



# THE ECONOMIC AND FINANCIAL PENAL POLE AS A NEWLY ESTABLISHED MECHANISM FOR COMBATING ECONOMIC AND FINANCIAL CRIMES IN ALGERIA

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## Abstract:

*Given the rise of economic and financial crimes in their modern and more complex form in Algeria, which have threatened national security and the economy, the Algerian legislator amended the Code of Criminal Procedure through Order 20/04. This order established the economic and financial penal pole as a specialized national judicial entity responsible for addressing economic and financial crimes. The legislator believes that concentrating this entity on such cases will be effective in curbing their proliferation. The research raises the question of whether the establishment of a penal pole as a mechanism for combating economic and financial crimes will be effective in preventing the spread of this type of crime. The answer to this issue is addressed in two main areas: first, the jurisdiction of the economic and financial penal pole, and second, the procedures for prosecution before the economic and financial penal pole.*

**Keywords:** forensic science, penal pole, economic and financial crimes, national jurisdiction, leakage, objection

## INTRODUCTION

Economic and financial crimes have become more dangerous than ever before, primarily due to their perpetration by organized criminal groups that plan to inflict severe harm on a significant number of victims, often exceeding the borders of a single state. The use of information and communication technologies has further facilitated these economic and financial criminal activities, transforming the digital space into a virtual arena where criminals can engage in all types of potential and actual crimes.

As the prevalence of economic and financial crimes in Algeria has frighteningly increased to the extent that national security and the economy are now threatened by organized criminal groups seeking to maximize their gains from such crimes, the Algerian legislator has been vigilant against their malicious practices. Consequently, an amendment was introduced to the Code of Criminal Procedure through Law 20/04 (20/04, 2020), establishing a penal pole specifically dedicated to combating this type of crime, which was previously under the jurisdiction of expanded judicial authorities.

The central issue raised in this context is: will the establishment of a penal pole as a mechanism for combating economic and financial crimes be effective in preventing the spread of this type of crime? To address this issue, we will examine its territorial jurisdiction and the types of economic and financial crimes it is responsible for. This will be explored in the first section: the jurisdiction of the economic and financial penal pole. Additionally, we will investigate how the economic and financial penal pole connects with cases and the implications of that connection, which will be covered in the second section: procedures for prosecution before the economic and financial penal pole.

The study aims to analyze the legal organization of the economic and financial penal pole in terms of its jurisdiction and the specificity of prosecution procedures. Through this, we will form an understanding of its effectiveness in combating economic and financial crimes. To achieve this, we have adopted an analytical approach, where we will analyze the legal texts related to the penal pole and reference various sources to arrive at significant conclusions in this regard. The penal pole is headquartered at the Court of the Council of Algiers.



## The First Axis

### Jurisdiction of the Economic and Financial Penal Pole

The Algerian legislator has stipulated the establishment of a specialized national penal pole to combat economic and financial crime in Articles 211 bis to 211 bis 15 of the Code of Criminal Procedure. Article 211 bis states: “A national penal pole shall be established at the level of the court headquartered at the Algiers Judicial Council.” This pole is vested with both local and specific jurisdiction, which are detailed as follows:

#### First: Territorial Jurisdiction

The concept of territorial jurisdiction is based on dividing the country's territory into multiple areas, with each area assigned to a court that has jurisdiction over crimes committed within its boundaries. It is unfeasible for a single court to handle all crimes committed across the entire national territory (Hassani, 2013). Criminal procedural laws establish rules governing this jurisdiction, which are based on the location of the crime, the residence of any individuals suspected of involvement, or the location where any of these individuals were apprehended. However, according to Article 211 bis 1 of the Code of Criminal Procedure, the jurisdiction of the penal pole extends across the entire national territory. Additionally, the legislator has provided that the public prosecutor at the economic and financial penal pole, along with the investigating judge and the head of the pole, shall exercise concurrent jurisdiction alongside the jurisdiction arising from the application of Articles 37, 40, and 329 of the Code of Criminal Procedure, specifically for economic and financial crimes, as stipulated in Article 211 bis 2 of the same law.

Upon examining Articles 37, 40, and 329 of the Code of Criminal Procedure, we find that the legislator outlined the previously mentioned general standards and also provided for the extension of jurisdiction to the jurisdictional boundaries of other courts, through regulatory measures, for specific crimes enumerated exhaustively.

#### First Axis Jurisdiction of the Economic and Financial Penal Pole

In light of the evolving criminal phenomena and the diversification of their forms, and within the framework of combating certain modern crimes that pose significant threats to the economy, national security, and Algerian society, and in alignment with the recommendations of the Justice Reform Program (Khalifa, 2016), the Algerian legislator amended the Code of Criminal Procedure under Law No. 04/14 dated November 10, 2004 (04/14, 2004) to establish what are known as specialized poles or courts with extended jurisdiction (Al-Hamid, 2013).

Article 329 of the Code of Criminal Procedure, in its final paragraph, stipulates: "The territorial jurisdiction of the court may be extended to include the jurisdiction of other courts by regulatory measure in cases involving drug trafficking, cross-border organized crime, offenses related to automated data processing systems, money laundering, terrorism, and crimes related to currency exchange regulations".

The specific regulations for these courts were issued under Executive Decree No. 06/348 (06/348, 2006) in its Articles 2, 3, 4, and 5, whereby the territorial jurisdiction of the Sidi M'Hamed Court in Algiers, the Constantine Court, the Ouargla Court, and the Oran Court is extended to encompass the jurisdiction of other courts as follows:

According to Article 2, the territorial jurisdiction of the Sidi M'Hamed Court, along with its public prosecutor and investigating judge, extends to the courts within the judicial councils of Algiers, Chlef, Laghouat, Blida, Bouira, Tizi Ouzou, Djelfa, Médéa, M'Sila, Boumerdes, Tipaza, and Ain Defla.

Pursuant to Article 3, the territorial jurisdiction of the Constantine Court, along with its public prosecutor and investigating judge, extends to the courts within the judicial councils of Constantine, Oum El Bouaghi, Batna, Bejaia, Biskra, Jijel, Setif, Skikda, Annaba, Guelma, Bordj Bou Arréridj, El Tarf, El Oued, Khenchela, Souk Ahras, and Mila.

According to Article 4, the territorial jurisdiction of the Ouargla Court, along with its public prosecutor and investigating judge, extends to the courts within the judicial councils of Ouargla, Adrar, Tamanrasset, Illizi, Tindouf, and Ghardaia.



Article 5 states that the territorial jurisdiction of the Oran Court, along with its public prosecutor and investigating judge, extends to the courts within the judicial councils of Oran, Bechar, Tlemcen, Tiaret, Saida, Sidi Bel Abbas, Mostaganem, Mascara, El Bayadh, Tissemsilt, Naama, Ain Temouchent, and Relizane.

These specialized poles have subject-matter jurisdiction over drug trafficking, cross-border organized crime, cybercrimes in accordance with Algerian legislation, money laundering, terrorism, and crimes related to currency exchange regulations. Additionally, they are empowered to handle corruption offenses pursuant to Article 24 bis 1 of the Law on the Prevention and Fight Against Corruption (Khalifa, 2016).

It is understood from the foregoing that the Economic and Financial Penal Pole exercises concurrent jurisdiction with the specialized penal poles with extended jurisdiction concerning economic and financial crimes.

### **Second : Subject-Matter Jurisdiction**

The Penal Pole is authorized, whether in research and investigation, follow-up, inquiry, or trial, pursuant to Article 211 bis 2, to handle the following crimes:

Embezzlement Crime as stipulated in Article 219 bis of the Penal Code,

Money Laundering Crime as stipulated in Articles 389 bis 1 to 389 bis 3 of the Penal Code,

Corruption Crimes in accordance with Law No. 06/01 concerning the Prevention and Fight Against Corruption,

Currency and Capital Movement Crimes to and from abroad pursuant to Order No. 96/22, related to suppressing violations of legislation and regulations concerning currency and capital movement to and from abroad,

Smuggling Crimes as outlined in Articles 11 to 15 of Order No. 05/06 concerning the Combat against Smuggling.

Furthermore, according to Article 211 bis 3 of the Code of Criminal Procedure, the Penal Pole is responsible for the research, investigation, follow-up, inquiry, and judgment of the most complex economic and financial crimes and related offenses. Economic and financial crimes are particularly complex due to the following factors:

#### **- Multiplicity of Actors and Partners or Victims:**

These crimes often involve numerous individuals or entities, increasing the complexity of investigations and prosecutions.

#### **- Wide Geographical Scope of the Crime Location:**

The international nature of these crimes means they span multiple jurisdictions, complicating enforcement and coordination efforts.

#### **- Severity of Resulting Damages:**

Such crimes pose significant threats to national security and the economies of states, leading to extensive and far-reaching consequences.

#### **- Organized Nature:**

These offenses are typically perpetrated by so-called criminal mafias that operate on an international level, enhancing their capability to evade detection and prosecution.

#### **- Transnational Characteristics:**

The cross-border dimension of these crimes underscores the inherent criminal dangers posed by the perpetrators, making them more challenging to apprehend and prosecute.

#### **- Utilization of Information and Communication Technologies:**

The most sophisticated criminals exploit advanced technologies to facilitate their illicit activities, expedite the generation of criminal proceeds, and swiftly obscure the traces of their crimes, thereby hindering the judiciary's ability to obtain evidence necessary to prove charges.

In addition to the above factors, addressing these complex crimes necessitates the adoption of the following measures:

#### **- Specialized Investigative Tools:**



Utilization of advanced investigative methods such as wiretapping, interception, electronic surveillance, and other technical means to gather crucial evidence.

- Specialized Technical Expertise:

The intricate nature of economic and financial crimes requires experts in economics and finance to decode complex schemes and interrogate both real and virtual crime scenes. The judiciary, whether active or sitting, cannot rely solely on its legal knowledge to obtain evidence generated by such crimes without collaborating closely with specialized experts.

- International Judicial Cooperation:

Given the transnational nature of these crimes, which are committed by organized criminal groups, international cooperation is essential for the apprehension of suspects. This collaboration ensures that perpetrators do not find refuge in jurisdictions immune to prosecution.

## Second Axis

### Follow-Up Procedures Before the Economic and Financial Penal Pole

According to Order 20/04, as amended in the Code of Criminal Procedure, economic and financial crimes necessitate the direct involvement of the Penal Pole upon its assignment to a case. This is due to the specialized investigative methods required by the severity of economic and financial crimes. Below, we outline the specialized investigative methods following the Penal Pole's assignment to economic and financial crime cases in the following points:

#### First: Assignment of Economic and Financial Crime Cases to the Penal Pole

The Public Prosecutor and the Investigating Judge at the Penal Pole are assigned economic and financial crime cases in several manners as outlined by the legislator under Order 20/04, as amended in the Code of Criminal Procedure. Their assignment to these cases results in several consequences, which are detailed in the following points:

##### A. How the Penal Pole is Assigned Economic and Financial Crime Cases

The Penal Pole is assigned economic and financial crime cases as follows:

According to Article 211 bis 6: Copies of informational reports and investigative procedures completed by the Judicial Police concerning economic and financial crimes are sent to the Public Prosecutor at the Penal Pole by Public Prosecutors at the competent judicial authorities under Article 37. After obtaining the opinion of the Deputy Public Prosecutor at the Judicial Council regarding the procedural file, if it is considered that the crime falls within the Penal Pole's jurisdiction during preliminary investigations, follow-up, and investigation as per Article 211 bis 7, the competent Public Prosecutor issues a request for the Penal Pole Public Prosecutor to relinquish the case in favor of the latter, in accordance with Article 211 bis 9.

In the event of an investigation opening: Requests are submitted by the Public Prosecutor at the Penal Pole to the Investigating Judge handling the case, issuing an order to relinquish the case in favor of the Penal Pole's Investigating Judge as per Article 211 bis 10.

If the Penal Pole's requests coincide with a demand from the court with extended jurisdiction: The jurisdiction must inevitably be transferred to the Public Prosecutor at the Penal Pole.

If the case file is with the court of extended jurisdiction during investigations, follow-up, and investigation: The case file is relinquished upon request by the Public Prosecutor at the Penal Pole.

If the case file is with the court of extended jurisdiction and new elements pertinent to the Penal Pole emerge: The Public Prosecutor and the Public Prosecutor at the Penal Pole are informed, and the case file, along with all documents, records, and evidentiary materials, is sent to them for their review in accordance with Article 211 bis 12.

##### B. Effects of the Penal Pole's Assignment to Economic and Financial Crimes Cases

Transferring a case to the Public Prosecutor or the Investigating Judge at the Penal Pole results in the following effects:

Retention of Arrest and Detention Orders:



Arrest and detention orders issued remain effective until a contrary order is issued by the Investigating Judge at the Penal Pole. This judge becomes the guarantor of the legality and validity of the temporary detention procedures.

Simultaneously, these orders do not renew the procedures that were previously initiated, as stipulated in Article 211 bis 13 of the Code of Criminal Procedure.

**Transfer of Administrative and Supervisory Powers:**

The administrative and supervisory authorities concerning judicial police operations related to completed, ongoing, or intended procedures are transferred to the Public Prosecutor and the Investigating Judge at the Penal Pole.

They receive instructions and mandates from the Penal Pole in accordance with the provisions of Article 211 bis 14 of the Code of Criminal Procedure.

**Application of Code of Criminal Procedure Provisions Upon Relinquishment:**

In the event of relinquishment, the provisions of the Code of Criminal Procedure apply concerning the initiation and practice of public prosecution, investigation, and trial.

This is in accordance with Article 211 bis 15 of the same Code.

## **Second : Specificity of Follow-Up Procedures Before the Economic and Financial Penal Pole**

The follow-up procedures before the Economic and Financial Penal Pole are characterized by the use of measures stipulated in the Code of Criminal Procedure, particularly those related to specialized investigative methods due to the severity of the crimes. Among these specialized investigative measures are those outlined in the Code of Criminal Procedure and specific laws pertaining to certain economic and financial crimes, such as the Law on the Prevention and Fight Against Corruption, the Order concerning the Suppression of Violations of Legislation and Regulations Related to Currency Exchange to and from Abroad, and the Order on Combating Smuggling. Below, we outline some of these measures as provided in the Code of Criminal Procedure, including wiretapping, interception of wired and wireless communications, audio recording, and image capturing.

### **A. Wiretapping**

Wiretapping, as understood from the provisions of Article 65 bis 12 of the Code of Criminal Procedure, involves a judicial police officer or an aide—under the supervision of a judicial police officer responsible for coordinating the operation—undertaking the task of monitoring individuals suspected of committing a felony or misdemeanor by deceiving them into believing that the officer is acting as an accomplice, or accessory.

Given that wiretapping impinges upon individual liberties, the Algerian legislator has established safeguards for its implementation. These safeguards serve as mandatory conditions that must be verified whenever the need arises to employ this measure, as outlined in Articles 65 bis, 65 bis 11, 65 bis 13, 65 bis 14, 65 bis 15, and 65 bis 16 of the Code of Criminal Procedure. These conditions are as follows:

- **Applicability:** Wiretapping must be employed during the investigation or inquiry of crimes related to drug trafficking, cross-border organized crime, offenses against automated data processing systems, money laundering, terrorism, crimes related to currency exchange regulations, and corruption offenses.
- **Preliminary Reporting:** To ensure that the judge is thoroughly informed about the circumstances and requirements of the case, the judicial police officer responsible for coordinating the wiretapping operation must prepare a preliminary report containing the necessary elements to examine the crimes, excluding those that would expose the operative to danger.
- **Authorization Requirement:** Written and reasoned authorization must be obtained from the regionally competent Public Prosecutor. If the case is in the hands of an Investigating Judge, the authorization must be obtained from them after notifying the Public Prosecutor.
- **Form and Justification of Authorization:** The authorization must be written and justified under penalty of nullity. The justification must include the elements upon which the ordering judge relies,





the specific crime subject to the wiretapping, and the identity of the judicial police officer under whose responsibility the operation is conducted.

- Duration and Renewal: Wiretapping must be limited to a duration of four months, renewable if necessary for the continuation of the investigation and inquiry. Renewal requires written and justified authorization for the same duration. The judge who ordered the renewal may order its termination at any time before the expiration of the specified period.

Implementing wiretapping results in several effects, as inferred from Articles 65 bis 14, 65 bis 16, 65 bis 17, and 65 bis 18 of the Code of Criminal Procedure, which are as follows (Khalifa, 2016):

- Utilization of Legal and Material Means: Judicial police officers and their aides, in the course of conducting wiretapping and the individuals they employ for this purpose, can acquire, possess, transfer, deliver, or provide materials, funds, products, documents, or information obtained from the commission of crimes or used in their perpetration. They may also use or make available to the perpetrators of these crimes legal or financial means, as well as means of transportation, storage, shelter, preservation, or communication. This is done without being held criminally liable for the use of illicit means.

- Exemption from Criminal Liability for Wiretapping: Acts of wiretapping conducted within the scope of the written and justified authorization are not subject to criminal liability. Performing wiretapping outside the scope of such authorization constitutes criminal acts. However, conducting wiretapping within the framework of legal authorization is a ground for exemption under paragraph 01 of Article 39 of the Algerian Penal Code. Consequently, the operative is exempted from criminal liability for unlawful acts carried out within the scope of this legal procedure.

- Complete Confidentiality of the Operation: The identity of the operative conducting the wiretapping must remain completely confidential at all stages of the public prosecution under penalty of punishment. If the presiding judge deems it necessary to hear about the operative, the identity is not disclosed. Instead, the judicial police officer responsible for the operation is heard. Anyone who discloses the operative's identity is subject to imprisonment for two to five years and a fine ranging from 50,000 Algerian Dinars to 200,000 Algerian Dinars. The punishment is increased to imprisonment for five to ten years and a fine ranging from 200,000 Algerian Dinars to 500,000 Algerian Dinars if the disclosure of the operative's identity leads to acts of violence against the operatives, their spouses, children, or direct relatives.

## **2. Interception of Wired and Wireless Communications, Voice Recording, and Photography**

The Algerian legislator has not provided a definition for the procedures of interception, voice recording, and photography, but these are addressed in Articles 65 bis 5 to 65 bis 10 of the Code of Criminal Procedure. Some scholars (Khalifi, 2010) have defined interception as the covert monitoring of wired and wireless communications within the context of investigating crimes and collecting evidence and information about individuals suspected of committing or participating in the commission of a crime.

Voice recording and photography refer to the recording of verbal conversations that individuals have privately or confidentially in public or private places, as well as capturing images of one or more individuals present in a private location (Khalifi, 2010).

Since the procedures for intercepting communications, recording voices, and taking photographs infringe upon the right to the confidentiality of communications and the right to privacy, these actions can only be carried out after verifying the legal conditions for their validity (Khalifa, 2016), which are:

**Specific Crimes Requirement:** These measures must be employed in the investigation of specific crimes, which were previously mentioned in the conditions for wiretapping.

**Written Authorization Requirement:** It is necessary to obtain written authorization from the regionally competent Public Prosecutor. In the case of an opened judicial investigation, authorization must be obtained from the Investigating Judge and conducted under their direct supervision.

**Content of the Written Authorization:** The written authorization must include all elements necessary to identify the communications to be intercepted, the targeted locations, the type of crime that justifies the use of these measures, and the duration of the operation.



**Four-Month Duration with Renewal:** The interception must be limited to a period of four months, which can be renewed if necessary for the investigation. The renewal also requires written and justified authorization for the same duration.

**Use of Authorized Technical Assistants:** The authorized operative may utilize any qualified personnel from a public or private body responsible for wired or wireless communications to manage the technical aspects of the operation (Khalifa, 2016).

**Preparation of an Official Report:** After the completion of this operation, the authorized operative must prepare an official report documenting the content of the operation and the technical arrangements made. This report must include the date and time of the start and end of the operation, and it should contain copies of the communications, conversations, or photographs recorded that are useful in revealing the truth. The report must be filed in the case file, and conversations conducted in a foreign language must be transcribed and translated as necessary, with the assistance of a translator assigned for this purpose.

## CONCLUSION

The establishment of a national pole by the Algerian legislator, specifically dedicated to addressing economic and financial crimes, serves two primary purposes: firstly, it contributes to preventing the spread of such crimes, and secondly, it alleviates the burden on specialized penal poles. We have reached a number of findings and recommendations regarding this topic.

### FIRST: FINDINGS

- The Penal Pole is a judicial body specialized in research, investigation, follow-up, and adjudication in cases of economic and financial crimes, including the more complex and serious economic and financial offenses.
- The jurisdiction of the Penal Pole extends across the entire national territory.
- The Penal Pole exercises concurrent jurisdiction with specialized penal poles regarding economic and financial crimes.
- The Penal Pole has priority in the follow-up of economic and financial crimes when there is concurrent demand for the file with specialized penal poles.
- The procedures followed before the Penal Pole are the same as those stipulated in the Code of Criminal Procedure, and the legislator implicitly affirms that specialized investigative methods must be employed.

### Second: Recommendations

- We recommend that judges at the Economic and Financial Penal Pole be specialized in criminal law, particularly in economic and financial crimes.
- Enhance the role of media and civil society in raising awareness about the dangers of economic and financial crimes on the economy and international security.

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