

Customs Reconciliation in Algerian Legislation

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Abstract---Customs crimes are distinguished by their significant particularities, as the Algerian legislator has established specific rules to regulate them. This is primarily due to the serious nature of these crimes, particularly in relation to the interests of the public treasury. This has necessitated the Algerian legislator to create alternative methods to combat such crimes and reduce them significantly, thus protecting the interests of the state and society from the consequences of these crimes, which pose a major threat to countries worldwide. Among the alternative methods proposed by the legislator, moving away from the traditional repressive system that specifies penalties to deter violators of the criminal system, is customs reconciliation. This new and innovative approach aims to reduce and eliminate customs crimes.

Keywords---Customs Crime, Customs Administration, Customs Reconciliation Applicant, Reconciliation Decision, Seized Goods Recovery.

Introduction

The foundation of law is based on mitigating harms that impact the lives of individuals and society (the state). Thus, every legal provision aims to achieve certain benefits and prevent damages, with the legislator striving to avoid any occurrence of these harms in a way that ensures the safety, security, and stability of the state and the individuals living within its territory and belonging to it. Among the harms that have become a major threat to all nations, especially after the dominance of the capitalist system and its unnatural spread, are economic damages caused by economic crimes. These crimes, with varying degrees of severity and legal classifications, weaken the local economy significantly, leaving it vulnerable to underdevelopment and stagnation.

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Therefore, the Algerian legislator has worked to establish a legal framework to prevent such crimes. Some economic crimes have been distinguished by a set of special rules, such as customs crimes, which have a penal system that includes specific characteristics and features that make it entirely different from the penal systems governing other crimes.

One of the approaches introduced is customs reconciliation, which will be discussed in this research. The question that arises is:

To what extent has the Algerian legislator succeeded in curbing the spread of customs crimes through the establishment of the customs reconciliation system?

Chapter 1:

The Conceptual Framework of the Customs Reconciliation System

Customs disputes are a central and significant issue in customs law because customs law outlines the methods for resolving these disputes through the Customs Administration, which is the legal authority entrusted with the power to detect customs violations. Additionally, the Customs Administration refers cases of customs violations to the competent judicial authorities to resolve disputes between the conflicting parties in customs matters. However, the practical reality has compelled national legislators to adopt alternative methods to resolve customs disputes more efficiently and quickly, as judicial authorities take considerable time before issuing rulings and resolving disputes. Moreover, the judicial process often complicates matters due to the procedures followed in resolving disputes related to criminal law. To avoid these challenges, the Algerian legislator has granted the Customs Administration the ability to resolve customs disputes through the customs reconciliation system, without the need to refer cases to the judicial authorities, since reconciliation occurs within the Customs Administration itself.

Thus, it can be said that customs reconciliation has become an alternative method for resolving administrative disputes, and it has proven to be highly effective in the professional field due to the benefits it offers to all parties involved. In this regard, it is noteworthy that the Algerian legislator has established rules for the formation of customs reconciliation committees, the procedures for conducting customs reconciliation, and the list of representatives from the Customs Administration responsible for organizing the reconciliation process. These rules are clearly outlined in the customs law, which defines everything related to customs reconciliation and its consequences. The legislator aims to reduce the pressure on criminal judicial authorities and provide the Customs Administration with an opportunity to resolve customs disputes without involving the judicial authorities.

In this chapter, we will examine the conceptual framework of customs reconciliation before delving into its legal conditions and the consequences of this system, which will be discussed in Chapter 2.

Section 1: The Concept of Customs Reconciliation

Sub-section 1: Definition of Customs Reconciliation

According to Article 495 of the Civil Code, "Reconciliation is a contract by which the parties end a potential dispute, where each party mutually waives part of their right."

From this provision, it can be concluded that the legislator has set three conditions for reconciliation to occur:

1. There must be an existing dispute between the parties.
2. The parties must have the intention to resolve this dispute.
3. The parties must be willing to waive all or part of their rights in order to reach an agreement.

It is important to note that the Algerian legislator requires that the parties involved in reconciliation must be legally capable of managing the rights in dispute. However, Article 461 of the Civil Code prohibits reconciliation in disputes that concern public order. In other words, reconciliation is not permitted in cases of felony, misdemeanor, or violation, because the legislator has prohibited the settlement of criminal cases, meaning that criminal matters cannot be subject to reconciliation except

when related to the civil rights of the parties involved. As for punishment, reconciliation is not allowed because it is a matter of great importance to society as a whole, not just the individual involved.

Nevertheless, the Algerian legislator does not generally prohibit reconciliation in criminal cases. Instead, it allows it through a legal provision that terminates the criminal case. In this context, it is important to distinguish between cases related to public law, in which reconciliation is not allowed for criminal actions, and cases related to economic matters, where reconciliation is possible, provided that there is a clear legal provision for it, as is the case with customs-related crimes.¹

1. Legal Definition

The Algerian legislator defines customs reconciliation as "an agreement through which the Customs Administration waives the prosecution of a customs crime in exchange for the violators' compliance with certain conditions set by the Customs Administration."²

From this definition, it is clear that customs reconciliation differs from civil reconciliation in that the violator in a customs reconciliation is subject to conditions determined by the Customs Administration. Furthermore, the Customs Administration holds a strong position towards violators because it is not obligated to proceed with the reconciliation and has the discretion to accept or reject reconciliation requests.

The Algerian legislator, following the approach of other legislators, has not provided a precise legal qualification for customs reconciliation. Instead, it focuses on the conditions and results of the reconciliation. Thus, the exact legal nature of customs reconciliation remains unclear, whether it is a mere individual administrative decision or a contractual act³.

2. Judicial Definition

The Egyptian Court of Cassation defines customs reconciliation as: "A waiver by the public entity of its right to pursue criminal action in exchange for the payment (or fine) imposed under the customs reconciliation system, and as such, its effect is automatic by law."⁴

The Algerian judiciary's stance on customs reconciliation is clear, considering it as a reason for the expiration of both the criminal and fiscal claims. The Supreme Court has issued several judicial decisions supporting this approach, notably in its rulings on December 20, 1996, and July 27, 1998 (Case Numbers 140314 and 157563). These rulings affirm that the reconciliation process can lead to the termination of criminal proceedings, as well as the tax claim, by virtue of the reconciliation's legal effects⁵.

3. Doctrinal Definition:

Several scholars, both at the national and international levels, have attempted to define customs reconciliation comprehensively. Some of the most notable definitions include:

- **Professor Ahsen Bouski'ia** defines customs reconciliation as "a method aimed at peacefully and amicably resolving a dispute⁶."

- **Professor Abdelhamid El-Shawerbi** views it as "an individual expression of the violator's will regarding customs law, received by the Customs Administration for review to confirm its validity. This expression implies the violator's readiness to relinquish the legal guarantees granted by the legislator.

¹. Fatiha Naar, Customs reconciliation in Algerian law, Management Magazine, Issue 24, p 78

². See Article 2 of Executive Decree No. 19/136 of 29 April 2019 establishing reconciliation committees and determining their composition and functioning, as well as the list of customs administration officials qualified to conduct reconciliation, the limits of their competence and the percentages of partial exemptions, Official Gazette No. 29 of 2019, p. 7.

³. The succession of Manal bin Aisha Abdel Hamid, Customs reconciliation as a mechanism for settling customs dispute, Journal of Law and Political Science, Volume 08, Issue 02, Year 2021, p. 67.5

⁴. Momni Ahmed Al-Sadiq Abdel Qader, Customs reconciliation and its distinction from what is suspected, Journal of Legal and Political Studies, Volume 04, Issue 02, Year 2020, p. 285..

⁵. Jurisprudence in customs disputes, second class, General Directorate of Customs, 1998.

⁶. Ahsan Bousqaia, reconciliation in penal matters in general and in customs in particular, Algeria, Dar Houma for printing and publishing, 2005, p 03.

The approval of the Customs Administration also implies that the state renounces its right to impose punishment, resulting in the extinction of the customs crime⁷."

- **Professor Nabil Loukabboui** defines it as "a consensual contract between two parties—the Customs Administration and the violators—where the Customs Administration agrees to refrain from prosecuting the case and imposing penalties in exchange for the violator paying the fine set by law or relinquishing the confiscated goods ⁸"

Sub- Section Two: Characteristics of Customs Reconciliation

Customs reconciliation is considered an alternative system to criminal proceedings before judicial courts. However, it is an exceptional measure, used only in specific cases, and is excluded in cases involving smuggling crimes. The main characteristics of customs reconciliation include:

1- Customs Reconciliation as a Legal Basis for Transferring Jurisdiction from the Judiciary to the Customs Administration:

The customs legislator found itself compelled to withdraw certain powers from the legislative and judicial authorities and delegate them to the customs administration, considering it the specialized and competent body. This decision stems primarily from the distinctive technical and dynamic characteristics of customs offenses, which are atypical within the traditional criminal field. Consequently, the legislator entrusted the customs administration with the authority to pursue offenders, as it possesses the necessary expertise and proficiency to address such offenses effectively.

Although the Algerian legislator, in reallocating jurisdiction from the legislative and judicial branches, effectively infringed upon the principle of criminal legality, this action was justified by pressing economic circumstances. The inherent complexity and intricacy of customs offenses make it challenging for the public prosecution to fully comprehend and combat such crimes effectively. This difficulty arises from the lack of technical expertise among prosecutors, as well as the extended time required for legal proceedings, which hampers the ability to swiftly curtail customs offenses. In contrast, customs reconciliation offers procedural efficiency, making it a practical and effective tool for addressing these issues—one of its most significant advantages⁹.

2- Customs Reconciliation as a Consensual Contract:

Customs reconciliation is fundamentally based on mutual consent in all its forms. It cannot be initiated without the agreement of both the customs administration and the perpetrator of the customs offense, meaning that reciprocal consent is a prerequisite for customs reconciliation. Judicial intervention is not a requirement for the validity of customs reconciliation, as both parties have the right to either accept or reject the reconciliation. A unilateral expression of willingness to engage in customs reconciliation by one party is insufficient to terminate public prosecution; the approval of both parties is mandatory.

A significant portion of legal scholars views customs reconciliation as a discretionary privilege granted by the administration. It is an option extended to the perpetrator of the customs offense at the administration's discretion, without any legal obligation to do so. The administration retains the right to either accept or reject the reconciliation, and neither party can compel the other to agree to it under any circumstances¹⁰.

3- Customs Reconciliation Involves a Compensation Paid by the Perpetrator of the Customs Offense:

Customs reconciliation requires the offender to pay compensation, either as an acknowledgment of their liability or because they prefer reconciliation over appearing before judicial authorities. The Egyptian Administrative Court has ruled that a reconciliation agreement is a contract of exchange,

⁷ Abdel Hamid Al-Shawarby, *Financial and Commercial Crimes*, Egypt, Dar Al-Shaab Publications, Cairo, 1986, p 47.

⁸ Nabil Loqabwi, *Crimes of cash smuggling between reality and law*, Egypt, Dar Al-Shaab Publications, Cairo, 1993, p 239.

⁹ Kobi Hafidha, *The specificity of the rules applicable to customs disputes of a penal nature in Algerian legislation*, PhD thesis in science, Mouloud Mammeri University, Faculty of Law and Political Science, Tizi Ouzou, 2018, p 478 .

¹⁰ Abdelkrim Lubna, *Criminal Reconciliation in Economic Crimes in Algerian Legislation*, PhD thesis in Law, Larbi Tebessa University, Algeria, Faculty of Law and Political Science, academic year 2018/2019, p. 99.

wherein neither party offers a gratuitous concession to the other. Instead, both parties mutually relinquish part of their claims in exchange for concessions from the other party. Thus, customs reconciliation enables the public treasury to collect specific amounts from offenders. The customs administration must carefully determine the amount of compensation, taking into account the offender's financial resources, prior offenses, and the severity of the violation¹¹.

In addition to the characteristics mentioned earlier, the following features of customs reconciliation can be highlighted:

-Binding Contract for Both Parties:

The offender is obligated to pay compensation in exchange for the customs administration relinquishing its right to pursue judicial action.

-Applicable Before and After Judicial Verdicts:

Customs reconciliation can be finalized either before or after a final judgment is issued by judicial authorities.

Resolution of Customs Disputes Customs reconciliation effectively resolves existing customs disputes, leading to the dismissal of public prosecution. Once ratified, it becomes final and binding, with no possibility of reversal¹².

Section Two: The Legal Nature of Customs Reconciliation

scholars have had significant differences in how they classify customs reconciliation, each with their own opinion forming a distinct legal doctrine. Some consider customs reconciliation to be a civil contract, others see it as a contract of adhesion, and a third group believes it to be merely an administrative contract due to the involvement of the customs administration as a party. There are other opinions¹³, which will be discussed below:

Sub-section One: The Contractual Nature of Customs Reconciliation:

Proponents of this view argue that customs reconciliation is merely a reciprocal contract that is binding on both sides. In this sense, it closely resembles civil reconciliation, as both aim to resolve disputes and avoid legal action. Similarly, customs reconciliation seeks to avoid criminal proceedings and resolve customs violations without involving judicial authorities. This is achieved through mutual concessions from both parties: the customs administration waives its right to file criminal charges, while the violator relinquishes any confiscated goods and agrees to pay compensation in order to avoid punishment by the judicial authorities.

However, this theory has faced significant criticism because civil reconciliation takes place between private parties without any public legal entity representing the state. In contrast, customs reconciliation involves the customs administration, which is a public legal entity using its authority. This difference is particularly notable when the violator fails to fulfill their obligations under the agreement. These criticisms have diminished the value of this view and have shown that this doctrine fails to adequately describe the nature of customs reconciliation¹⁴.

Sub-section Two: Customs Reconciliation as a Legal Procedure:

The second view holds that customs reconciliation is merely a legal procedural act initiated by the accused, as it is the law that determines the basis for customs reconciliation, which primarily involves the payment of compensation.

¹¹ Djilali Abdelhak, The system of reconciliation in criminal matters in Algerian legislation, PhD thesis, Abdelhamid Ibn Badis University of Mostaganem, Faculty of Law and Political Science, academic year 2016-2017, p 23.

¹² Elias Al-Hawari Ahababo - Legal and Economic Consecration of the Reconciliation System in the Customs Article - Journal of Ijtihad for Legal and Economic Studies - Volume 07 - Issue 02 - 2018 - p 105.

¹³ Bin Bou Abdullah Fareed, The Legal Nature of Customs Reconciliation, Journal of Research in Law and Political Science, Vol. 04, No. 02, p. 6768.

¹⁴ Fatiha Naar, Customs Reconciliation in Algerian Law, Management Magazine, No. 24, p. 14..

the defendant has no right to alter the conditions or terms set by the customs administration. Consequently, the defendant must either accept the terms set by the customs administration or reject them, leading to the failure of the customs reconciliation and the continuation of the criminal prosecution in its usual form. Based on the above, customs reconciliation, according to this view, occurs through the defendant's unilateral will. The competent administrative authority has the right to review the request for customs reconciliation and respond by either accepting or rejecting it, depending on the facts of the case and the circumstances related to the defendant. Thus, if the customs administration accepts, the reconciliation becomes a legal act carried out by both parties, with the necessary effects.

Therefore, according to this view, customs reconciliation is a reflection of an individuals' will aimed at ending the criminal case, and it must follow specific conditions as outlined in the applicable customs law. Alternatively, it is an administrative legal procedure aimed at peacefully and amicably resolving customs disputes without resorting to judicial authorities, carried out by administrative committees authorized by law to conduct customs reconciliation.

Supporters of this view have disagreed on how to classify customs reconciliation. Some consider it simply a legal act from one side, while others see it as a legal act sufficient to bring about a legal situation, without needing to focus on the consequences. A third group considers it a legal act involving both sides. If we accept, for the sake of argument, the validity of this view, the third opinion seems to be the most accurate in this matter¹⁵.

Sub-section Three: Customs Reconciliation as a Contract of Adhesion:

The third perspective holds that, although customs reconciliation gives the impression of equal concessions between the parties, it, in reality, bears the characteristics of an adhesion contract or closely resembles it in several aspects, which can be highlighted as follows:

1. Exceptional Powers of the Customs Administration:

The customs administration possesses exceptional powers as the competent public authority representing the state in customs matters. This position is particularly significant when compared to the significantly weaker position of the offender. The latter must either accept all the conditions set by the customs administration or reject them, thereby exposing themselves to criminal prosecution by judicial authorities representing the state.

2. Customs Reconciliation as a Non-Negotiable Grant:

Customs reconciliation is essentially a grant provided by the competent administrative authority under non-negotiable conditions. The offender, being the weaker party, requests the reconciliation. There is a stark difference between the authority that grants customs reconciliation and imposes its terms, and the weaker party that seeks the reconciliation. Upon the administration's approval, the offender is bound to accept all the pre-determined conditions.

3. The Source of Customs Reconciliation:

Customs reconciliation arises from the offender's violation of the law, which explains the absence of judicial intervention to protect the weaker party in this context. Unlike adhesion contracts, where the judiciary intervenes to protect the weaker party, in customs reconciliation, the judiciary serves as a deterrent by threatening the offender with criminal prosecution if they fail to comply with the terms set by the administrative authority.

However, the party requesting customs reconciliation can always refuse the reconciliation process if they believe their position will be better defended before judicial authorities. This contrasts with adhesion contracts, where the weaker party has no right to contest the terms, necessitating legal and

¹⁵ Abdelkrim Lubna, Criminal reconciliation in economic crimes in Algerian legislation, doctoral thesis for M. Dvé Law, Larbi Tebessa University, Faculty of Law and Political Science, academic year 2018-2019, p 110111.

judicial intervention to protect them. This distinction sets customs reconciliation apart from standard adhesion contracts¹⁶.

Sub-section Four: Customs Reconciliation as a Penal Contract:

Advocates of this opinion argue that customs reconciliation is a punitive and compensatory contract arising as a reaction to a crime. Therefore, it cannot be considered a civil or administrative contract; instead, it should be classified as a punitive contract. This classification is due to its connection to public order, as it results in the termination of public prosecution, which represents the subject of public rights. Furthermore, it closely resembles standard criminal reconciliation, which is concluded between the accused and the victim. Thus, it should be regarded as a mere punitive reconciliation or a punitive contract between the customs administration and the offender, despite the customs administration acting as a public administrative entity representing the authority of the state. This classification explains customs reconciliation as a response to the offender's crime.

While this interpretation provides a largely accurate legal characterization of customs reconciliation as a punitive contract akin to criminal reconciliation, we disagree with equating the two forms due to several key distinctions between criminal reconciliation and customs reconciliation, including:

-Procedural Differences:

Criminal reconciliation is conducted in accordance with legal provisions and initiated by an offer from the public prosecutor. This procedural framework does not apply to customs reconciliation, which fundamentally differs in this respect.

-Determination of Compensation:

The compensation amount for criminal reconciliation is predetermined by law, leaving no room for negotiation between the parties. In contrast, the customs administration determines the appropriate compensation for customs reconciliation, reflecting the administration's direct involvement.

-Effects of Reconciliation:

The effects of criminal reconciliation are established by procedural law, giving them legal force. This differs from customs reconciliation, where such effects are determined by the customs administration's agreements¹⁷.

In conclusion, after considering the various scholarly opinions on the legal nature of customs reconciliation, it can be concluded that while these perspectives are valid in certain respects, they are also subject to criticism. This leads to the determination that the customs reconciliation system is a hybrid framework that cannot be fully classified under a single legal category. Its unique nature arises from the distinctive circumstances and characteristics of customs matters, which necessitate a system that reflects the particularities of administrative disputes. This conclusion helps resolve the fundamental differences and disagreements surrounding the legal characterization of customs reconciliation.

Chapter Two: The Legal System of Customs Reconciliation

The system of customs reconciliation is considered one of the most important alternative systems that can be resorted to instead of pursuing criminal litigation, as it brings substantial financial benefits that compensate for the damages incurred by the state due to customs crimes. The customs reconciliation system is a discretionary legal process, not mandatory. It is an exceptional procedure that can be invoked in specific, predetermined circumstances as an alternative to criminal proceedings. The general principle in combating customs crimes, however, is punishment, as outlined by the law and applied after initiating criminal proceedings by the public prosecution, which is responsible for taking the necessary legal steps.

It is important to note that the Algerian legislator has considered the customs reconciliation system as one of the causes for the termination of criminal proceedings, in accordance with Islamic principles that

¹⁶ Kobi Hafiza, The specificity of the rules applicable to customs disputes of a penal nature in Algerian legislation, PhD thesis in science, Mouloud Mammeri Tizi Ouzou University, Faculty of Law and Political Science, 2018, p. 488.

¹⁷ Djilali Abdelhak, The System of Reconciliation in Criminal Matters in Algerian Legislation, PhD thesis in law, Abdelhamid Ibn Badis University of Mostaganem, Faculty of Law and Political Science, 2016/2017, p 352/35

emphasize reconciliation as a preferred and prioritized method in deterring crimes and minimizing them as much as possible. This system is subject to a series of legal procedures and conditions, as stipulated in the rules governing criminal reconciliation.

While the system of criminal reconciliation is a critical issue for legal professionals and students at various levels, the consequences of this reconciliation are, in fact, the most important subject when studying the customs reconciliation system. This is because these consequences determine the position of each party as a result of the reconciliation, clarify the legal status of each party in relation to the reconciliation, and, most importantly, outline the outcomes of customs reconciliation. This ensures that each party has the right to appeal reconciliation decisions if they are deemed unjust or unfair.

Therefore, we will attempt to address all the effects resulting from the customs reconciliation system for both parties, viewing the reconciliation as a procedural mechanism used by the disputing parties—the customs administration and the violators of the customs penal code—and discuss the various outcomes that arise from customs reconciliation, including the termination of criminal proceedings and the establishment of new rights resulting from the conclusion of the reconciliation. In this context, each party waives some of its rights in favor of the other, allowing the reconciliation to be concluded and its effects to take place.

Section One: Conditions for Customs Settlement Agreement:

Customs law requires a series of conditions for the validity of the customs settlement agreement. Some of these conditions relate to the subject matter of the settlement, which are referred to as substantive conditions, while others pertain to the procedures followed before the judiciary, which are called procedural or formal conditions¹⁸. We will attempt to elaborate and study these aspects as follows:

Sub-section One: Substantive Conditions.

Based on the provisions of Article 256, it can be said that all crimes are subject to a customs settlement, except for the exceptions mentioned in the third paragraph of the same article, which concern violations related to prohibited goods in import and export operations, as defined in Article 21 of the Customs Law¹⁹.

However, after the issuance of Ordinance 06/05, customs settlements were prohibited in cases related to smuggling, as per the text of Article 21 of the aforementioned law²⁰.

It is worth mentioning here that Article 21 of the Customs Law does not specify the goods and does not refer to a text that defines the goods that are prohibited for export and import, unlike the previous situation before the amendment, where it referred to an executive decree that would specify the goods²¹.

The Algerian legislator also reduced the crimes eligible for a customs settlement by excluding double crimes that have both a criminal and customs nature. Additionally, it excluded the export of all food products, cereals, their derivatives, as well as all medicines and medical products. It also excluded the export of fuel, all its derivatives, and commercial fertilizers imported or exported through illegal methods, as well as any goods containing counterfeit origin marks or originating from prohibited countries. The legislator further prohibited all prohibited legislations, publications, and drawings due to their violation of public morals. Moreover, smuggling operations involving firearms or participation by

¹⁸ Ali Ahmed Saleh, Customs Reconciliation in Algerian Law, *Annals of the University of Algiers* 1, Part IV, Issue 33, December 2019, p. 182..

¹⁹ . Ben Dadouche Sid Ahmed, Customs reconciliation is a right for the violator or a privilege for the customs administration, *Algerian Journal of Maritime Law and Transport*, Fifth Issue, p. 30.2

²⁰ Ordinance No. 06/05 of 23 August 2005 on combating smuggling, *Official Gazette* No. 59 of 2005.

²¹ . Abdali Habiba Jabaili Hamza, Customs reconciliation as an alternative to judicial follow-up, *Journal of Social Sciences and Humanities*, Issue Eight, p. 344.

customs officers are also excluded from the customs settlement. All these crimes mentioned earlier are explicitly excluded from the possibility of a customs settlement by clear legal text²².

The prohibition of customs settlement in smuggling crimes, according to Ordinance 06/05, even when the smuggling involves non-prohibited goods, results in depriving the state's treasury of the financial resources it could have obtained through the customs settlement process. This also constitutes a clear violation of the provisions of Article 6 of the Penal Procedures Law and Article 256 of the Customs Law²³.

As for the goods mentioned previously, which the legislator has prohibited for import and export and excluded from the customs settlement application, it should be noted here that this prohibition is partial, meaning that if these goods are accompanied by a legal authorization, they may be imported according to this authorization, and the prohibition will be lifted in accordance with the provisions of the Customs Law.

Sub-section Two: Formal Conditions.

We will now address the procedural conditions required for the establishment of a customs settlement:

1. Request for Customs Settlement:

There is a significant difference in determining who should request the settlement in economic crimes. However, there is agreement that the violator in customs and exchange crimes is the one who must submit the request to the competent administrative authorities²⁴.

It is also important to note that the request does not necessarily have to come from the offender themselves; it may also come from the accomplice in the fraud, the beneficiary, the declarant, the customs agent, the proxy, or the guarantor.

The request submitted in this case is considered an offer made by the violator, and it is governed by the general rules of contract theory. However, it differs in that it is subject to a set of formalities required by customs law. Among these is the requirement that the request be made in writing. Although the customs law does not specify a particular form for the writing, the executive decree concerning the conditions for establishing settlement committees considers writing as an essential condition that cannot be deviated from. This can be implicitly understood from the existence of pre-printed forms for this purpose, where the offender simply fills out these forms. Regarding the timing of submitting the request, the customs law allows the request to be made before initiating the public lawsuit or even after a final judgment is issued. It also permits requesting the settlement even after the penalty has been executed²⁵.

2. Approval by the Customs Administration:

Although customs law requires the submission of a request from the person charged with a customs violation, this request is not binding on the administration. The administration may accept or reject it without being obliged to respond. If the customs administration remains silent, it is understood as a rejection of the request. On the other hand, its acceptance is considered a decision to proceed with the settlement, which involves preparing the file and presenting it to the competent authorities specified by law. In this regard, the customs legislator distinguishes between cases that require the opinion of the

²² Rabih Zahia, The substantive and procedural specificity of customs reconciliation and its effects according to the latest amendments in Algerian customs legislation, *Journal of Ijtihad for Legal and Economic Studies*, Volume 12, Issue 03, Year 2023, p.184

²³ Belgrave Samia, The legal system of customs reconciliation and the problem of balance between the parties to the dispute, *Al-Nibras Journal for Legal Studies*, Volume II, Issue Two, March 2017, p. 171.

²⁴ Hakim Crimea, The specificity of economic crime in Algerian law, PhD thesis in law, Abderrahmane Mira University of Bejaia, Faculty of Law and Political Science, year 2020/2021, p 319.

²⁵ Zabat Fawzia, The specificity of reconciliation in customs criminal disputes as an alternative measure to judicial settlement, *Journal of the Research Professor for Legal and Political Studies*, Volume One, Issue Eight, December 2017, p 209210.

national committee or local settlement committees and cases where these committees are not necessary. This distinction is based on the severity of the violation and the number of duties evaded²⁶.

Section Two: Consequences of the Customs Settlement.

Sub-section One:

The Binding Nature of the Customs Settlement

Once the customs settlement is concluded, the individual who settles is obligated to pay the specified compensation amount. If they refuse to pay, the administration may resort to enforcement actions or request cancellation of the settlement²⁷.

The amount for the customs settlement, which the violator is required to pay within the specified timeframes, is determined through the settlement decision, without exceeding the maximum customs fine stipulated in the Customs Law²⁸.

The position of the Algerian legislator is clear and explicit in considering the customs settlement as one of the causes that ends criminal prosecution, as it leads to the expiration of the public lawsuit because the parties have reconciled. There is no longer a need to resort to the judiciary. In this case, the state benefits from the compensations and financial amounts obtained through the customs settlement, while the applicant benefits by avoiding legal prosecution and putting an end to potential court rulings against them had the customs settlement not taken place. Thus, the intended benefit for the person settling is that judicial actions are halted by the settlement, with the direct effect being the expiration of the public lawsuit²⁹.

Moreover, the applicant for the settlement may retrieve from the customs administration any seized goods after paying the amount specified in the settlement decision, which serves as a customs fine against the violator of the Customs Law³⁰.

If a final judgment is issued in the public lawsuit, the legislator allows for a customs settlement, but its effect, after the judicial decision, relates only to the tax lawsuit and does not affect the criminal penalties such as imprisonment or fines imposed by the judiciary.

Sub-section Two: Effects of the Customs Settlement on Third Parties:

The principle of customs reconciliation is that its effects are limited to the party requesting it, in accordance with the provisions of Article 256, Paragraph 2, of the Customs Code. Thus, it can be said that customs reconciliation cannot cause harm to others, but it can confer rights upon third parties in accordance with the general provisions of the Civil Code, particularly Article 113 of the Civil Code.

Moreover, affected parties cannot be compelled to bear the consequences of customs reconciliation. Any harmed party has the right to resort to the judiciary to obtain fair compensation for the damage suffered, without the offender being able to invoke the argument of having undertaken customs reconciliation.

This is because customs reconciliation does not nullify the rights of the injured party nor obligate them to refrain from seeking judicial remedies for compensation. Consequently, it cannot be considered as evidence against the injured party under any circumstances³¹.

²⁶. Miloud Filali, The Legal System of Reconciliation in Algerian Customs Legislation, Journal of Human Rights Studies, Volume 09, Issue 01, June 2022, p 227.

²⁷ Ben Yacoub Hanan, New Trends in Customs Disputes, Master's Thesis in Criminal Law, University of Algiers, Faculty of Law and Political Science, Academic Year 2003-2004, p. 117

²⁸The key to the feast, customs crimes in Algerian law, graduation thesis for obtaining a doctorate, Abu Bakr Belkaid University of Tlemcen, Faculty of Law and Political Science, academic year 20112012, p 329.

²⁹. Hassiba Rahmani, On the issue of the effects of customs reconciliation on both parties during the judicial stage, Journal of Comparative Legal Studies, Volume 06, Issue 02, Year 2020, p.940

³⁰. Ben Dadouche Sayed Ahmed, Customs reconciliation is a right for the violator or a privilege for the customs administration, Algerian Journal of Maritime Law and Transport, Fifth Issue, p 30. 5

³¹ Miloud Filali, The Legal System of Reconciliation in Algerian Customs Legislation, Journal of Human Rights Studies, Volume 09, Issue 01, June 2022, p 232233..

Conclusion

The customs settlement system is a new and modern approach in the fight against crimes that are considered highly dangerous due to their impact on the state's economic system and their direct influence on the national market and the public treasury's interests. Therefore, the Algerian legislator has sought alternative solutions to reduce these crimes through innovative and new methods, different from the traditional approach of imposing punishment on those who commit violations and violate the customs penal system. The following are some of the findings reached after studying and researching this topic:

1. The customs settlement system is an administrative, amicable system that helps reduce the burden of overcrowded courts and, furthermore, significantly saves time and costs.
2. The Algerian legislator must explicitly allow the customs settlement in criminal matters. Therefore, carrying out the customs settlement without a clear legal provision is considered invalid and not enforceable.
3. Adopting the customs settlement as an alternative to judicial prosecution reduces the spread of customs crimes and contributes to minimizing these crimes. This is because it imposes obligations on the violator to pay compensation and fines determined by the customs administration based on the circumstances of the case and the offender's previous history.
4. There is a difference in the consequences of the customs settlement before and after the issuance of a judicial judgment. When the settlement is conducted before a judicial decision, it leads to the expiration of both the public lawsuit and the tax lawsuit. However, if the settlement occurs after a judicial judgment has been issued, it only leads to the expiration of the tax lawsuit, without affecting the criminal penalties, including imprisonment, fines, and judicial costs imposed by the courts.

Recommendations:

1. It is necessary to amend the administrative structure of the bodies responsible for carrying out the customs settlement, as they are composed of customs officials, which means there is a complete lack of independence since the customs administration is both a party to the dispute and the authority issuing the settlement decision.
2. Restrict the types of customs violations for which the legislator allows the settlement by prohibiting the customs settlement in violations that involve the smuggling of materials already prohibited by law, such as drugs, weapons, etc. This would increase the benefits to the public treasury from the compensations and financial fines incurred by violators after the customs settlement.
3. Grant the national judiciary the authority to monitor the decisions issued by the settlement committees and assess the proportionality between the customs violation and the compensation determined by these committees. This ensures greater fairness and transparency and guarantees the rights of the violator in cases of abuse of power by the customs administration.
4. There is a need to amend the Customs Law to address its shortcomings, particularly by revising the legal provisions that define the consequences of the customs settlement before and after the issuance of judicial judgments.

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