

## The administrative corruption: from the causes of spread to the mechanism of prevention and combatting

الفساد الإداري: من أسباب تفشيه الى آليات الوقاية منه ومكافحته

Benkaidali mohamed lamine

Faculty of Law and Political sciences- Boumerdès University  
a.benkaid@univ-boumerdes.dz

Date of submission:19/09/2023 /Date of final acceptance:24/03/2024 /Date of publication :mars 2024

### Abstract:

The administrative corruption is a serious phenomenon that affected various sectors and fields, and led to negative repercussions on the individuals and the state with its institutions. In this line, the administrative corruption is considered a criminal act. Therefore, it is necessary to move and think about how to stop its creeping and find solutions for prevention and combatting, in accordance with legal mechanisms that determine the measures and the institutions.

**Keywords:** corruption; combatting corruption; effects of corruption; mechanisms of combatting corruption; values and ethics.

ملخص:

يعد الفساد ظاهرة مست مختلفة المجالات والقطاعات، اين ترتب عنه اثار سلبية سواء على الفرد او الدولة ومؤسساتها بالرغم من انها من بين الأسباب التي ساعدت على تفشيه الى حد وصوله الى مستوى تكيفه ضمن الأفعال المجرمة، ما أدى الى التحرك و التفكير في ايقاف زحفه وايجاد الحلول للوقاية منه ومكافحته وفقا لآليات محددة قانونا من حيث الإجراءات أو من حيث المؤسسات الساهرة على ذلك.

الكلمات المفتاحية: الفساد - مكافحة الفساد - أثار الفساد - آليات مكافحة الفساد - القيم والأخلاق

Auteur correspondant : benkaidali mohamed lamine

## **Introduction:**

The economic and administrative environment has helped the spread and growth of corruption significantly as a result of inadequate foresight studies and failure to minimize the causes of its spread. The area in which corruption thrives and forms the optimal environment is the local communities in its various degrees, represented by the municipality as the first degree and the wilaya as an extension of the state authorities at the local level. Because Administrative corruption is a three-dimensional political, economic and social phenomenon that has spread at an accelerated pace throughout the world, with varying degrees from one country to another, and as a result, its reduction varies according to the degree of its seriousness on the one hand, and the extent to which it is linked to the means of limiting all that is unethical on the other hand.

Thus, the methods of combatting this corruption differ according to its degree of severity. Based on what was said, and because corruption is an international phenomenon, it was treated with a high exactitude regarding the implications on the local development.

Algeria witnesses the spread of the administrative corruption that it is a world phenomenon with negative consequences, mainly on the emerging states that lack a clear strategy against its implications on the local level, on the state's development, and the general performance.

In this context, the issue of the administrative corruption is very important; mainly that it is linked to valorizing the properties of the local communities and their rational use that leads to economic and social benefits.

Based on the said, we raise the following problematic: what are the consequences of the administrative corruption and how can we combat it?

To answer this, we divided the study into two chapters. The 1<sup>st</sup> revolves around the general frame of the administrative corruption while the 2<sup>nd</sup> revolves around its consequences.

## **Chapter I: The General frame of the administrative corruption**

It is necessary to shed light on the administrative corruption, as in issue that raises social and legal questions and represents a functional deviation. Thus, we shall focus on its concept and discuss its characteristics and consequences.

### **Section I: The concept and characteristics of the administrative corruption**

#### **a- Definition of the concept:**

There are various definitions for this issue that has negative consequences on the society and various sectors. Many jurists defined it as any violation, with bad will, of the laws and legislations, and neglect of the good established social norms and values<sup>1</sup>.

In addition, it is defined as ethical deviation by some officials through disrespecting the ethical values of the society. Besides<sup>2</sup>, the American Encyclopedia for the Social Sciences defines corruption as the use of the public funds to achieve personal gains<sup>3</sup>.

We deduce that these definitions focus on the ethical aspect. Therefore, the definition of the administrative corruption depends on the social and ethical nature, as it affects the society and violates the established norms and values.

On the other hand, it is related to the job and is defined as any activities inside the governmental administrative organizations that lead to a deviation from the official objectives to personal objectives<sup>4</sup>, either continuously or discontinuously, individually or collectively<sup>5</sup>. Thus, it is a negative behavior by administration officials.

Despite there are several definitions, we can summarize them saying that it is the set of acts that violate the social established traditions and values. Legally speaking, it is a set of acts against the laws that aim at affecting the good functioning of the public administration and its activities in order to get direct or indirect material benefits<sup>6</sup>.

Moreover, the International Transparency Organization defines it as all the acts by the public officials that aims at achieving private aims<sup>7</sup>. On the other hand, the World Bank sees that it

is related to the job and its practice in an illegal manner to achieve personal gains, such as getting bribe to facilitate a contract or a procedure, or mediating in return for illegal gains<sup>8</sup>.

Furthermore, it is defined as the misuse of the public job for personal gains through unofficial transactions and nepotism to take advantage of the public property, and through bribes in return for accelerating the transactions by the public officials<sup>9</sup>.

As for the Algerian law, it discusses the administrative corruption in Law 06-01<sup>10</sup> that did not in fact give a comprehensive definition, as it just gave its forms. In this line, Article 02 identifies the forms of the administrative corruption as bribing the national or foreign public officials or getting privileges in the public transactions<sup>11</sup>.

#### **b- Characteristics of the administrative corruption:**

The various definitions of the phenomenon show that its characteristics are as follows:

- It is a form of misusing the public funds and properties of the people. This may lead many citizens to file reports even if no harm is done to them.
- It is characterized with prioritizing the personal benefit to the public, mainly through misusing the job and the public property. This is a reversal of the general rule of prioritizing the public interest over the private interest that we see as benefiting everyone on the one hand, and adopting the rule of putting the right man in the right place on the other.<sup>12</sup>
- The officials have large prerogatives and do not respect the good governance and their responsibilities who is supposed to set an example as a responsible duty bearer.
- There is secrecy in the administrative corruption to achieve negative objectives.
- It is a social phenomenon that affected many aspects with the help of many parts in an infinite circle. In other words, corruption is the result of a set of behaviors, customs and traditions that are accepted in a society, which affects it negatively and considers it to be an unfit society. This leads to a lack of professional ethics among public officials, who are considered to be employees who are appointed to a permanent and official public position<sup>13</sup>.
- It leads to administrative retardedness and absence of motivation in providing the services as officials misuse time and do not perform their duties as necessary.
- It spreads rapidly as it is related to the authority and misuse of power in an illegal frame. Thus, the officials are in a position of strength that helps exercise influence to achieve their goals<sup>14</sup>. This is the direct cause that can be considered as one of the reasons for the spread of the phenomenon in a society in general and in an administration in particular, through the misuse of a public function.<sup>15</sup>

Thus, the administrative corruption is an illegal behavior based on the misuse of the authority by a public official for his personal interest rather than the collective.

#### **Section II: The main elements that help the spread of the administrative corruption**

Prioritizing the personal benefit when practicing the job at any institution makes its adherents part of the corruption<sup>16</sup>. In this regard, the spread of corruption has many causes and factors that make it an illegal act that violates the social values and ethics.

To identify the causes, we must point that they have political, economic, social, and administrative dimensions that affect the societies<sup>17</sup>.

Moreover, the administrative corruption is the offshoot of the inability of the authority to limit the influence of the decision makers, who seek the personal interests, on the rule<sup>18</sup>.

#### **a- The political causes:**

It is clear that the political causes are the 1<sup>st</sup> point of the political corruption of the decision makers who have direct influence on taking some illegal decisions. This effect gets worse in the political life because of a functional relation and trust between the institutions and the citizen<sup>19</sup>.

Moreover, the other political causes include the political instability that leads to the instability in the institutions, the non-application of laws, monocracy<sup>20</sup>, and the absence of the will

to fight corruption<sup>21</sup>. We attribute this situation to the lack of interest shown by political leaders in the fight against corruption as an ethical deviation on the part of civil servants.<sup>22</sup>

**b- The economic causes:**

The economic developments and transformations in the societies contributed to the radical change of the individuals' needs. Thus, the environment of corruption emerged, mainly the administrative, to guarantee a good living standard that covers the life needs.

In this vein, bribe and abuse of power emerged to achieve personal interest. This act was the indicator of the widespread of corruption inside the state institutions, if not the state per se, that are weak and unable to deter such unethical practice that go against the social norms.

In addition, with the shift from the rent-based economy into the free market and the attraction of foreign investors, the phenomenon spread amid the economic sector because some officials look for illegal privileges<sup>23</sup>.

Besides, the low wages of the public officials do not satisfy their needs<sup>24</sup> and, thus, make them resort to such criminal acts. However, these acts may even be committed by high official who are well-paid; thus, they contribute to the financial and administrative corruption<sup>25</sup>.

**c- The social causes:**

The individuals must respect the values and ethics that raise up the society through the good practices and education. In this line, the religion and law incite for the positive behavior in the institutions and the society to avoid the administrative corruption and decrease the corrupt inclinations of the individuals.

In return, the causes of the administrative corruption include the gaps resulting from the unmerited promotions to higher positions that put unqualified and dishonest people in positions where they directly exercise corruption<sup>26</sup>.

Hence, we can say that the social causes of the administrative corruption come from the gap between the civilizational values and the official work bases that leads to the violation of the rules<sup>27</sup>.

**d- The administrative causes:**

The premise that there are administrative causes for corruption is based on the fact that the administration is the suitable environment for the spread of corruption. This environment makes the human resource take advantage of his position and disrespect the work ethics that must be respected by competent and honest employees who had been appointed far from the nepotism. Hence, each official must not abuse his position to exercise corruption such as getting bribes, relying on nepotism, administrative looseness, money laundering, etc<sup>28</sup>.

What makes administrative corruption more prevalent in different societies is the phenomenon of bureaucracy decimating the administration

**Chapter II: The implications of the administrative corruption and mechanisms of combatting it**

The administrative corruption has economic implications that must be shed light on and fought to stop, or reduce, them.

**Section I: The negative effects of the administrative corruption**

Based on the conceptual approaches of the administrative corruption and their characteristics that we discussed, we cannot deny the negative consequences on the economic side that can be stated as follows:

- The weakness of the relation between the citizen and the state: The administrative corruption destroys the trust between the citizen and the state that guarantees the credibility<sup>29</sup>. This lack of trust increased the administrative corruption and the disrespect of ethics and values.
- The decline of economy and hindering the economic growth: Despite that the administrative corruption implies negative behaviors related to the performance of a high position job, it affects the economy in general, and the economic growth in particular. Since the corrupt behavior is not based on the social ethics and values, it causes direct economic effects that manifest in<sup>30</sup>:

- The absence of the competitive environment that attracts the national and foreign capitals because the investors do not trust the state<sup>31</sup>.
- The decline of the national production and the increase of the services costs, though they are not quality services.
- The immigration of the human qualifications to the foreign companies and the states that motivate the personal creativity.
- The absence of the regime's legitimacy and instability in all the fields due to the absence of the human competencies that can limit corruption.

In this context, we must point that the achievement of the political, economic, and social stability and limiting corruption require raising awareness about its negatives. Besides, it is necessary to valorize the post-monitoring of the functional performance<sup>32</sup> and arrest any official who misuses his position to achieve his interests on the detriment of the public interest that guarantees the good relation between the citizens and the administration<sup>33</sup>.

Thus, the administrative corruption negatively affects the national and local administrative management as it hinders the task of the local communities that aim at improving the services and meeting the needs of the citizens.

## **Section II: The legal mechanisms for combatting the administrative corruption**

The various causes and negative consequences of the administrative corruption require a strategy or policy that eradicates this phenomenon. Therefore, the domestic and international laws adopted the penal and administrative prevention mechanisms first, and the combatting mechanisms second. Besides, they enacted special laws and established special institutions.

In this regard, the Algerian legislator adopted mechanisms against corruption in Law 06-01<sup>34</sup> on the prevention and combatting of corruption. It supervises this phenomenon through preventive measures, identifying the institutional frame for preventing corruption, and adding the penal and deterrent nature against the criminal acts that have a special nature.

The dissuasive and penal aspect is represented by the provisions of Chapter IV of Ordinance 06-01, which includes the incrimination and penalties for corruption-related offences, which may be custodial sentences ranging from 2 to 10 years' imprisonment and pecuniary penalties ranging from a fine of 200,000 to 1,000,000 Algerian dinars if the offence is related to corruption:

- Bribery of civil servants
- Unjustified privileges in the field of public procurement
- Misappropriation or unlawful use of assets by a public official
- Bribery
- Influence peddling
- Bribery of foreign public officials and officials of public international organizations
- Abuse of office
- Secret financing of political parties
- Illicit enrichment
- Illegal acquisition of interests
- Corruption in public contracts is punishable by a prison sentence of 10 to 20 years and a fine of 1,000,000 to 2,000,000 Algerian dinars.
- Illegal exemptions and allowances are punishable by between 05 and 10 years' imprisonment and a fine of between 500,000 and 1,000,000 Algerian dinars.
  - Penalties ranging from 06 months to 2 years and a fine of 50,000 to 200,000 Algerian dinars for :
    - Gifts
    - Conflict of interest

- Penalties ranging from 6 months to 5 years and a fine of 50,000 to 500,000 Algerian dinars.
  - Corruption in the private sector
  - False declaration of assets
  - Misappropriation of assets in the private sector
  - obstruction of justice
  - Protection of witnesses, experts, whistleblowers and victims
  - failure to report offences
  - wrongful denunciation

On the other hand, the international organizations handled the issue of administrative corruption, as it is a cross border issue. In this line, the UN issued a convention against corruption that binds its members to establish local mechanisms against the administrative corruption<sup>35</sup> at any phase.

- **International anti-corruption mechanisms<sup>36</sup>**

As corruption has an international dimension due to its effects, many countries have combined their efforts at international level to combat this phenomenon, which has become a political, economic and even social threat. This has led the countries of the world to develop a strategy to combat it and minimize its effects, as it has become a threat to international relations.

In the same context, the countries of the world have taken the initiative of adopting legislative mechanisms in the form of international conventions based at international and regional level, in particular:

**Inter-American Convention**

This is the first convention devoted to the fight against corruption. It was adopted on 29-03-1996 in Caracas, and considers corruption to be a phenomenon that must be tackled at least at regional level with a set of substantive and procedural measures<sup>37</sup> and procedures necessary to combat it.

It should be noted that this convention is one of the measures adopted by countries to strengthen international cooperation in order to combat and limit corruption, which can take the form of bribery, abuse of public office, crimes of rapid enrichment<sup>38</sup> and other activities likely to have negative effects on society.

**European conventions**

The European Union initiated the fight against corruption by adopting the Strasbourg Convention in Decision 97-27 at its meeting on 10 and 11 October 1997. The Convention covers all preventive measures against corruption, raising public awareness of its seriousness, punishing the perpetrators of corruption offences and encouraging international cooperation to combat these negative phenomena.

Three other conventions have also been adopted, mainly aimed at combating corruption:

- The Criminal Law Convention on Corruption of 27-01-1999, which entered into force on 07-01-2002, extending the application of preventive measures to the private sector.
- The Security Convention on Corruption of 04-11-2003, which incorporated rules on civil law, the possibility of compensation for damage resulting from corruption and the protection of whistleblowers<sup>39</sup>.

**African Union Convention**

This is the convention adopted by Africa through the contents of the Constitutive Act of the African Union to emphasize the principles of good governance, the rule of law and participatory democracy<sup>40</sup>.

The Convention was adopted on 11-07-2003, in support of the Declaration adopted at the Lusaka session in 2001 and endorsed by the Durban Conference in 2002, noting that the Convention was ratified by Algeria in 2006<sup>41</sup>.

### **Arab Convention against Corruption**

This convention aims to strengthen preventive measures against corruption and the involvement of civil society in limiting and combating corruption.

It was concluded on 21-12-2010 in Cairo, where its provisions include measures to enforce regional cooperation in the fight against corruption and encourage participating countries to include its principles in their national legislation aimed at combating and limiting corruption.

**The 2003 United Nations Convention** against Corruption, adopted by the United Nations body on 31-10-2003, in which countries agreed to establish measures to put an end to corruption by means of a strategy that is periodically evaluated at conferences between the States Parties in order to harmonize procedures and measures according to the data relating to the fight against this phenomenon.

In short, the international mechanisms for preventing corruption aimed to involve civil society in monitoring the phenomenon, based on the principles of participatory democracy and transparency<sup>42</sup>.

Thus, Law 06-01 provided for the establishment of the National Organization for Preventing and Combatting Corruption<sup>43</sup> that has amoral personality that grants it the financial independence.

In terms of the institutional framework, the provisions of Article 17 of Law 06 01 provided for the creation of a national authority for preventing and combating corruption, classified in the category of independent administrative authorities, which in turn has legal personality and financial independence like the other independent administrative authorities<sup>44</sup>.

This same authority was enshrined in the provisions of the 1996 revision of the Constitution, then in the provisions of the 2020 revision of the Constitution in Title IV devoted to control institutions and the conformity of legislative and regulatory work with the Constitution, to be replaced by the High Authority for Transparency, Prevention and the Fight against Corruption.<sup>45</sup>

Law 22-08, which defines the organization, composition and powers of the aforementioned High Authority, established the legal framework of the High Authority, the provisions of which set out the terms and conditions for the exercise of its functions, which mainly revolve around the monitoring and detection of acts of corruption or the conduct of information and awareness-raising operations to reduce the spread of corruption in various fields, It exercises its control either by collecting and exploiting information relating to corruption and reducing its effects, or by checking the validity of asset declarations required by law.

In order to do this, the High Authority relies directly on the mechanism of investigation and enquiry and on the involvement of all civil society players<sup>46</sup>, as soon as the investigation procedures concern the identification of manifestations of wealth, the investigation of this enrichment or of anything related to manifestations of corruption and proof of the violation of the rules of integrity and transparency, either on its own initiative or following information or a referral.

The High Authority for Transparency, Prevention and the Fight against Corruption also has the right to fulfill the advisory role assigned to it, in particular with regard to legislation or the ongoing training of its staff responsible for implementing its strategy.

Moreover, the Presidential Decree 06-413<sup>47</sup>, amended later by the Presidential Decree 12-64<sup>48</sup>, determined the members of the Organization.

In this line, its Article 05 provides that the Organization includes 06 members appointed for renewable 05 years. In preventing and combatting corruption<sup>49</sup>:

- It suggests a comprehensive policy to prevent and combat corruption.
- It valorizes and raises social awareness about the negative consequences of corruption.
- It provides recommendations to remove the causes of corruption and evaluate and promote the legislative mechanisms for that.
- It notifies the judicial branch to start the judicial measures.

In support to the awareness and deterrent role of the Organization, the National Office against Corruption has been established in accordance with Ordinance 10-05<sup>50</sup>. It is a control organization that combats corruption.

It includes police officers from the Ministry of Internal Affairs and the Ministry of Defense, and other officials who have qualifications related to fighting corruption. Besides, combatting corruption may take place through administrative organizations that have a financial nature. Thus, they start the measures against the financial corruption more than those against the administrative one; even if the two are interrelated most of the time.

These organizations include:

- **General Inspectorate of Finance**<sup>51</sup>: The General Inspectorate of Finance is a control body operating under the supervision of the Ministry of Finance, with a number of powers to combat and limit corruption, particularly financial corruption, since it is linked to controlling the use and management of public financial resources<sup>52</sup>, accounting and financial management, and ensuring the compliance of expenditure that has been spent.<sup>53</sup>

In the same context, the Inspectorate General of Finance intervenes to support internal control in public institutions, particularly in the face of the widespread phenomenon of administrative and financial corruption. By virtue of the powers conferred on it, we consider it to be one of the bodies responsible for controlling and protecting public finances, especially as regards the ex post control it carries out.

- **Court of auditors**: that has a financial and legal nature<sup>54</sup>, it was entrusted with financial control missions, which were effectively activated after the reforms initiated by Algeria in 1988.

However, its remit has been extended to include auditing public accountants, on condition that it draws up a detailed report on all its work and submits it to the President of the Republic, together with a series of recommendations on its findings.<sup>55</sup>

- **Competition Council for regulating the economic activity**<sup>56</sup>: It is an effective means of reducing and combating corruption, particularly in the area of public procurement, where its intervention will minimize the prevalence of corruption, especially after the strict application of competition rules.

The Competition Council's intervention in corruption-related cases is based on building the capacity of competition authorities to minimize and combat corruption.

In addition, we find ad hoc committees that differ according to the sector<sup>57</sup> such as the:

- **Public Transactions Committee**, It is a regulatory body that ensures that contracts are concluded in accordance with the law, thereby legitimizing them.

It is made up of members from the Ministry of Finance and the Ministry of Trade, and acts to minimize corruption by applying the principle of equal opportunities on the one hand, and the principle of fair competition on the other.<sup>58</sup>

- **Financial intelligence processing cell**, it is a specialized anti-corruption body with a mandate to collect and process suspicious transaction reports in order to find solutions to prevent and combat corruption.

It is also responsible for combating the crime of money laundering and terrorist financing in coordination with the competent authorities on the basis of the reports it prepares in this respect.

It was set up in 2002 by Executive Decree 02-127, amended and supplemented by Executive Decree 22-36, which defines the powers, organization and operation of the unit as an independent administrative authority under the supervision of the Ministry of Finance.

## **Conclusion:**

Through identifying the concept of the administrative corruption and its factors and characteristics, we deduce that it is a negative phenomenon with negative economic consequences that hinder the social and economic growth and violate the values and norms.



The importance of the topic of the administrative corruption lies within the legal mechanisms adopted by the various laws to combat the rapid increasing phenomenon. Moreover, it is the axis of many researches and laws that aim at limiting its spread on the economic, political and social levels. Based on this, we deduce that:

- It is necessary to focus more on the negative consequences of the administrative corruption and think about limiting its spread.
- The high national and international awareness contributes to showing the danger of the behaviors that go against the social norms and values.
- The national and international legislations help treat and combat the administrative corruption.

Therefore, we recommend:

- Valorizing the awareness about the risks of the administrative corruption and its negative consequences on the society and economy.
- Integrating all the actors in the society to limit the spread of the national and international phenomenon.
- Promoting the control of the institutions that combat corruption.

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