

Received: 06/01/2022

Accepted: 05/04/2022

## Preventive and remedial measures to reduce illegal immigration in Algerian legislation

### التدابير الوقائية والعلاجية للحد من الهجرة غير الشرعية في التشريع الجزائري

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#### Abstract :

Illegal immigration is a phenomenon of the most powerful governments and countries in the world where countries in that are experiencing economic or Security crises have become a source migration towards developed and because countries and what is difficult to combat is the emergence of networks specialized in human smuggling in exchange for large sums of money. The crime of illegal immigration is a phenomenon that most countries in the world suffer from, and in order to combat it, the Algerian state, like most countries that suffer from the phenomenon, has adopted a set of measures on many levels, which may help in limiting this phenomenon.

**Keywords:** Illegal immigration - Preventive measures - Algerian legislator detention – prison - monetary fine.

#### المخلص:

أصبحت الهجرة غير الشرعية تحل حيزا هاما في السياسة الدولية حيث أرقت أعتى الحكومات والدول في العالم، إذ تعتبر الدول التي تعيش أزمات اقتصادية أو أمنية خاصة دول العالم الثالث مصدرا للهجرة نحو الدول المتقدمة والأمن. ومما صعب من مهمة محاربتها هو ظهور شبكات دولية مختصة في تهريب البشر مقابل مبالغ مالية باهظة. فباتت هذه الظاهرة تقض مضاجع أغلب دول العالم الغنية منها والفقيرة على حد سواء، ولأجل محاربتها اعتمدت الدولة الجزائرية - مثلها مثل معظم الدول التي تعاني- منها مجموعة من التدابير الوقائية على عديد المستويات مما قد يساعد في الحد من هذه الظاهرة.

**الكلمات المفتاحية:** الهجرة، غير الشرعية، التدابير الوقائية، المشرع، القانون الدولي.

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### **Introduction:**

Praise be to God, Lord of the worlds, and I bear witness that there is no god but God, alone without a partner, and I bear witness that Muhammad is His servant and Messenger, may God guide by mercy to the world.

In the past, man was obliged to move from one place to another so that to get a suitable life. They had to search for water, food and grass for their animals. Now; life has totally changed affected by political, secure, economic and social events. This phenomenon is now called immigration. It has become a serious problem as the number of immigrants is increasing.

Thousands of persons die in the Sahara, the sea and in refugee camps while trying to move to the other side (Europe and America). Anthony Giddens said;" immigration is not a new phenomenon, but it is increasing in the last decades as it becomes an important factor insight Global immigration".

Migration patterns reflect the economic, political and cultural relations between countries of the world.

It is estimated that these numbers will increase in the beginning of the 21<sup>st</sup> century. Some sociologists even call these days "immigration era"<sup>1</sup>.

Since the lack of solidarity and the large attorney fees between developed and developing countries and the Exploitation of the colonial countries to the bounties of poor countries and the restriction on the granting of visas have created criminal networks in the field of trafficking and smuggling of the human beings. The countries affected by this phenomenon take practical, legal measures to reduce it. They punish people who practise this phenomenon and even the assistant. But in reality, this penalty reduces this crime but It does not stop it.

So, the policies of countries lead to the study of causes and factors of a legal emigration. They take additional preventing measures of penalties to stop illegal emigration. Algeria is suffering from this problem because it is bordering the Mediterranean Sea which help many clandestine emigrants to go by small boats through its sea shores.

Therefore, it has enacted laws which criminalize this phenomenon, then comes several protective and remedial measures to stop clandestine emigration of foreigners (Africans) or Algerians who use our seaside to go to Europe. Among these measures, regulating the entry and residence of foreigners, controlling them and the detention of violators who are expelled. Then, activating the security aspect and controlling (both the south where appears the phenomenon of clandestine emigrants, in the north, criminal organizations resort to organizing secret trip towards Europe with the so called Death Boats. Later, creating jobs, providing bank loans and creating mini enterprises to avoid the emigration of Algerian youths. Also, the Algerian state has signed international treaties with many countries in the context of combating the phenomenon of illegal emigration. So, it was obliged to intensify efforts for this.

Proceeding from the danger of this phenomenon onto Algeria's security and economy, I thought the topic of my research would be entitled: preventive and remedial measures to limit illegal emigration in Algerian legislation.

### **The study problem:**

The study problem can be summarized in the following question:

How do we define the illegal emigration in the international covenants and Algerian legislation? What are the most important protective and remedial measures adopted by the Algerian legislator to reduce this phenomenon?

Some other problems are derived from the global one:

1. What is meant by emigration in global and illegal immigration in special?
2. How did the Algerian legislator address illegal Immigration?
3. What are the preventive and curative measures taken by the Algerian legislator?

### **Objectives of the study:**

Since the previous questions, we can specify the objectives of the study as:

1. Defining the concept of immigration and its types.
2. Declaring the penalty for illegal immigration in accordance with Algerian penal code.
3. Presentation and study of the most important preventive measures adopted by the Algerian legislator to face illegal immigration.

### **The importance of the study:**

The importance of the study has two main aspects:

First: Theoretical importance: the importance of this side is to complete the jurisprudential and scientific efforts that focus on the study of immigration phenomenon and enrich what was written in this matter.

Second: the practical importance: the practical importance of this study is that it contributes to inform the public opinion with the danger of this international phenomenon from many fields such as brain drain and labor force; and its influence on the national economic growth and even political.

### **Study approach:**

In the study of this research, we will depend on the descriptive approach (describing the crime of illegal immigration with some statistics) with help of the analytical approach by mentioning and justifying the legal material and analysis.

### **Search plan:**

First requirement: the concept of immigration and preventive measures.

Section one: defining preventive measures.

Section two: defining immigration (legal/illegal).

Second requirement: preventive and remedial measures to limit illegal immigration in the Algerian penal code.

Section one: Preventive measures to limit illegal immigration in the Algerian penal code.

Section two: remedial measures to limit illegal immigration in the Algerian penal code.

Conclusion.

### **First requirement: the concept of immigration and preventive measures.**

#### **Section one: defining preventive measures.**

Penalty has become insufficient to fight this crime, which urges us to search for other ways which can replace penalty, this leads to the appearance of preventive measures<sup>2</sup> as a new form for the criminal part. So, what is the concept of preventive measures?

Before answering this question, we mention that laws and legislation did not have a unified system. We find that it differs from one legislation to another under different names and unstable controls, a strange transition.

So, preventive measures are a set of measures which face a complete criminal risk in the personality of the criminal to get it from the community<sup>3</sup>.

Based on this definition, we can say that preventive and blind measures are not from the same nature, so the penalty is virtuous while the preventive measures do not include the penalty because the penalty should be related to an order aware by the person addressed to him, deserves punishment once violating it. Unlike, the preventive measure which is strict in the penalty and its aim is not to face a mistake but confronting the criminal danger inherent in the person in general.

So, the preventive measures are different from other penalties by many characteristics. Dr. Levasseur touched on some of the characteristics of the measures being individual coercive measures, without moral blame, which are practised on people who are dangerous to public order, in order to prevent potential crimes in view of their dangerous situation<sup>4</sup>. The Algerian legislator adds another advantage of the measures provided that his goal is preventive<sup>5</sup>.

According of the forgoing, it can be said that preventive measures are a measure taken by the legislator to confront the criminal danger to protect society.

This measure may fall on a legal person as a natural person when he realizes the danger in immorality.

We should note that the rule of blocking shields in Islamic law is what corresponds to preventive measures in man-made punitive systems. However, Sharia was the distance to its implementation, whether in financial transaction or in limits and accounts; that is in criminal legislation, it has a great and wide scope in Islamic jurisprudence. Imam Chatbi says: "the truth of pretext, beggin has grown from benefit to corruption"<sup>6</sup>.

Confirming what Imam Chatbi said is the work of the prophet Mohamed companions, may God almighty be pleased with them, with the rule and after them the righteous predecessors.

Looking at the outcomes actions between achieving the benefit or replacing the evil, as well as looking at plants.

It can be said that the relationship between preventive measures and illegal immigration phenomenon that we are studying is that preventive measures are measures that anticipate the occurrence of the crime of illegal immigration as they work to limit the spread of this phenomenon and reduce it.

## **The Second Section: The concept of illegal immigration**

### **First: Definition of immigration**

Immigration is an infinitive name from immigrate<sup>7</sup> in Lisan Al Arab, it has seven main meanings which refer to one origin which is the distance from something, as Ibn al-Arabi<sup>8</sup> concluded:

1. Against el wasl.
2. What should be not said.
3. Free thing, including immigration.
4. Delirium patient
5. Midday.
6. The young El-Hassan.
7. The lamb that is pulled in the camel's loins, then tightened in one of its legs

Although the word immigration has many meanings, however we use it to say, to leave homelands, or to move from one land to another one. Our God said,

Lot believed in him and said I am an emigrant to my Lord that he is the Mighty, the wise An-Nisa/100.

**Second: Immigration in Islamic jurisprudence.**

Sharia jurists view immigration in a special way confined to the religious aspects. For them, its aim is to protect the religion and Islamic beliefs. So, they define it as leaving the abode of infidelity to the abode of Islam<sup>9</sup> El Jurjani said, Immigration is leaving the land of infidelity and moving to the land of Islam<sup>10</sup>. The two definitions refer to the Almighty's sayings Indeed, those whom the angels took who wronged themselves, they said, "Why do they break?" They said, we were weak in the land." They said All God's earth is vast, so they migrated in it. So, the first of their abode are Hell, and evil counsel for" Nissa/197.

Through a presentation of these definitions, it is clear that the jurists have limited the reason for migration to the religious offender only. Once a person is afraid for his religion and belief, he finds himself obliged to migrate. This definition restricted immigration by moving from the abode of infidelity to the abode of Islam.

However, it is not necessarily that emigration should be from the place of infidelity to the abode of Islam, but it could be the opposite. Perhaps the clearest example of this is the migration of the prophet, peace be upon him, from Mecca to Medina, as well as the emigration of the prophet's companions from Mecca to Habasha (now Ethiopia), God said: "And those who migrated for the sake of God after they were wronged, their sins in this world will be good, and the last of the Hereafter will be greater if the only knew "An-Nahl 41. This is what expressed the Professor Imad Aneur: "the believer moves from a country of strife, and fear for his religion, to a place where is secure in his religion<sup>11</sup>.

To sum up, we can say that emigration in Islamic Jurisprudence is an alternative solution and not a punishable crime, if we exclude some of the strong sayings that prohibit emigration to the lands of unbelief, especially now. But, remains the prevailing opinion is that when a person fears for his religion, he must migrate to a place where he can preserve his religion.

It is worth noting that a state limited with borders and political entities, which makes us distinguish between the concept of immigration among the ancients and contemporary, where movement from one entity to another in the modern era has become different from what it was because people could move from one to another place, the opposite of what it exists today among the entities of Islamic countries.

**Third: Migration in public, international legislation.**

The view of the law on immigration differs greatly from the view of jurists or sociologists. Defining by law, it is accompanied by the permissibility of the act or not, and certain penalties are imposed on it or not.

Migration in public international law is when a person moves from the territory of his state, or the state in which he resides permanently, to the territory of another state with the intention of residing in it and setting in<sup>12</sup>, and is almost the same definition given by Dr. Ali Sadiq Abou Haif.

Where he says, Individuals voluntarily return from the country of domicile with the intention of entering the territory of another country, and staying there permanently or for a specific period for the purpose of living, for different reasons. It entails some legal consequences for the status of these individuals<sup>13</sup>.

Through the previous two definitions, it becomes clear to us that immigration is of two types.

1. Legal immigration is the act that does not entail on penalties and takes place according to the laws of each country in which the immigrant is protected from all dangers in the name of law. So, it is said that legal immigration takes place with the approval of two countries for the immigrant to move from his homeland original to the receiving country<sup>14</sup>.

The international convention on the protection of the rights of migrant workers and members of their families, which was approved by the General Assembly on June, 18th 1990, in accordance with article 5- A- Immigration (Immigrants and their family members are considered in a legal situation if they are authorized to enter, reside and to work in the country in which works is carried out in accordance with the system in force in that country and what not inconsistent with the international agreements to which it is bound)<sup>15</sup>.

As a remark, saying with the approval of the countries or the licence, means that it is done legally. There must be a passport, entry and exit visas, residence cards and permits

2. Illegal immigration: the phrase illegal indicates that the act is carried out in crooked way in which the person is circumventing the law or is totally against.

Thus, illegal immigration becomes infiltration through land, Sea or air borders and residence in another country illegally, and immigration may be legal in its basis and then turns into illegal immigration after the authorized legal judiciary which is known as illegal residence<sup>16</sup>.

The international agreement adopted by the Assembly was known in general June 18th, 1990 according to article 5- B- illegal immigrant (without documents and in an illegal situation is considered anyone who does not meet the conditions stipulated in paragraph (a) of this article<sup>17</sup>. Based on the foregoing, it is concluded that illegal immigration is what is done secretly of the authorities and out of the international laws of residence, this is what is expressed by the Algerian 'El Harga'.

It is noted that the Algerian law does not define the crime of illegal immigration, but its concept can be extracted by studying its elements in article 545 of maritime law no 108-115<sup>18</sup> and article 175 bis of law 09/01 amending the penal code<sup>19</sup>, as the penalty is for the sake of that person who uses the trick to leave the country without submitting the necessary documents.

### **The Second requirement. Preventive and remedial measures to limit illegal immigration in Algerian law.**

Due to the problems caused by illegal immigration to the security and economy of the country as well as its social fabric, the Algerian legislator sharpened some preventive and curative measures to limit and combat this phenomenon, and this is what is addressed in these two elements.

#### **Section One: Preventive measures to limit illegal immigration in Algerian law.**

The Algerian legislator presented many types of preventive measures, as it was not limited to one side, the extent that it approved political, economic, social, sportive measures and other media measures in order to limit this phenomenon and fight it and encourage the youths investing at home by improving their living conditions. And this is what we will see in the following elements:

##### **First: Political measures**

When talking about the state policy on any topic, we mean the procedures and methods of dealing, whether at the internal or external level; Algeria is one of the countries that has

characterized by mature policies in dealing with the issue of immigration contrasted with the ones that do not have fixed policies on this issue (Morocco is a model, and recent incidents are the best evidence of this, as well as Mexico)<sup>20</sup>.

**1. Internal policies to address the phenomenon of illegal immigration:** Algeria has adopted a broad internal policy regarding the phenomenon of illegal immigration represented in the following:

**A. Regulation entry and residence foreigners:** Law n 11/08 of

July 25th, 2008 related to the entry, residence and movements of foreigners to Algeria<sup>21</sup> enumerates this law to confront the growing of the phenomenon of illegal immigration especially in light of the large influx of clandestine immigrants across the southern borders, and its consequences for Serious matters such as the spread of deadly diseases, organized crime, terrorism, and counterfeit currency<sup>22</sup>. But in return, the Algerian legislator guarantees to foreigners the freedom to enter and exit the national territory in accordance with the legal procedures of the state, and the law also organized the methods of obtaining a residence card<sup>23</sup>, and ways to withdraw it<sup>24</sup>, and it prohibits marriage to obtain a residence card by the way what is known 'White marriage'. So, it decides to a penalty of imprisonment from two (2) to five (5) years and a fine from 50000 DA to 500.000DA<sup>25</sup>.

It is noted on the regulation of the entry of foreigner to Algeria that the Algerian legislator has almost the same laws in use in other countries.

**B. Deportations and expulsion to the borders:** if we leave the national territory in accordance with legal procedures, this is called home exodus. In return, the non-administrative exit is unified and takes place when the person is illegally present on the national territory<sup>26</sup>, and is also expelled from the Algerian territory by virtue of a decision issued by the Minister of the interior<sup>27</sup>. As for the expulsion to the borders, the decision is issued by the regionally competent governor<sup>28</sup>.

It should be noted that the process of expelling illegal immigrants from the national territory takes place in most cases after they are gathered in a specific center, they leave by land for the immigrants of neighboring countries. As for others, in most cases, it is by air (planes). This deportation is not unreasonable under certain laws and media presence in anticipation of international criticism.

**C. Establishment of waiting centers:**

Algeria, like other countries receiving immigrants, has created waiting centers where illegal immigrants gather waiting for their deportation, which is law no 08/11 of April 25th, 2008 which organizes the foreigner's movement.

It is noted that the waiting centers in Algeria are temporary centers, illegal immigrants are collected there to send them to their countries (a center in Algiers and another one in Tamanrasset.)

**2. Foreign policies to address the phenomenon of illegal immigration:**

The foreign policy of the Algerian state regarding the phenomenon of illegal immigration is the conclusion of agreements and treaties in this section. These agreements may come separately between the Algerian government and certain countries such as Spain, France and Italy. Including what comes in the form of agreements between certain blocs.

The best example of this is the countries of Euro-Mediterranean Partnership which includes the parliaments of the Mediterranean countries and some countries that have good relations in

the Mediterranean Sea and includes the parliaments of the following Arab countries like: Jordan, Tunisia, Algeria, Morocco, Egypt, Lebanon, Syria, Palestine and the Arab Inter-Parliamentary Union. This assembly approved the Mediterranean charter in Monaco in the month of November 2007, The Barcelona Declaration, and the Declaration issued by the Ministers of interior of the Western Mediterranean countries which was held in Venice city Italy on November 2009<sup>29</sup>.

It can be said that this agreement was found in conditions during which the Mediterranean was home for large illegal immigration, especially in its western and northern eastern part. Meeting of group 5+5 on November 11th 2004 between the countries of the Maghreb (Algeria, Morocco, Libya, Tunisia, Mauritania) and European countries (France, Italy, Malta, Germany, Portugal) which focused on combatting illegal immigration and tighten control over huge number of African immigrants. There are also bilateral agreements between Algeria and some countries<sup>30</sup>, including, for example:

The conclusion of an agreement between Italy and Algeria in Rome on February 24th 2000 and ratified by presidential decree 06-67 dated on November 02nd, 2006, according to which Algerian immigrants were deported to Algeria after legitimate verification.

- Agreement between France and Algeria on October 25th, 2003

- Agreement between Germany and Algeria in Bohn, on February 14th, 1997, ratified by presidential decree 06/63, on February 11th, 2006.

- Agreement between Britain and Algeria signed in London on

November 11th, 2006. Agreement between Spain and Algeria signed on July, 31st 2000 and ratified by presidential decree 03-476 in 2003.

It is noted that these agreements all came with the countries of western Europe due to their being the preferred destination for immigrants due to the geographical and historical proximity (countries that colonized the countries exporting immigration). Also, Algeria's foreign policy deals similarly with regard to immigrants, as it has been releasing its citizens from abroad who are in an illegal situation, after following an economic policy stimulating work and investment on the homeland during the beginning of this century which is what we will see in the next element.

### **Third: Economic measures:**

Since, the economic aspect is the main reason behind People's migration in order to improve their standard of living. Algeria has adopted a qualitative economic policy towards its youths by opening the field of investment and financial support, as the state's economic policies towards its youths since independence have been based on creating job opportunities and integrating young people in the economic growth of the country. These policies were divided into two parts: the first from the independence to 1988, the second from 1988 till now<sup>31</sup>.

Among the important economic plans drawn by the Algerian governments since independence to the present day are:

- the tripartite plan 1967–1969.

-The quadruple plan 1970-1973.

- the second four-year plan: 1974-1977

- the five year first five-year plan 1980-1984.

- The second five-year plan 1985-1989.

- Then, the fifth program 2005-2009.



- The fifth program 2010 /2014. Finally, the five-year plan 2014/2019, then the five-year plan 2015/2019 as complementing the previous programs.

By tracking these programs, we note that the Algerian state has spent huge amounts of money, especially in the last decades to pilgrim these plans.

#### **Fourth: Information Measures:**

As it is known that the media is sounder like the fourth authority in the country, and a means of refining and directing States and government hear the direction and guidance of the public opinion of the peoples through the path of nationalism through various media, and the pulpits of rhetoric in mosques and writing articles and editing books. Perhaps, this is what the Algerian media resort to by making documentaries and dramas available in which they show the dangers of immigration, as well as the directorates of religious-affairs recommend of special Friday harvests and lessons on the issue of illegal immigration and that it is a life threatening danger (and do not throw yourselves into destruction with your own hands, and finally, God He loves the doors of God). Al baqarah 195.

As well as the press media in newspapers, and magazines, social media, television, radio, and shed light on the dead immigrants and their suffering in the countries of immigration and the discrimination, exploitation, and other methods and behaviors they are subjected to.

#### **Fifth: Social measures**

It is about those gatherings and meetings that are held as civil society associations and organizations to make aware the youths of the dangers of illegal immigration.

#### **Sixth: Sports Measures**

The Algerian state calls for building stadiums in residential neighborhoods in order to help young people and to keep them away from the idea of illegal immigration, so, we now see football stadiums and a role for culture in most emerging cities and even villages, and this is a good thing for the youths.

In conclusion, it says that the state authorities tried to find solutions to the phenomenon of illegal immigration but greed of some people, indifference, and the absence of a moral, professional and even religious conscience, sometimes often produce results opposite to what the authorities want, perhaps due to the absence of a policy of deterrence.

### **The second section: Remedial measures to curb illegal immigration in Algerian law.**

To address the remedial measures to the crime of illegal immigration by the Algerian legislator, we must search for the measures taken in order to reduce the phenomenon, and these measures are nothing more than either security, political, economic, or social.

#### **First: the penalties prescribed for dealing with illegal immigration according to the Algerian legislator.**

The Algerian legislator like most international legislator, punishes the crime of illegal immigration and everything related to it, as it works hard to address the phenomenon by various means, although combatting it, requires international cooperation between the countries exporting emigration and the receiving countries, as well as transit countries.

Considering that the phenomenon threatens the security and stability of states, the Algerian legislator worked on setting up an independent legislative action to address this dangerous phenomenon. Because the crime of illegal immigration is composed of several parties

(immigrant smuggler, assistant, accomplices). I thought that the study of this element will be according to the following divisions:

1. The penalties for the immigrant person himself: The Algerian legislator has singled out two penalties for him, one of which is freedom, negative and the other is financial.

As stated in the penal code, article 175 bis: Without Prejudice to other legislative provisions in force, punished by imprisonment from two (2) to six (6) months as a fine of 20.000 to 60.000 DA, or one of these two penalties, every Algerian or foreigner resident who leaves the territory illegally while crossing the land, the sea, or air border post, by impersonating an identity or using forged documents or any other fraudulent means to evade submitting the necessary official documents or from taking the procedures rapidly required by the laws and regulations in force.

The same penalty shall be applied to every person leaving the national territory through ports or places other than borders posts.

Pursuant to the text article 1 of the Algerian Penal Codes<sup>32</sup> mentioned above, the punishment for illegal immigrant is defined in two types:

**a. Freedom depriving punishment:** this penalty is imprisonment from two (2) to six (6) months.

**b. Financial punishment:** the Algerian legislator combined freedom depriving penalties with financial penalties, from 20.000 to 60.000 Algerian Dinar.

It is clear from the previous article that the legislator left the discretionary power of the judge to choose the appropriate Penalty, either by ruling the two penalties together, or sufficiency with one of them. It also dealt with the same punishment, whether the illegal immigrant is an Algerian or a resident foreigner who wanted to leave the national territory illegally, that is, without submitting the necessary documents.

In addition, we note through the text of the previous article that the crime of illegal immigration in Algerian law is considered an offence, and the sentence with this penalty is not aggravating, because in most cases, the humanitarian aspect is taken into account, evidence of the absence of aggravating circumstances, Then other penalties are set by the following laws complementary to the Penal Code such as the Maritime Law in article 545 No 98-05: a penalty of imprisonment from 6 months to 5 years and a fine of 10.000 to 50.000 Algerian dinar, every person who slips surreptitiously onto a ship with the intention of making a voyage. The same penalty shall be applied to any - member of the crew or any employee who provides a helping hand on board the ship or on land by disembarking or embarking a hidden passenger or his entrapment or provision of him. He should be punished with imprisonment from two to six months or with one of the two penalties every Algerian on a resident who leaves the national territory illegally legitimate while crossing a land, sea or air border posts. The same penalty that shall be applied to every person who leaves the national territory through ports or places other than the border Posts, in addition to other subjects.

It also has two penalties for the illegal immigrants:

A freedom-depriving penalty, which is punished by imprisonment from six months to five years, and a financial penalty, a fine of 10.000 to 50.000 Algerian dinars. As well as article 44 of law no 08/11: Regardless of the provisions stipulated in articles 30 and 36 above, those violating the provisions of articles 4,7,8 and 9 above, are punished from six months to two

years, and a fine of 10.000 to 30.000 Algerian dinars. So, this article approved the illegal immigrant with two penalties

- Freedom depriving penalties: imprisonment from six months to two years -
- Financial penalties, a fine of 10.000 to 30.000 DA.

It is noticeable from the previous penalties approved by the Algerian legislator for the phenomenon of immigration that it affects the immigrant himself, whether he is an Algerian or a foreigner. However, the Algerian Penal Code allocated other Penalties for smuggling networks of immigrants and anyone who helps them to commit the crime of immigration.

### **Penalties for smugglers' networks**

The fifth section bis 2 (1) is related to the smuggling of immigrants from article 303 bis 30 to article 303 bis 41 Because it was not possible to mention all of them<sup>33</sup>, I mentioned what is related to the subject of our research as follows:

a. Article 303 bis 30: the rapprochement of immigrants is

Punishable by imprisonment from 3 to 5 years and a fine from 300000 to 500000 DA.

Article 303 bis 31: shall be punished by imprisonment from 5 to 10 years and a fine from 500000 to 1.000.000 DA. when:

- Among the immigrants
- Endangering the life or safety of smuggled migrants or
- making them likely to be exposed to it.
- Treating smuggled migrants inhumanly or professional *treatment*

**C. Article 303 bis 32 from 10 to 20 years, and a fine from 1.000.000 to 2.000.000 DA if he smuggles migrants with one of the following circumstances,**

- if the perpetrator's job facilitated the commission of the crime.
- if the crime was committed by more than one person.
- if the crime was committed by an organized criminal group.

We note that all the penalties mentioned against people smugglers are punishable by two parts, one of which is negative for freedom and other financial.

It is worth nothing that the Algerian legislator has tightened the penalty for gangs that are active in the field of migrant smugglers. Through the previous articles, it appears that the minimum penalty approved by the legislator is 3 years and the maximum is 20 years, while the fine was set from 300.000 to 2000000 DA, and perhaps the reason for this;

- 1) The seriousness of the crime committed, which sometimes leads to the death of migrants, whether they drowned in the Mediterranean Sea or thirst in the arid Sahara, in the south.
- 2) The geographical location of Algeria, which is close to the northern bank (European countries) where the ideal destination for immigrants, which attracts many smugglers to organize cruises on death boats in exchange for exorbitant sums of up to 1000000 DA according to some testimonies of migrants.
- 3) Algeria has vast borders with many African countries and the difficulty of controlling them completely, facilitates - the movement of immigrants from African countries towards Algeria which is close to the northern bank (Europe).
- 4) Algeria's association with several countries with treaties and agreements on combatting illegal immigration, which makes it tighten procedures and penalties in order to combat the phenomenon in compliance with the terms of these agreements.

### 3. The crime for not reporting the crime of illegal immigration.

The Algerian legislator was not satisfied with prohibiting the immigrant or his assistants, but also expanded the penalty to include those who covered up the crime of illegal immigration and did not report it, so article 303 bis 37 stipulates the penalty for not reporting imprisonment from One (1) to five (5) years and a fine of 100 000 DA to 500000 DA while article 303 bis 36 exempts from the penalty, anyone who reports the crime of smuggling migrants before it begins, and it reduces the penalty to half if it reaches after completion.

The rest of the articles are directives and regulations for the punishment of human warfare.

Despite all this stress by the Algerian authorities towards the smuggling networks of migrants, the networks are still active, which requires the Algerian state to redouble more efforts to solve them, and as we mentioned earlier that punishment alone is not enough to eliminate the crime, and this is what requires following other methods to reduce illegal immigration, which we will see in the next element.

#### **Second: Security measures**

Fighting illegal immigration cannot be done in isolation from the security man who is entrusted with the task of searching investigating and arresting the immigrant and his assistant, Dr Ramadhan Mohamed said; 'Despite all the United measures and Procedures, in addition to the regularly laws that mocked the spending of the concerned authorities to curb the phenomenon of illegal immigration because of the dangers entrusted it poses to public security, they remain limited without the presence of a security apparatus, and this what Algeria took to allocate the security agencies entrusted with a mission combat phenomenon, such as border guards, coast guards, and border police.<sup>34</sup>

It is noted that these security services are not limited to suppressing this phenomenon only by taking deterrent security measures such as expulsion, deportation, taking and detention, but rather assigning them other tasks such as guarding, controlling borders and tracking networks of immigrants. the most important of these security agencies that Algeria has created are:

**First: the border guard group:** it includes six Regional leaders (No 1 Bejaia, No 2 Oran, No 3 Bechar, No4 Ouargla, No5 Constantine, No 6 Tamanrasset)<sup>35</sup>. Each division was assigned the task of monitoring the borders in its territory.

**Second: the coast guards;** it is a department affiliated to the ministry of national defense, whose mission is to guard the coasts along the length of 1200km, created on June 25th 1998, It works in coordination with the maritime border police specialized in fighting illegal immigration<sup>36</sup>.

- **Border police:** the tasks of this police are implementing the instructions, regulating the movement of people and goods across the borders. It is also charged with monitoring the validity of travel documents submitted at border points and it is subjected to the police directorate. It includes five directorates as the following<sup>37</sup>:

1. Prosecution of the air border police directorate.
2. Prosecution of the land border police directorate.
3. Prosecution of maritime border police directorate.
4. Prosecution of statistics and reductions police directorate.
5. Prosecution of the directorate of security of ports and airports.

In addition to this, the presence of border police.

It is noted by looking at the security approach that the Algerian authorities have followed in order to combat the phenomenon of illegal immigration, we can say that Algeria has made great strides in this field, as it has become dependent on global technologies and international confusions such as the fingerprint system, biometric passport and the scan device, and perhaps this is what made it linked to terminal and treaties, which we will see in the next element.

### **Conclusion**

Through what was presented with us in this study, it can be said that illegal immigration, although its name is different, its content is the same. It is the presence over the territory of a state in violation of its laws. Illegal immigration has been a source of interest for the Algerian authorities, which have been legislating laws Penalizing the phenomenon, as well as searching for preventive measures and treatment for it, and the economic aspect has gained the most important part through allocating a large budget to accelerate and integrate young people into investment through limiting financial loans and establishing micro-enterprises. It should not reduce the effectiveness of other measures that are all aimed at combating the phenomenon, Given the risks that the migration problem poses to the country's economy and the national social fabric.

In conclusion, we should note the efforts made by the Algerian state to reduce this phenomenon, whether preventive or curative, but it remains insufficient due to the difference in the standard of living between the underdeveloped countries, the mother and the developed countries, and this is due to the prosperity of these countries and the life of luxury that tempts young people, which pushes him to risk his life and emigrate there.

Finally, we can say that dealing with the phenomenon of migration, must involve all countries of the world, whether exporting or receiving countries, and to give young people investment opportunities, away from bureaucracy, whether from the mother country or developed countries, Just as it is not hidden from us the greed of some colonial countries in dealing with weak countries, considering them to be merely guards of their borders, and in return they are working to exploit their resources so without providing an alternative to the original inhabitants, which generates resentment and searches for immigration.

Through this research, the results obtained can be summarized as follows:

1. Illegal immigration has become a global political event that most countries suffer from, not special for one country.
2. Illegal immigration has negative effect and repercussions on society, the economy and the homeland security.
3. Develop an accurate strategy based on true scientific foundations *to combat* the phenomenon of illegal immigration in the short time,
4. A coherent legal arsenal should be legislated to eradicate this phenomenon from its roots, and to find appropriate solutions whether in terms of prevention or in terms of treatment.
5. It is necessary to rely on a clear compelling economic policy, and practicing strict measures to exploit public money.
6. Working to remove bureaucratic obstacles facing young people from the administration, and encourage the investment in front of them in order to direct them to the right direction and divert their thoughts from illegal immigration.

1- 04/27/2015.

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## References

- <sup>1</sup> Giddens, Anthony. (2005), *Sociology*, translated by Dr. Fayez Al-Sabbagh, Beirut, Center for Arab Unity Studies, first edition, p. 331.
- <sup>2</sup> Preventive measures have different names from one legislator to another: precautionary - curative - security measures.
- <sup>3</sup> Dr. Mahmoud Najib Hosni, *Lessons in Criminology and Punishment*, Dar Al-Nahda Al-Arabia 1982, p. 119) Abdullah Suleiman, *The General Theory of Precautionary Measures*, a comparative study, first edition, National Book Foundation, Algeria, 1990, p. 59.
- <sup>4</sup> Lévassieur, (G) Stefani (G) and Jamb Merlin (R), *criminology and Penitentiary Science*, Dalloz, 4th edition. 1980, p470.
- <sup>5</sup> Article 4 of the Algerian Penal Code, Paragraph 4 (The security measures are a preventive aim).
- <sup>6</sup> Ibrahim bin Musa Al Shatby, *Al Muwafaqat fi Usul Al Sharia*, Dar Al Maarifa, Beirut, Vol. 4, p. 199.
- <sup>7</sup> - Abu Mansour Muhammad ibn Ahmad al-Azhari, language refinement, edited by Muhammad Abd al-Moneim al-Khafaji and Omar Faraj al-Uqdah, *Al-Masryah House*, Cairo, undated, 6/42-43. *Realizing the Heritage in Al-Resala Foundation*, 3rd Edition, Al-Resala Foundation, Beirut, 1993, p. 638.
- <sup>8</sup> Abu Bakr Muhammad bin Abdullah, known as Ibn al-Arabi, *Provisions of the Qur'an*, Dar al-Kutub al-Ilmiyya, Beirut, 1988/1-534 | and Muhammad bin Makram bin Manzoor, *Lisan Al Arab*, Dar Sader, Beirut, 1956 AD, article (HJR).
- <sup>9</sup> Al-Mughni, Ibn Qudamah Al-Maqdisi Al-Turki, investigated by Abdullah Al-Turki, Abdul Fattah Al-Helou, third edition, *Dar Alam Al-Kutub*, Riyadh, 1417 A.H., vol. 9, p. 236. Al-Ragheb Al-Asfahani, *Vocabulary of the Qur'an*, p. 536.
- <sup>10</sup> Sharif Ali bin Muhammad Al-Jerjani, *Definitions*, 3rd Edition, Dar Al-Kutub Al-Ilmiyya, Beirut, 1988, p. 256.
- <sup>11</sup> A. Imad Amer, *Migration to Non-Muslim Countries - Its Ruling, Controls and Applications*, Master's thesis, first edition, Dar Ibn Hazm, Beirut, 1425 AH, p. 41.
- <sup>12</sup> Dr. Saeed Muhammad Ahmad Banaja, *The Right to Emigrate and the Right to Political Asylum*, *Manar Al-Islam Magazine*, United Arab Emirates, Issue 4/1982, p. 83.  
Dr. Ali Sadiq Abu Heif, *Public International Law*, 17th Edition, Mansha'at al-Maaref, Alexandria 1982 AD, vol. 1, p. 286.
- <sup>13</sup> Dr. Ali Sadiq Abu Heif, *Public International Law*, Eleventh Edition, Mansha'at al-Maaref, Alexandria, 1975, p. 5.
- <sup>14</sup> Khato Fayza, *The Security Dimension of Illegal Immigration in the Framework of Euro-Maghreb Relations between 1995 and 2010 A.D.* Master's thesis in Political Science and International Relations, Faculty of Political Science and Media, University of Algiers 2011.
- <sup>15</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, December 18, 1990, General Assembly Resolution No. 45/158.
- <sup>16</sup> Muhammad Ramadan, *Secret immigration in Algerian society, its dimensions and its relationship to social alienation*, the Mawqaf site for studies and research in society and history, Mustafa Istanbuli University, Camp No. 4/2009, p. 2. Article 545 of Maritime Law No. 98-05, which we will come to later.
- <sup>17</sup> Same as the previous reference to the international convention approved by the General Assembly in

18/06/1990 AD Article 5. Paragraph b. 1- We will come to it later.

<sup>18</sup> Article 175 bis 1, mentioned in Section VIII (3) regarding crimes committed against the laws and regulations related to leaving the national territory, and we will come to it later.

<sup>19</sup> Article 1 of the Algerian Penal Code.

<sup>20</sup> Employing minors in illegal immigration operations to achieve political goals and blackmail the Spanish authorities (more than 8,000 Moroccan minors crossed into the city of Ceuta and Melilla on May 19, 2021). 57166703- <https://www.bbc.com/arabic/world>  
His visit was on 09/24/2021 PM at 23:05

Turkey's pressure on the European Union countries during the internal Syrian war, and its use of the file of Syrian refugees who used Turkish soil as a crossing point towards Europe. 20200304/ <https://www.mc-doualiya.com/articles>  
The site visit took place on 09/24/2021 AD at 23:10.

<sup>21</sup> Official Gazette, No. 36, issued on July 2, 2118.

<sup>22</sup> Ordinance No. 66/211 of July 21, 1966 relating to the status of foreigners in Algeria, amended and supplemented, was the legislation relating to the status of foreigners prior to the promulgation of Law No. 11/08 before it was repealed under Article 51 of it.

<sup>23</sup> See the first paragraph of Article 18 of Law 11/08

<sup>24</sup> See the first paragraph of Article 22 of Law 11/08.

<sup>25</sup> See Article 48 of Law 11/08.

<sup>26</sup> The Algerian legislator regulated deportation and expulsion to the border through Articles 30 and beyond in Chapter Seven of Law No. 11/08

<sup>27</sup> Article 30 of Law 11/08

<sup>28</sup> Article 36 of Law 11/08

<sup>29</sup> Othman Al-Hassan Muhammad Nour, Yasser Awad Al-Karim Al-Mubarak, *Illegal Migration and Organized Crime*, Naif University for Security Sciences, Kingdom of Saudi Arabia, 2008.

<sup>30</sup> Ait AbdelMalek Nadia, *National and International Mechanisms to Combat Illegal Immigration*, Sawt al-Qanun Magazine, Issue Two: October 2014 / Reply D 9938-2358, p. 110.

<sup>31</sup> Medini Ben Shahra, *Economic Reform and Employment Policy The Algerian Experience*, Dar Al-Hamid, Amman, Jordan, 1/2009, p. 167; And Samiha. Younes, *University graduates' attitudes towards the national employment policy, a field study on workers in pre-employment contracts in the city of Biskra*, Master's thesis, Mohamed Khider University, Biskra, Algeria 2006/2007

AD pp. 94-97; Belkacem Hassan Bahloul, *The Policy of Development Planning and Reorganizing Its Course in Algeria, Operation Evolution, Part 2*, University Press, Algeria, 1999, p. 265.

Fatima Zahra Boukabus, *Employment Policy and Youth Orientation Towards Informal Economic Activity*, Master's Thesis, University of Bouira, 2011, pg. 60. Dr. Rit' Abed, Mr. Benhaj Jalloul Yassin, *Performance of the National Economy through Development Programs - The Hamas Program 2010/2014 An example*, an article published in the *Journal of Economics and Human Development*, pg. 96/95.

<http://www.econostrum.info/L-Algerie-s-apprete-investire-2625-mrds> seen on :27/04/2015.

<sup>32</sup> Article 1 of the Penal Code: "There is no penalty, no crime, or security measures without a text."

<sup>33</sup> Algerian Penal Code, Section V, editor 2 (1) on the smuggling of migrants, from Article 303 bis 30 to Article 303 bis 41.

<sup>34</sup> Dr. Ramadan Muhammad, clandestine immigration in Algerian society, its dimensions and its relationship to social alienation, field study, Journal of Human Sciences. pg. 2009/88.

<sup>35</sup> Dr. Ramadan Muhammad, previous reference, p. 90.

<sup>36</sup> Law 98/05, 1998

<sup>37</sup> Ibrahim Amin, Structuring the Police Directorate, An Applied Field Study, No. 15 - Oran, Algeria, 200. p. 18.

### **Bibliography List :**

- 1- The Holy Quran.
- 2- Ibrahim Amin, Structuring the Police Directorate, An Applied Field Study, No. 15 - Oran, Algeria, 200.
- 3- Ibrahim Bin Musa Al-Shatibi, Consents in the Fundamentals of Sharia, Dar Al-Maarifa, Beirut, Part 4.
- 4- Abu Bakr Muhammad bin Abdullah, known as Ibn al-Arabi, Provisions of the Qur'an, Dar al-Kutub al-Ilmiyya, Beirut, 1988.
- 5- Abu Mansour Muhammad bin Ahmed Al-Azhari, language refinement, achieved by Muhammad Abdel-Moneim Al-Khafaji and Omar Faraj Al-Oqdah, Al-Masrya House, Cairo, undated.
- 6- The Official Gazette, Issue 36, issued on July 2, 2018.
- 7- Al-Ragheb Al-Isfahani, Vocabulary in the Strange Qur'an, verified and controlled by Muhammad Sayed Kilani, Dar Al-Maarifa, Beirut, Lebanon.
- 8- Sharif Ali bin Muhammad Al-Jerjani, Definitions, 3rd Edition, Dar Al-Kutub Al-Ilmiyya, Beirut, 1988.
- 9- Al-Fayrouzabadi, Insir Dhul-Tamaiz, Part 5.
- 10-Ait Abdelmalek Nadia, National and International Mechanisms to Combat Illegal Migration, in the voice of the law, second issue: October 2014 / Reply D 9938-2358.
- 11-Belkacem Hassan Bahloul, The Policy of Development Planning and Reorganizing Its Course in Algeria, The Evolution of Employment, Part 2, Diwan of University Publications, Algeria, 1999.
- 12- Khato Faiza, The Security Dimension of Illegal Immigration in the Framework of Euro-Maghreb Relations between 1995 and 2010 AD Master thesis in Political Science and International Relations, Faculty of Political Science and Media, University of Algiers 2011.
- 13-Ramadan Muhammad, clandestine immigration in Algerian society, its dimensions and its relationship to social alienation, a field study in the Humanities Department 2009.
- 14-Saeed Muhammad Ahmad Banaja, The Right to Immigration and the Right to Political Asylum, Manar Al-Islam Magazine, United Arab Emirates, Issue 4/1982.
- 15- Samiha. Younes, University graduates' attitudes towards the national employment policy, a field study on workers in pre-employment contracts in the city of Biskra, Master's thesis, Mohamed Khider University, Biskra, Algeria 2006/2007 AD.



- 16-The tape of Abed, bin Al-Hajj Jalloul Yassin, the performance of the national economy through development programs - the five-year program 2010/2014 as a model, an article published in the Journal of Economics and Human Development.
- 17-Abdullah Suleiman Suleiman, The General Theory of Precautionary Measures, a comparative study, first edition, National Book Foundation, Algeria, 1990.
- 18-Othman Al-Hassan Muhammad Nour, Yasser Awad Al-Karim Al-Mubarak, Illegal Migration and Organized Crime, Naif University for Security Sciences, Kingdom of Saudi Arabia, 2008.
- 19-Ali Sadiq Abu Heif, Public International Law, 17th Edition, Mansha'at al-Maaref, Alexandria 1982 AD, Part 1.
- 20-Gadens, Antwi, Sociology, translated by Dr. Fayez Al-Sabbagh, Beirut, Center for Arab Unity Studies, 2005 AD, first edition.
- 21-Fatima Zahra Boukabus, Employment Policy and Youth Orientation Towards Informal Economic Activity, Master's Thesis, University of Bouira, 2011.
- 22-Muhammad Ramadan, Secret Migration in Algerian Society, Its Dimensions and its Relationship to Social Alienation, Al-Mawqif District for Studies and Research in Society and History, Mustafa Istanbuli University, Camp No. 4.
- 23-Mahmoud Najib Hosni, Lessons in Criminology and Punishment, Arab Renaissance House 1982.
- 24-Madani Bin Shahra, Economic Reform and Employment Policy The Algerian Experience, Dar Al-Hamid, Amman, Jordan, Edition 1/2009.
- 25-The Algerian Penal Code.
- 26-Muhammad bin Makram bin Manzoor, Lisan Al Arab, Dar Sader, Beirut, 1956 AD.
- 27-Mohi Al-Din Muhammad bin Yaqoub Al-Fayrouz Abadi, The Ocean Dictionary, Al-Resala Foundation, investigation by the Heritage Investigation Office at Al-Resala Foundation, 3rd Edition, Al-Resala Foundation, Beirut, 1993.
- 28-Levasseur, (G) Stefani (G) and Jamb Merlin (R), criminology and Penitentiary Science, Dalloz, 4th edition. 1980, p470.
- 29-<http://www.econostrum.info/L-Algeria-s-apprete-investire-2625mrds-> Viewed on: 04/27/2015.