the crime of embezzlement, this led to its departure from the general rules governing the crime, into its own rules and individual texts, through the capacity of the perpetrator (the presumed element), that is, the public official.

- This crime is characterized by specificity in criminal prosecution, in terms of restricting the initiation of public prosecution by the Public Prosecution and then canceling it by the Algerian legislator as evidence of its keeping pace with the tremendous and noticeable development at all levels, and the same is true for the statute of limitations, as the latter has paid great attention to it, whether on the crime or the penalty, which is equal to its maximum limit.

- Expanding the jurisdiction of the judicial police in the crime of embezzlement, by stipulating special procedures for investigation and research by the Algerian legislator due to the seriousness of the crime of embezzlement on public and private

funds alike, which imposed itself to the extent that it pursued a preventive criminal policy through the establishment of constitutional bodies, namely the Accounting Council and the Supreme Authority for Transparency and for the Prevention and Combating of Corruption, as stated in the last constitutional amendment of 2020, as well as national bodies represented by the General Inspectorate of Finance and the Central Bureau for the Suppression of Corruption, whose task is to directly or indirectly control property and protect it from all waste, embezzlement, damage, loss or theft.

- The maximum penalties shall be imposed if the perpetrator is one of those singled out in the text of Article 133 of Order No. 03-11 related to cash and loan, namely: the Chairman of the Board of Banks (public or private), one of its members of the Board of Directors or the General Manager of it.

Accordingly, the following recommendations can be put forward, so that our Algerian legislator may take them into account in the future:

- Because the crime of embezzling public funds has taken a dangerous course in our country, it has become necessary to allocate a deterrent law before it is penal for the category of banks in particular, because we have recently seen embezzlement of amounts that cannot even be imagined.

- Allocating specialized committees in research and investigation at the level of general inspectorates of banks and central financial institutions, and with a high level of training in this field.

- Allocating a high-class training for judges appointed in the field of adjudicating cases of embezzlement of bank funds through continuous training at the level of this type of traditional-style joint stock companies, in order to keep abreast of the rapid legal development in the field of civil and criminal liability of its managers in the event of a breach of their duties; all this in order to avoid serious abuses in this sector.

References

[1]- Order No. 66-156 of 8 June 1966 containing the Penal Code, JR No. 49, of 11 June 1966.

[2]- Law No. 01-09 of June 26, 2001, amending and supplementing the Penal Code, JR, No. 34 of June 27, 2001.

[3]- Order No. 03-11 of August 26, 2003, relating to cash and loan, JR, No. 52, issued on August 27, 2003.

[4]- Law No. 06-01 of February 20, 2006, on Preventing and Combating Corruption, No. 14, issued on March 14, 2006.

[5]- Law No. 15-02 of July 26, 2015, amending and supplementing the Code of Criminal Procedure No. 40, issued on July 23, 2015.

[6]- Law No. 19-10 of 11 December 2019 amending Order No. 66-155 of 08 June 1966 containing the Code of Criminal Procedure, JR No. 78, issued on 18 December 2019.

[7]- Bouskaya AHassan, The Brief in the Special Penal Code, Part II, Seventh Edition, Dar Homa for Printing, Publishing and Distribution, Algeria – 2007.

[8]- Haj Ali Badreddine, Corruption Crimes and Anti-Corruption Mechanisms in Algerian Legislation, Part I, First Edition 2017, Dar Al-Ayyam for Publishing and Distribution.

[9]2. Dissertations and theses:

[10]- Ghazali Nazihah, The Criminal Responsibility of the Banker in Algerian Law, Research submitted to obtain a master's degree, Faculty of Law and Political Science, University of Menturi, Constantine 2009/2010.

[11]- Birid Al-Harissi Khadija, Penal Protection of Public Money from the Crime of Embezzlement of Public Property, Sawt Al-Law Magazine, Volume Five, Issue 01, April 2018.

[12]- Adi Talfah Mohammed, Aligning the Criminalization of Embezzlement in the Private Sector with the United Nations Convention against Corruption, Journal of the Faculty of Law for Legal and Political Sciences, Volume 6, Issue 2, c. 1 (30 September 2017), p. P. 564-596, University of Tikrit, Faculty of Law and Political Science.

[13]- Ashour Fatima, The specificity of the crime of embezzlement in the public sector in the light

of Law 06-01 Annals of the University of Algiers 1, Issue 33 – Part I / March 2019.

[14]- Loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée, JORF n° 0312 du 26 décembre 2020.

[15]Redouan, A. (2024). The Effect of Islamic Finance on the Economic Growth of a Sample of Islamic Countries during the Period 2001-2019. *World Economics*, 25(2), 108-129.

ⁱ"The entry by a public official or his equivalent of things of value, whatever this value, found in his possession by virtue of the public office he occupied into his private property without right": Haj Ali Badreddine, *Corruption Crimes and Mechanisms to Combat them in Algerian Legislation Part I*, First Edition 2017, Dar Al-Ayyam for Publishing and Distribution, p. 236.

ⁱⁱLaw No. 06-01 of February 20, 2006, on Preventing and Combating Corruption, JR, No. 14, issued on March 14, 2006.

ⁱⁱⁱArticle 119 of the Penal Code: "Any public official who deliberately and unlawfully embezzles, destroys, squanders or detains or unlawfully uses for his own benefit or for the benefit of another person or entity any public or private property, funds, securities or any other things of value entrusted to him by virtue of or because of his functions shall be punished by imprisonment from two (2) to ten (10) years and a fine from DZD 200,000 to DZD 1,000,000."

^{iv}Order No. 66-156 of June 8, 1966 containing the Penal Code, J.R., No. 49, of June 11, 1966.

^vArticle 41 of Law No. 06-01 of February 20, 2006, on the prevention and combating of corruption: "Any person who manages or works in any capacity in a private sector entity during the exercise of an economic, financial or commercial activity, intentionally embezzling any property, funds, private securities or any other things of value entrusted to him by virtue of his duties, shall be punished by imprisonment from six (6) months to five (05) years and a fine from 50,000 DZD to 500,000 DZD."

^{vi}Article 132 of Order 03-11 Concerning Cash and Loan: "A penalty of imprisonment from one to ten (10) years and a fine from five million (5,000,000 DZD) to ten million dinars (10,000,000 DZD) shall be imposed on the Chairman, members of the Board of Directors or the general managers of a bank or financial institution, who embezzle, squander or unlawfully detain at the expense of the owners or holders of bonds, funds, papers or any other instruments containing an obligation or discharge handed over to them as a deposit, pledge or advance only."

^{vii}Order No. 03-11 of August 26, 2003, Concerning Cash and Loan, JR, No. 52, issued on August 27, 2003.

^{viii}Ghazali Nazihah, *Criminal Liability of the Banker in Algerian Law*, Research submitted for a master's degree, Faculty of Law and Political Science, University of Menturi, Constantine 2009/2010, p. 46.

^{ix}Article 133 of Order 03-11 Concerning Cash and Loan: "The penalty shall be life imprisonment and a fine of twenty million dinars (DZD 20,000,000) to fifty million dinars (DZD 50,000,000) if the value of the funds misappropriated, wasted or intentionally withheld without right shall be ten million dinars (DZD 10,000,000) or more."

^x Article N° 432-15 de la loi N° 2020-1672 du 24/12/2020 : «Le fait, par une personne dépositaire de l 'autorité publique ou chargée d 'une mission de service public, un comptable public, un dépositaire public ou l'un de ses subordonnés, de détruire, détourner ou soustraire un acte un titre, ou des fonds publics ou privés, ou effets, pices oures en tenant lieu, ou tout autre objet qui lui a été remis en raison de ses fonctions ou de mission, est puni de dix ans d 'emprisonnement et d'une amende de 1,000,000€, dont le montant peut être porté au double du produit de l 'infraction.

La peine d'ajuste est portée à 2 000 000€ ou, s'il excède ce montant, au double du produit de l 'infraction, lorsque l'infraction est commise en bande organisée.

La tentative des délits prévus aux alinéas qui précèdent est punie des mêmes peines ».

^{xi}Loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée, JORF n° 0312 du 26 décembre 2020.

^{xii}Law No. 01-09 of June 26, 2001, amending and supplementing the Penal Code, J.R., No. 34 of June 27, 2001.

^{xiii}The penultimate paragraph of Article 119 repealed from the Penal Code: " When the crime stipulated in this article is committed – which means: If a judge, employee, or public officer who embezzles, squanders, detains intentionally or unlawfully, or steals public or private funds or things in their place, documents, bonds, contracts, or movable property placed in his possession, whether by virtue of a job or because of it – or the crimes stipulated in Articles 119 bis, 119 bis 1, 128 bis, or 128 bis 1 harm public economic institutions whose capital is owned by the State or with mixed capital, the public action shall not proceed except upon a complaint from the organs of the company concerned stipulated in the Commercial Law and in the law relating to the management of the commercial capital of the State."

^{xiv}The last paragraph of Article 119 repealed from the Penal Code: "Members of the organs of the company who do not report the criminal acts stipulated in this article and in Articles 119 bis, 128 bis and 128 bis 1 shall be subject to the penalties stipulated in Article 181 of the Penal Code."

^{xv}Law No. 15-02 of July 26, 2015, amending and supplementing the Code of Criminal Procedure, No. 40, issued on July 23, 2015.

^{xvi}Article 6 bis of Order No. 15-02 amending and supplementing the Code of Criminal Procedure: "Public action against the managers of public economic institutions whose capital is owned by the State or with mixed capital shall not be motivated by acts of management that lead to theft, embezzlement, damage or loss of public or private funds except on the basis of a prior complaint from the social bodies of the institution stipulated in the Commercial Code and in the legislation in force.

Members of the social bodies of the institution who fail to report facts of a penal nature shall be subject to the penalties established in the legislation in force. "

^{xvii}Sari Al-Harasi Khadija, Penal Protection of Public Money from the Crime of Embezzlement of Public Property, Sawt Al-Law Magazine, Volume Five, Issue 01, April 2018, p. 359.

Ainous, R. (2018). Macroeconomic, income inequality, and poverty relationship: A review of research perspectives. *The Review of Black Political Economy*, 45(2), 123-146.

^{xviii}Harasi Khadija Bed, op. Cit., P. 360 and 370.

^{xix} Article 3 of Law No. 19-10 of December 11, 2019 amending Order No. 66-155 of June 08, 1966, containing the Code of Criminal Procedure: " Articles **6 bis, 15 bis, 15 bis 1** and 15 bis 2 of Order No. 66-155 of June 08, 1966, containing the Code of Criminal Procedure, shall be repealed."

^{xx}Law No. 19-10 of 11 December 2019 amending Order No. 66-155 of 08 June 1966 containing the Code of Criminal Procedure, JR No. 78, issued on 18 December 2019.

^{xxi} Article 54 of Law No. 06-01 on the Prevention and Combating of Corruption stipulates that: "Without prejudice to the provisions stipulated in the Code of Criminal Procedure, public prosecution and punishment shall not be time-barred for the crimes stipulated in this law, in the event that the proceeds of crime are transferred abroad.

In other cases, the provisions stipulated in the Criminal Procedure Law shall apply.

However, for the crime stipulated in article 29 of this law, the period of limitation of the public action shall be equal to the maximum penalty prescribed for it. "

^{xxii}Law No. 06-01 of February 20, 2006, on Preventing and Combating Corruption, JR, No. 14, issued on March 14, 2006.

^{xxiii} Article 41 of Law No. 06-01 on Corruption and Combating it: "A penalty of imprisonment from six (6) months to five (05) years and a fine from DZD 50,000 to DZD 500,000 shall be imposed on any person who manages or works in any capacity in a private sector entity while engaged in an economic, financial or commercial activity, intentionally embezzling any property, funds, private securities or any other things of value entrusted to him by virtue of his duties."

^{xxiv}Bakoush Malika, The Crime of Embezzlement under the Prevention and Combating Corruption Law, Memorandum submitted for a Master's Degree, Faculty of Law, University of Oran, 2012-2013, p. 133.

^{xxv}Article 20, paragraph (k), of Law No. 06-01 on the prevention and fight against corruption stipulates that: "The procedure that allows illegal or suspicious shipments to leave, pass through or enter the national territory with the knowledge of the competent authorities and under their supervision in order to investigate an offence and reveal the identity of the persons involved in its commission."

^{xxvi}Bakoush Malika, op. Cit., P. 124.

^{xxvii}Ahsan Bouskaya, The Brief in the Special Penal Code, Part II, Seventh Edition, Dar Homa for Printing, Publishing and Distribution - Algeria – 2007, p. 33.

^{xxviii}Article 65 bis 12: "Leakage means that an officer or assistant of the judicial police, under the responsibility of the judicial police assigned to coordinate the operation, monitors persons suspected of committing a felony or misdemeanor by deluding them that he is an actor with them or an accomplice to them."

^{xxix}Bed of Al-Harasi Khadija, op. Cit., P. 371 and 372.

^{xxx}Adi Talfah Mohamed, Aligning the Criminalization of Embezzlement in the Private Sector with the United Nations Convention against Corruption, Journal of the Faculty of Law for Legal and Political Sciences, Volume 6, Issue 2, c. 1 (30 September 2017), p. P. 564-596 University of Tikrit, Faculty of Law and Political Science, p. 588.

^{xxxi}Ashour Fatima, The specificity of the crime of embezzlement in the public sector in the light of Law 06-01, Annals of the University of Algiers 1, Issue 33 – Part I / March 2019, p. 381.

^{xxxii}Article 09 of the Penal Code: "Complementary penalties are: limitation of residence, prohibition of residence, deprivation of the exercise of some Rights of partial confiscation of funds, dissolution of the legal person and publication of the judgment. "

^{xxxiii}Article 52 of Law No. 06-01, on Preventing and Combating Corruption: "A legal person shall be criminally liable for the crimes stipulated in this law in accordance with the rules established in the Penal Code."

^{xxxiv}Ashour Fatima, op. Cit., P. 384.

^{xxxv}Ashour Fatima, *ibid.*, p. 385.

Bibliography

List of Sources :

- Order No. 66-156 of 8 June 1966 containing the Penal Code, JR No. 49, of 11 June 1966.

- Law No. 01-09 of June 26, 2001, amending and supplementing the Penal Code, JR, No. 34 of June 27, 2001.

- Order No. 03-11 of August 26, 2003, relating to cash and loan, JR, No. 52, issued on August 27, 2003.

- Law No. 06-01 of February 20, 2006, on Preventing and Combating Corruption, No. 14, issued on March 14, 2006.

- Law No. 15-02 of July 26, 2015, amending and supplementing the Code of Criminal Procedure No. 40, issued on July 23, 2015.

- Law No. 19-10 of 11 December 2019 amending Order No. 66-155 of 08 June 1966 containing the Code of Criminal Procedure, JR No. 78, issued on 18 December 2019.

In Arabic:

1. Books:

- Bouskaya AHassan, The Brief in the Special Penal Code, Part II, Seventh Edition, Dar Homa for Printing, Publishing and Distribution, Algeria – 2007.

- Haj Ali Badreddine, Corruption Crimes and Anti-Corruption Mechanisms in Algerian Legislation, Part I, First Edition 2017, Dar Al-Ayyam for Publishing and Distribution.

2. Dissertations and theses:

- Ghazali Nazihah, The Criminal Responsibility of the Banker in Algerian Law, Research submitted to obtain a master's degree, Faculty of Law and Political Science, University of Menturi, Constantine 2009/2010.

3. Articles:

- Birid Al-Harissi Khadija, Penal Protection of Public Money from the Crime of Embezzlement of Public Property, Sawt Al-Law Magazine, Volume Five, Issue 01, April 2018.

- Adi Talfah Mohammed, Aligning the Criminalization of Embezzlement in the Private Sector with the United Nations Convention against Corruption, Journal of the Faculty of Law for Legal and Political Sciences, Volume 6, Issue 2, c. 1 (30 September 2017), p. P. 564-596, University of Tikrit, Faculty of Law and Political Science.

- Ashour Fatima, The specificity of the crime of embezzlement in the public sector in the light of Law 06-01 Annals of the University of Algiers 1, Issue 33 – Part I / March 2019.

French: Santé!

- Loi n° 2020-1672 du 24 décembre 2020 relative au Parquet européen, à la justice environnementale et à la justice pénale spécialisée, JORF n° 0312 du 26 décembre 2020.