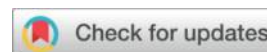




The Organized Criminal Group in Algerian Criminal Law



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Abstract:

In implementation of its international obligations, Algeria has gradually worked to harmonize its criminal legislation with the provisions of the Palermo Convention on Combating Transnational Organized Crime. Its legislative interventions aimed at tightening procedural and substantive provisions related to the organized criminal group have continued for more than twenty years. However, it did not adopt a clear and precise definition of the organized criminal group until the amendment of the Penal Code in 2024, which raises questions about the soundness of applying criminal rules in the absence of an explicit definition of the organized criminal group and its confusion with the association of wrongdoers. Therefore, this study aims to shed light on the provisions related to the organized criminal group in two stages: the first before adopting a specific definition for it (the stage before the 2024 amendment of the Penal Code), and the second is the stage after adopting the definition of the organized criminal group pursuant to the 2024 amendment of the Penal Code.

Keywords: organized crime, organized criminal group, participation, association of wrongdoers.

Introduction:

The phenomenon of committing crimes within groups is a very old criminal phenomenon (highway robbery by gangs, attacking ships...). Criminal legislations have always included provisions confronting this phenomenon, such as considering multiple participants an aggravating circumstance in thefts, and the rules governing criminal participation. This phenomenon developed with the emergence of tightly organized criminal groups that operate secretly, excel in planning, and engage in serious crimes to achieve financial gains, with their activities extending beyond the borders of a single state. These groups have even challenged state authorities in many cases, such as the Italian mafia organizations, the Mexican cartel, the Japanese Yakuza, the Russian and Turkish mafias. These organizations took the trade of narcotics and psychotropic substances, arms trafficking, antiquities smuggling, human trafficking and trafficking in human organs as their primary activities, and commit a set of secondary crimes to facilitate them, such as violence, corruption, and money laundering. To confront this dangerous phenomenon, states established the first legal framework at the

international level by concluding the United Nations Convention against Transnational Organized Crime in November 2000 in Palermo, Italy. The location was chosen in honor of the Italian judge GIOVANNI FALCONE, originally from Palermo, who was assassinated by the COSA NOSTRA organization on the orders of its leader TOTTO RINA of the CORLEONE family.

Algeria ratified this convention pursuant to Presidential Decree No. 02-55 dated 05/02/2002, and worked to confront the organized criminal group by gradually introducing special provisions into its criminal legislation beginning in 2004. Have Algerian criminal legislation been successfully harmonized with its international obligations in combating organized crime? And has it succeeded in safeguarding rights and freedoms when applying the substantive and procedural provisions related to organized criminal groups?

In fact, there are multiple legal controls that allow the proper application of the law in general and of the provisions related to organized criminal groups in particular. Perhaps the most important control is the precise and clear definition of the organized criminal group, because it prevents the application of the strict procedural and substantive provisions to concepts that are ambiguous or close to it, such as associations of wrongdoers, and to crimes less serious than organized crimes.

Through this study, we will attempt to shed light on the legislator's uses of the term organized criminal group in various legal texts and some of its applications, in two stages: the stage before the amendment of the Penal Code in 2024 (I), and the stage after the amendment of the Penal Code in 2024 (II).

I. The Organized Criminal Group in Algerian Legislation Before the 2024 Amendment of the Penal Code

After Algeria ratified the Palermo Convention, it was keen on implementing its international obligations and gradually introduced the term “organized criminal group” into its criminal legislation. Therefore, we will address the use of the term in the Penal Code, in special criminal laws, and then in the Code of Criminal Procedure.

1. Introducing the Term “Organized Criminal Group” in the Penal Code

The most important amendments to the Penal Code that included the term “organized criminal group” are the 2004 amendment, the 2009 amendment, and the 2014 amendment.

1-1. The 2004 Amendment of the Penal Code:

The explanatory memorandum of the draft amendment of the Penal Code in 2004 stated that it supports the legislative framework for combating organized crime by proposing to amend Article 176 of the Penal Code related to the association of wrongdoers, in order to expand its

definition to include the definition of the organized criminal group as provided in international conventions. The draft also proposed amending Article 177 of the Penal Code, which prescribes penalties for participation in associations of wrongdoers, by providing for misdemeanor penalties if the crimes intended to be committed are misdemeanors, and felony penalties if the crimes intended are felonies, with harsher punishment for the organizer(s) or leader(s). It also introduced Article 177 bis, which defines participation as provided in the United Nations Convention against Organized Crime.

What is noticeable is that the legislator did not include the term “organized criminal group” in these articles, even though the declared purpose of the amendments was to combat organized criminal groups.

1-2. The Amendments of 2009 and 2014:

The term “organized criminal group” was introduced in several criminalization texts. The legislator considered the commission of a crime within an organized criminal group as an aggravating circumstance, making crimes aggravated misdemeanors, such as the misdemeanor of organ trafficking under Article 303 bis 20 of the Penal Code, the misdemeanor of stealing protected or identified movable cultural property under Article 350 bis 02 of the Penal Code, or felonies, such as human trafficking (Article 303 bis 5), migrant smuggling (Article 303 bis 32), and the felony of selling or purchasing a child (former Article 319 bis, Article 75 of Law No. 23-04).

2. The Term “Organized Criminal Group” in Special Criminal Laws

The Algerian legislator used the term in several special criminal laws, such as the child protection law, the narcotics and psychotropic substances law, and the human trafficking law.

2-1. Law No. 15-12 on Child Protection:

Paragraph 4 of Article 54 permits hearing a minor held in custody immediately without the presence of a lawyer for the purpose of preserving evidence when the matter concerns transnational organized crime.

2-2. Law No. 23-05 on the Prevention of Narcotics and Psychotropic Substances:

According to the last paragraph of Article 17, acts of production, manufacture, sale, acquisition, possession, offering, purchase for sale, storage, extraction, preparation, distribution, delivery, brokerage, shipping, transit, or transportation of narcotics or psychotropic substances committed by an organized criminal group constitute a felony punishable by life imprisonment.

2-3. Law No. 23-04 on the Prevention and Combating of Human Trafficking:

Article 41 prescribes temporary imprisonment of 20 to 30 years and a fine of 10,000,000 to 20,000,000 DZD for human trafficking committed by an organized criminal group.

Article 49 aggravates penalties for the misdemeanor of joining or participating in an organized criminal group with the intent to prepare or commit crimes under this law, prescribing imprisonment of 3 to 10 years and fines of 300,000 to 1,000,000 DZD. The last paragraph imposes 10 to 15 years' imprisonment and fines of 1,000,000 to 1,500,000 DZD for establishing or leading organized criminal groups.

3. Introducing the Term “Organized Crime” in the Code of Criminal Procedure

The legislator introduced the term in the 2004 amendment of the old Code of Criminal Procedure, then in the amendments of 2006, 2015, and 2020. The draft new Code of Criminal Procedure presented to parliament on 22/04/2025 included almost the same procedural provisions and established a national criminal division to combat terrorism and transnational organized crime.

The most important procedural provisions are:

3-1. Statute of Limitations:

The legislator excluded transnational organized crime from prescription: Article 08 bis states that public action does not lapse for felonies and misdemeanors related to transnational organized crime. Article 612 bis provides that penalties in such crimes do not lapse either.

3-2. Extending Territorial Jurisdiction:

The territorial jurisdiction of judicial police officers is extended to the entire national territory for investigating organized crime (Article 16/07). The public prosecutor's jurisdiction is also extended (Article 37), as is that of the investigating judge and the court (Articles 40/02, 329).

3-3. Expanding Search and Investigation Powers:

Conditions of house searches do not apply in cases of transnational organized crime (Article 45). Article 47(3) allows searches by order of the public prosecutor at any time. The legislator also allowed extending custody three times (Articles 51/05, 65/03), and permitted the lawyer's visit after half the maximum custody period — after 96 hours (Article 51 bis 01). Police officers were given new powers such as infiltration, intercepting communications, recording voices, and taking photographs (Articles 65 bis 05 to 65 bis 18).

3-4. Establishing the Economic and Financial Criminal Division:

Law 20-04 added a fourth chapter creating a national economic and financial criminal division with nationwide jurisdiction to pursue complex economic and financial crimes, including organized or transnational crimes.

A fifth chapter extended jurisdiction in terrorism and transnational organized crime.

4. Problems in Applying Legal Texts on Organized Crime

It is clear that the legislator is strict in combating organized criminal groups, with noticeable restrictions on suspects' rights during investigation in cases involving organized groups or transnational crime. Penalties are also harsher compared to ordinary cases, with organized crime always being an aggravating circumstance, often turning misdemeanors into felonies.

Applying these provisions requires defining the concepts of organized criminal group and transnational organized crime. Misclassification leads to unjustified infringements on rights and freedoms.

4-1. Failure to Adopt an Explicit Definition of Organized Criminal Group in Algerian Legislation:

The purpose of amending Article 176 in 2004 was to expand the definition of association of wrongdoers to include the concept of organized criminal group. The new wording reads: "Any association or agreement, regardless of its duration and number of members, formed for the purpose of preparing one or more felonies or misdemeanors punishable by at least five years' imprisonment against persons or property, shall constitute an association of wrongdoers. This crime is constituted by the mere joint intention to commit the act."

Comparison shows that the definition did not change significantly nor expand to meet the Palermo Convention definition. The amendment only expanded the scope of crimes included. Article 177 bis included criminalization of participation in an organized criminal group as in Article 5 of Palermo Convention but used the term "association of wrongdoers," implying equivalence between the two terms.

4-2. The Need to Apply the Palermo Convention Definition:

Failure to define the organized criminal group created debate, especially since Article 176 and Article 177 bis support applying the association of wrongdoers definition to organized groups. Courts may consider any association fulfilling Article 176 conditions an organized criminal group and classify its crimes accordingly.

However, there are essential differences: e.g., two low-intelligence persons agreeing to commit a misdemeanor for revenge constitute an association of wrongdoers but not an organized criminal group. Their theft may show plurality of perpetrators, but not organized crime, because a minimum of three persons is required, and the purpose must be financial gain. The international definition requires a structured group of at least three persons, existing for a period of time, committing serious crimes for financial or material benefit.

This raises the question: should courts apply the domestic concept of association of wrongdoers or the international concept of organized criminal group?

According to Article 154 of the Algerian Constitution, treaties ratified by the President prevail over domestic law. However, the Palermo Convention's criminalization provisions lack the specificity required of penal rules, as they are drafted in general terms and call on states to incorporate them domestically. Thus, they are not directly applicable by criminal courts. Nevertheless, the situation is different regarding applying the *concept* of organized criminal group, since international treaties may be directly applicable regarding decriminalization, mitigation, procedures, and concepts.

Accordingly, the application by judges and law enforcement agencies of the concept of an organized criminal group as stated in the Palermo Convention is not only necessary but also a legal obligation imposed by the principle of criminal legality, and failure to apply it constitutes an error in the application of the law.

II- Incorporating the Palermo Convention's concept of the organized criminal group into the 2024 amendment of the Penal Code:

After twenty years from the first legislative intervention to prevent and combat transnational organized crime, the Algerian legislator addressed the gap in criminal legislation by adopting the definition of the organized criminal group under Law No. 24-06 amending the Penal Code, in line with the provisions of the United Nations Convention against Transnational Organized Crime. Article 176 bis was dedicated to defining the organized criminal group, and the term "organized criminal group" was used for the first time alongside the term "association of wrongdoers" in the texts of Articles 177, 177 bis, and 179, which indicates the affirmation of the distinction between the two terms. For this reason, we will present the most important amendments contained in this law and their consequences as follows:

1- Adoption of an explicit definition of the organized criminal group and transnational organized crime:

The first paragraph of Article 176 bis of the amended Penal Code No. 24-06 defines the organized criminal group as a structured group [not randomly formed for the immediate commission of an offense, and it is not required that its members have formally defined roles or that it have a developed structure], composed of at least three persons, existing for a period of time, carrying out a premeditated act intended to commit one or more felonies or misdemeanors punishable by at least five years' imprisonment, in order to obtain a financial or material benefit directly or indirectly.

The second, third, and fourth paragraphs of the aforementioned article clarify the meaning of the terms "structured group," "transnational organized crime," and "transnational crime," thus

removing any ambiguity related to the concept of the organized criminal group and the crimes it may commit within the state's territory or across state borders, known as transnational crime.

2- Criminalizing participation in organized criminal groups:

Articles 177 and 177 bis of the amended Penal Code regulate the provisions of participation in the organized criminal group, which are the same provisions related to participation in the association of wrongdoers. These provisions show that participation in an organized criminal group takes one of the following four forms:

2-1 First form:

This consists of an agreement among persons to commit felonies or misdemeanors punishable by at least 5 years' imprisonment, or to prepare for the commission of felonies or misdemeanors, or to organize an organized criminal group, or to agree to lead it for the purpose of obtaining a financial or material benefit.

2-2 Second form:

This is the performance—despite knowledge of the organized criminal group's objective or its intent to commit certain crimes—of an active role in the group's activity and in other activities it undertakes, knowing that this participation will contribute to achieving the group's criminal objective. This applies to a person who contributes to non-criminal activities carried out by the organized criminal group, such as commercial activities, export and import operations, whenever such actions help achieve the group's criminal objectives.

2-3 Third form:

This consists of performing—despite knowledge of the organized criminal group's objective or its intent to commit certain crimes—an active role in organizing the commission of a crime by the organized criminal group, or suggesting the commission of such a crime, or aiding, inciting, facilitating, or offering advice regarding it.

The three aforementioned forms are punishable by temporary imprisonment from 5 to 10 years and a fine of 500,000 DZD to 1,000,000 DZD if the preparation is for the commission of a felony or felonies. If the preparation is for the commission of one or more misdemeanors, participation in the organized criminal group is punishable by imprisonment from two to five years and a fine of 100,000 DZD to 500,000 DZD.

2-4 Fourth form:

This consists of organizing the organized criminal group or assuming any type of leadership within it. This form of participation is punishable by temporary imprisonment from 10 to 20 years and a fine of 1,000,000 DZD to 5,000,000 DZD. Due to the seriousness of this form, the legislator did not link the penalty to the type of crime being prepared; it makes no difference

whether the organization or leadership of the organized criminal group is for the purpose of committing felonies or misdemeanors.

It is noteworthy that the legislator began drafting Article 177 bis of the Penal Code by stating: “Without prejudice to the provisions of Article 42 of this law, participation in an association of wrongdoers or an organized criminal group shall be considered...” This indicates the difference between participation in a crime and participation in an organized criminal group, a distinction emphasized by the Supreme Court in its decision dated 17/11/2011, confirming that the term “participation” was mistakenly used in the Arabic wording of the text, and that what is meant by participation in the organized criminal group is “contribution” (la participation) and not “complicity” (la complicité) as defined in Article 42 of the Penal Code.

3- Distinguishing the organized criminal group from the association of wrongdoers:

The legislator explicitly distinguished between the organized criminal group and the association of wrongdoers by adopting a specific and independent definition for each term. By comparing the two definitions, the fundamental differences between the association of wrongdoers and the organized criminal group can be summarized as follows:

3-1 Number of members:

The organized criminal group is composed of at least three persons, while the association of wrongdoers can be formed by just two persons.

3-2 Time factor:

Time is an essential element in the formation of the organized criminal group, as the legislator requires that the organized criminal group exist over a period of time and continue to achieve its objectives. This is contrary to the association of wrongdoers, which can be formed quickly and spontaneously to commit a single crime.

3-2 Structure and organization:

The association of wrongdoers may be formed randomly for the immediate commission of a specific crime, whereas the organized criminal group must be structured—meaning not formed in an incidental, hasty, or reckless manner—and must have a system, even a simple one, governing its mode of operation. The legislator does not require formal role distribution among members or the continuity of their membership.

3-4 Purpose:

The purpose of forming an association of wrongdoers is to prepare for the commission of a felony or misdemeanor punishable by at least 5 years’ imprisonment, and the felony or misdemeanor must be a crime against persons or property. Meanwhile, the purpose of the organized criminal group is to commit felonies and misdemeanors punishable by at least 5

years' imprisonment, without specifying the interests targeted by these crimes. It is noteworthy that there is a slight difference between the purpose of the organized criminal group according to Article 176 bis of the Penal Code and its purpose under the Palermo Convention, which is the commission of "serious crimes," meaning those punishable by at least 4 years' imprisonment, or the commission of crimes stipulated in the Convention and its supplementary Protocols, such as money laundering, corruption, obstruction of justice, trafficking in persons, smuggling of migrants, manufacturing and trafficking of firearms.

3-5 Motive or incentive:

The legislator does not consider motive in the formation of an association of wrongdoers and only requires the purpose stated above. However, motive is considered an element in the formation of the organized criminal group, namely the desire to obtain material or financial benefit directly or indirectly. Thus, the legislator requires additional psychological elements (specific intent) for the establishment of the organized criminal group.

3-6 Premeditation or planning:

The legislator, in defining the organized criminal group, emphasized the characteristic of planning in its actions ("...carries out a premeditated act intended to commit one or more felonies or misdemeanors punishable by at least five years' imprisonment..."). This indicates that the group's actions are pre-planned, deliberately designed, and prepared calmly and thoughtfully. This characteristic affirms the organizational and planning nature of organized criminal groups.

The French Constitutional Council, in its decision No. 2007-492 dated 02 March 2004, when ruling on the constitutionality of the law on harmonizing justice with developments in criminality, confirmed that the organized criminal group presupposes premeditation of crimes, and unlike the association of wrongdoers, it is based on the existence of organization and structure among its members.

4. Consequences of applying the 2024 amendment of the Penal Code:

Adopting a clear and distinct concept of the organized criminal group provides an objective criterion for applying criminal procedures and punitive provisions related to organized criminal groups. It allows judicial authorities and the Supreme Court to review the validity of procedures and the proper application of the law.

Applications of the substantive rules concerning organized criminal groups fall under two scenarios:

Acts of preparation for committing felonies or misdemeanors by organized criminal groups according to Article 177 of the Penal Code constitute the crime of participation in the group.

However, if the crimes prepared for are committed or attempted, they are punished as completed crimes or attempted crimes with aggravating circumstances. Yet, this is not always clear, as a person may be prosecuted in the same case for participating in an organized criminal group and committing an aggravated crime due to the presence of the organized criminal group, raising the question of whether such dual prosecution is permissible.

4-2 The judiciary's authority to assess the existence of the aggravating circumstance:

If the crime committed within an organized criminal group is a misdemeanor, such as the theft of protected or identified movable cultural property under Article 350 bis 02 of the Penal Code, the misdemeanors court must establish in its ruling the aggravating circumstance (organized criminal group) upon which it based its imposition of the aggravated penalty. The ruling is deficient in reasoning if what the court establishes regarding the organized criminal group does not show that the accused acted within a group composed of at least three persons, existing for a period of time, having planned and designed to commit the crime to obtain material or financial benefit. It is thus not enough for the court to establish the aggravating circumstance; it must also establish its elements as defined by law.

If the crime committed within an organized criminal group is a felony, such as human trafficking, the criminal court must present a separate question regarding whether the act was committed within an organized criminal group, since this is an aggravating circumstance. However, does the criminal court escape the Supreme Court's review by presenting the question in a legally correct form in accordance with Article 305 of the Code of Criminal Procedure, even if the answer is "yes" despite the absence of the elements of the organized criminal group? The proper formulation of the question does not cure or correct the flawed reasoning and inference if it deviates from rational and logical necessity and has no basis in the record. There must be logical consistency between the conclusion reached and the facts established by the court. This can be reviewed through the reasoning section of the ruling, which must include the key elements that shaped the court's conviction. Moreover, failure to adhere to the elements of the organized criminal group in applying the aggravating circumstance constitutes an error in the application of the law because the error relates not to the establishment of facts but to giving them the correct legal description, which is a matter of law subject to Supreme Court review.

4-3 Combining the aggravating circumstance and participation in the organized criminal group:

Acts of participation in an organized criminal group are subject to criminal provisions different from those applied to the commission of crimes with the aggravating circumstance of an organized criminal group. This opens the possibility of combining the two in the same

prosecution or trial, raising the issue of violating the procedural principle “a person cannot be prosecuted, tried, or punished twice for the same acts even if given a different legal description.” In principle, most forms of participation in an organized criminal group under Articles 177 and 177 bis fall within the stage of planning or preparation to commit crimes, forming part of the total acts leading to the commission of the crime. If the organized criminal group prepares for drug trafficking or trafficking in psychotropic substances and these crimes are committed or attempted, the principle of non-duplication of prosecution imposes itself, as the material facts are the same and the two legal descriptions conflict and cannot both be applied.

However, it may occur that the organized criminal group plans and prepares for drug trafficking and human organ trafficking, and its members are caught committing drug trafficking. In such a case, there is no unity of material facts between participation in the organized criminal group and the felony of drug trafficking; therefore, combining the two descriptions in the same prosecution or trial is permissible. The same applies to the fourth form of participation—organizing or leading the organized criminal group—as it can be combined with the aggravating circumstance due to the multiplicity of material facts.

Thus, combining the two is not permissible if the material facts are the same and the legal descriptions conflict such that one excludes the other, which is the conclusion recently reached by comparative French jurisprudence.

Conclusion:

Despite the widespread use of the term “organized criminal group” in various procedural provisions that restrict personal freedoms and in substantive provisions of criminalization and punishment allowing harsher penalties for crimes committed within organized criminal groups, the legislator—throughout 20 years—overlooked clarifying the meaning of the term in the Penal Code, contrary to his approach in defining concepts in some special criminal legislations. Nor did he specify its meaning as an aggravating circumstance as is customary in criminalization, allowing for varied judicial applications and even opening the door to violations of the rights and freedoms of individuals by applying the provisions of organized criminal groups to cases that do not meet the conditions of organized criminal groups nor conform to their definition under the United Nations Convention against Transnational Organized Crime (Palermo, 2000).

The legislator has now adopted the concept of the organized criminal group as defined in the Palermo Convention and incorporated it into Article 176 bis of the 2024 amendment of the Penal Code. This step reflects Algeria’s commitment to its international obligations in combating transnational organized crime and resolves the ambiguity surrounding the concept

of the organized criminal group. This provides a substantive safeguard for suspects and defendants and protects their rights and freedoms during proceedings. It enables the review of courts' assessment of the existence of the organized criminal group as an aggravating circumstance and the proper application of the provisions on participation in the organized criminal group. It also allows distinguishing the organized criminal group from the association of wrongdoers after the confusion caused for years by the wording of Article 176 of the Penal Code prior to the 2024 amendment.

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