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CORRUPTION OFFENSES: BETWEEN THE JURISDICTION OF THE TRIBUNALS WITH EXTENDED TERRITORIAL JURISDICTION AND THE ECONOMIC AND FINANCIAL CRIMINAL POLE

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Abstract:

The creation of the economic and financial criminal pole as a new judicial body, which has jurisdiction over corruption offenses and other offenses provided for in article 211 quarter of the code of the criminal procedure, arises the logical question related to the nature of the procedural link existing between this jurisdiction and the tribunals with extended territorial jurisdiction, which has also competency to rule on the cases related to the corruption offenses. In this regard, the legislator provides that the jurisdiction of a new judicial body is concurrent with that granted to the tribunals with extended territorial jurisdiction, but by recognizing procedural mechanisms that guarantee the priority of the jurisdiction of the former over the latter. However, this priority does not affect the proceedings taken prior to the relinquishment of the case file by the tribunals with extended territorial jurisdiction.

Key Words*:* the economic and financial criminal pole*;* the tribunals with extended territorial jurisdiction; the concurrent jurisdiction; the claim of the file of the proceedings; the relinquishment.

جرائم الفساد: بين اختصاص المحاكم ذات الاختصاص المحلي الموسع والقطب الجزائي الاقتصادي والمالي

ملخص:

يثير إنشاء القطب الجزائي الاقتصادي والمالي، كجهاز قضائي جديد مختص بالنظر في جرائم الفساد

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وجرائم أخرى مقررة في المادة 211 مكرر 2 من قانون الإجراءات الجزائية، تساؤل منطقي يتمحور حول طبيعة الصلة الإجرائية القائمة بين هذه الجهة القضائية والمحاكم ذات الاختصاص المحلي الموسع التي تختص أيضا في النظر في مثل هذه الجرائم. أقر المشرع بالاختصاص المشترك للجهاز القضائي الجديد مع الاختصاص المخول للمحاكم ذات الاختصاص المحلي الموسع، وذلك مع وصغ آليات إجرائية تضمن أولوية اختصاص القطب المتخصص على اختصاص هذه الأخيرة. غير أن هذه الأولوية لا تؤثر على الإجراءات المتخذة من طرف المحاكم ذات الاختصاص المحلي الموسع قبل تخلي هذه الأخيرة عن ملف الإجراءات.

الكلمات المفتاحية: القطب الجزائي الاقتصادي والمالي، المحاكم ذات الاختصاص المحلي الموسع، الاختصاص المشترك، المطالبة بملف الإجراءات، التخلي عن ملف الإجراءات.

Les infractions de corruption : entre la compétence des tribunaux à compétence territoriale étendue et le pôle pénal économique et financier

Résumé:

La création du pole pénal économique et financier comme un nouvel organe judiciaire ayant une compétence à l'égard des infractions de corruption et d'autres infractions prévues par l'article 211 quater du code de procédure pénal, suscite logiquement la question de la nature du lien procédural existant entre cet organe et les tribunaux à compétence territoriale étendue qui sont aussi compétent pour connaitre des infractions de corruption. A cet égard, Le législateur a reconnu à ce nouvel organe une compétence concurrente à celle reconnu aux tribunaux à compétence territoriale étendue, mais cela tout en établissant des mécanismes procéduraux accordant la priorité à la compétence de cet organe sur celle de ces tribunaux. Cependant, cette priorité ne remis pas en cause les actes de procédures prises avant que les tribunaux à compétence territoriale étendue se dessaisissent du dossier de la procédure.

***Mots Clés**:* le pôle pénal économique et financier; les tribunaux à compétence territoriale étendue; la compétence concurrente; la revendication du dossier de la procédure; le dessaisissement.

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Introduction:

"Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law"[1], the General Assembly of the United Nations adopted the United Nations Convention against Corruption[2]. That is the recognition of the far-reaching destructive impact of the corruption on the societies around the world, both in developing and developed country, and the need to find effective measures against this phenomenon at domestic and international levels alike[3].

Being conscious of this reality, the state of Algeria has ratified the United Nations Convention against Corruption on April 19, 2004[4]. Consequently, the Algerian legislative power has made a special text[5] to address corruption by not only criminalizing the corruption under all his forms, but also by the adopting of measures that go beyond the penal system response. Owing to the particularity of the corruption offenses, the aforementioned text also provides special procedural system. The specificity of this system draws from the special investigative techniques[6], the creation of the central anti-corruption office[7], the international cooperation in criminal, civil and administrative matters[8], the singular rule applied to the statutory limitations of criminal proceedings[9], and the subjecting of the corruption offenses to the jurisdiction of the tribunals with extended territorial jurisdiction (hereafter T.W.E.T.J.) [10] or so called "specialized criminal poles"[11].

[1] Paragraph 9 of the preamble of the General Assembly resolution 58/4 of 31 October 2003 relevant to United Nations Convention against Corruption.
[2] See: operative paragraph 2 of the same resolution, noting that the full text of the United Nations Convention against Corruption has annexed to the resolution.
[3] See: DIMITRI Vlassis, the United Nations convention against corruption overview of its contents and future action, Resource Material Series N°.66, at 119, (Consulted on November 19, 2021, at 11h52), unafei.or.jp/publications/pdf/RS_No66/No66_15VE_Vlassis1.pdf .
[4] See: Décret présidentiel N° 04-128 du 29 safar 1425 correspondant au 16 avril 2004, portant ratification, avec réserve, de la convention des Nations Unies contre la corruption, adoptée par l'assemblée générale des Nation Unies à New York le 31 octobre 2003, J.O.R.A.D.P. N° 26, published on April 25, 2004.
[5] See: Loi N° 06-01 du 21 Moharram 1427 correspondant au 20 février, 2006, sur la prévention et la lutte contre la corruption, J.O.R.A.D.P. N° 14, published on March 8, 2006. Noting that before the issuance of this law the legislator criminal response to corruption has been embodied in the articles 119 to 134 of the penal code.
[6] See: art. 56 of the same law.
[7] See: art. 24 bis of the same law.
[8] See: art. 57 to 70 of the same law.
[9] See: art. 54 of the same law.
[10] See: art. 24 bis of the same law.
[11] About the use of this term see the art. 24 of the organic law related to judicial organization declared unconstitutional by the Constitutional Council see: Avis N° 01/A.LO / CC/05 du 10

Besides the jurisdiction of the T.W.E.T.J. over the corruption offenses, the legislator has established the economic and financial criminal pole (hereafter E.F.C.P.) as a new jurisdiction specializing in the fighting, among other offenses, of corruption offenses[1]. Consequently, it is necessary to wonder which of these two judicial bodies is competent to rule on cases concerning the corruption offenses and under what procedural conditions? It is clear that the corruption offenses fall within the jurisdictional area of the two judicial bodies (**Chapter 1**), but this is subject to procedural conditions which determine the jurisdictional link between these two judicial bodies (**Chapter 2**).

Chapter 1: The Tribunals with Extended Territorial Jurisdiction and the Economic and Financial Criminal Pole: a Dual Jurisdiction over Corruption Offenses

It appears from the relevant texts that the corruption offenses are subject to both the jurisdiction of the T.W.E.T.J. (**section 1**) and the E.F.C.P. (**section 2).**

Section 1: The Jurisdiction of The Tribunals with Extended Territorial Jurisdiction over Corruption Offenses: Better late Than Never

Given the particularity of certain offenses, such as money laundering offenses, terrorist offenses, and transnational organized offense, the legislator has amended the code of criminal procedure in 2004 by providing that the territorial jurisdiction of the prosecutor of the republic, the investigating judge, and the trial judge of certain tribunals can be extended, on regulatory basis, to judicial district of other tribunals[2]. After nearly two years of this amendment four tribunals have seen their territorial jurisdiction extended, namely the tribunal of Sidi M'Hamed, the tribunal of Constantine, the tribunal of Ouargla, and the tribunal of Oran[3].

Although the corruption offenses are of equal importance to other offenses that

Joumada El Oula 1426 correspondant au 17 juin 2005 relative au contrôle de conformité de la loi organique relative à l'organisation judiciaire à la Constitution, J.O.R.AD.P. N° 51, published on July 20, 2005.

[1] See : Ordonnance N° 20-04 du 11 Moharram 1442 correspondant au 30 août 2020 modifiant et complétant l'ordonnance N° 66-155 du 8 juin 1966 portant code de procédure pénale, J.O.R.A.D.P. N° 51, published on august 31, 2020.

[2] See articles 37, 40, and 329 of the code of criminal procedure thus amended in 2004 in: Loi N° 04-14 du 27 Ramadhan 1425 correspondant au 10 novembre 2004 modifiant et complétant l'ordonnance N° 66-155 du 8 juin 1966 portant code de procédure pénale, J.O.R.A.D.P. N° 71, published on November 10, 2004.

[3] See : Décret exécutif N° 06-348 du 12 ramadhan 1427 correspondant au 5 octobre 2006 portant extension de la compétence territoriale de certains tribunaux, procureurs de la république et juges d'instruction, J.O.R.A.D.P. N° 63, published on October 8, 2006 amended by ; Décret exécutif N° 16-267 du 15 moharram 1438 correspondant au 17 octobre 2016, J.O.R.A.D.P. N° 62, published on October 23, 2016.

fall within the jurisdiction of the abovementioned tribunals[1] and the issuance of the special text relevant to these offenses in 2006, they are initially excluded from the jurisdiction ratione materiae of these tribunals. In order to put an end to such abnormal situation, the legislator has, although late, issued the ordinance N° 10-06 by which it completed the law N° 06-01 related to prevention and fight against corruption[2] by the article 24 bis 1. This later provides that corruption offenses subject to the T.W.E.T.J. jurisdiction in accordance with the code of criminal procedure provisions.

Referring to the code of criminal procedure to which article 24 bis 1 refers, we find that articles 40 bis 1 to 40e thereof have determined the procedural track to which the T.W.E.T.J. are subjected. Based on these provisions, when the officers of the judicial police proceed with a preliminary investigation into one of the corruption offenses, they immediately notify the prosecutor of the republic of the tribunal territorially competent and forward to him the original and two copies of the investigation procedure. The second copy is addressed, without delay, by the prosecutor of the republic to the T.W.E.T.J. prosecutor of the republic[3]. The latter claims immediately, on the advice of the general attorney, the proceedings if he considers that the relevant offense concerns one of the corruption offenses, and in that case the officers of the judicial police excising their function within the judicial district of the concerned T.W.E.T.J., receive the instructions directly from prosecutor of the republic of this T.W.E.T.J.[4].

It is notable that the prosecutor of the republic of the T.W.E.T.J. can not only, claim the file of the proceedings during the phase of the preliminary investigation and the prosecution, but also during the phase of judicial investigation. Indeed, the article 40 quinquies allowed the above-motioned prosecutor to claim the proceedings at any phase of the criminal prosecution provided that he obtains an opinion of the general attorney. Thus, the prosecutor of the republic can claim, by means of the prosecutor of the tribunal territorially competent, the proceedings during the phase of the judicial investigation. In that case, the investigating judge issues an order of relinquishment in favor of the investigating judge of the T.W.E.T.J. Therefore, the officers of juridical police pursuing their function within the judicial district of this tribunal receive

[1] Namely offenses relating to drug trafficking, transnational organized crime, offenses relating to attacks on automated data processing systems, money laundering offenses, terrorist offenses, and the offenses relating to the exchange legislation.
[2] See : Ordonnance N° 10-05 du 16 ramadhan 1431 correspondant au 26 aout 2010 complétant la loi N° 06-01 du 21 moharram 1427 correspondant au 20 février 2006 relative à la prévention et à la lutte contre la corruption, J.O.R.A.D.P. N° 50, published on September 1, 2010.
[3] See art. 40 ter of the code of criminal procedure thus amended in 2020 in: ordonnance N ° 20-04, *supra* note 11.
[4] See arti. 40 quater of the code of criminal procedure thus amended in 2020 in: *id.*

instructions directly from the investigating judge of the same tribunal[1].

However, the arrest and provisional detention warrant already issued against the accused retains its enforceability until the concerning T.W.E.T.J. has been ruled on this question, subject to the provisions of the articles 123 and following of the code of criminal procedure[2]. Moreover, the investigating judge may, at the request of the public prosecutor or of its own motion, and at any time of the procedure, in addition to the seizure of the proceeds of the offense or those having served on his commission, order any protective or security measure[3].

It clearly arises from the article 40 quinquies that the claim of the procedure is possible for the prosecutor of the concerning T.W.E.T.J. only in the phase either the preliminary investigation or the prosecution, which means that the prosecutor cannot claim the proceedings during the trial phase. In this case, the question which arises is whether the trial judge should declare himself incompetent. Since the relevant provisions suggest that the T.W.E.T.J. has a concurrent jurisdiction with the ordinary tribunals, I believe the ordinary trial judge should rule on the case brought before him. The same applies to either the prosecutor of the republic or the investigating judge of the ordinary tribunals when the prosecutor of the T.W.E.T.J. does not claim the proceedings during the phase of either the preliminary investigation and the prosecution or the judicial investigating.

Section 2: The Economic and Financial Criminal Pole as New Mechanism to FIGHT against Corruption Offenses

In order to concentrate the human and material means at the level of one jurisdiction for an effective fight against certain corruption offenses, and others offenses, with a high complexity, the legislator has established a national specializing pole within the tribunal sitting at the chief town of the Algiers court[4]. The general attorney at the said court excises hierarchical authority over the prosecutor of the republic at the E.F.C.P. when he excises its public prosecution attributions provided by the code of criminal procedure in matters falling within its jurisdiction[5]. As for the investigating judge and the president of the E.F.C.P., they are administratively subject to the Algiers court president authority[6].

The scope of the territorial jurisdiction of the prosecutor of the republic, the investigating judge and the president of the E.F.C.P. comprises, logically, the whole national territory; otherwise, these judges have a statewide jurisdiction. However, the E.F.C.P. is only charged with searching, investigating, prosecuting, judicially

[1] See art. 40 quinquies of the code of criminal procedure thus amended in 2020 in: *id.*
[2] See art. 40e of the code of criminal procedure in: law N° 04-14, *supra* note 12.
[3] See art. 40f of the code of criminal procedure in: *id.*
[4] See art. 211 bis of the code of criminal procedure in: ordonnance N° 20-04, *supra* note 11.
[5] See art. 211e of the code of criminal procedure in: *id.*
[6] See art. 211f of the code of criminal procedure in: *id.*

investigating, and judging the cases related to a limited corruption offenses list. In fact, the E.F.C.P. declares himself competent if and only the corruption offenses brought before it are highly complex. Noting that the offenses related to the latter fall also within the jurisdiction of the E.F.C.P.

In order to determine what the criterion "highly complex" implies, the legislator establishes several elements that require the use of special investigative techniques, specialized expertise or the recourse to international judicial cooperation. Having regard to article 211 quater of the code of criminal procedure, the elements in question are as follows:

1- Geographic Element: It means that the corruption offenses shall be committed in an extended area of the national territory or involve more than one country in their planning, execution, or impact; in that case the corruption offenses can be qualified as translational offenses.

2- Multiplicity Element: It means that the corruption offenses shall be the product of a criminal participation either because of the multiplicity of offenders or accomplices. It means also that theses offenses have caused harm to more than one person.

3- Dangerousness Element: evaluation shall be focused here on the extent of the consequences that result from the commission of the corruption offenses.

4- Element related to the Organized Character of the Offense: It means that the corruption offenses shall be committed by transnational, national, or local groupings of highly centralized enterprises run by criminals acting in concert with the aims of committing these offenses, in order to obtain, directly or indirectly, a financial or other material benefit[1]. When the corruption offenses have a transitional character and involve organized criminal group they can be qualified as transnational organized offenses.

5- Element related to the Information and Communications Technologies: According to this element, the corruption offenses shall be committed by the use of the computer system or electronic communication system or any other means or process related to information and communication technologies. Hence, these offenses can be qualified as an offense related to information and communication technologies[2].

[1] See art. 2(a) of the United Nations Convention against transnational organized crime ratified by Algeria on February 5, 2002, with reservation. See: Décret présidentiel N° 02-55 du 22 Dhou El Kaada 1422 correspondant au 5 février 2002 portant ratification, avec réserve, de la convention des Nations Unies contre la criminalité transnationale organisée, adoptée par l'Assemblée générale de l'Organisation des Nations Unies le 15 novembre 2000, J.O.R.A.D.P. N° 09, published on February 10, 2020.

[2] About these offenses See: loi N° 09-04 du 14 Chaâbane 1430 correspondant au 5 août 2009 =

Chapter 2: The Division of Jurisdiction Between the Tribunals with Extended Territorial Jurisdiction and The Economic and Financial Criminal Pole: Subjecting Corruption Offenses to the Concurrent Jurisdiction

To avoid the conflict jurisdiction that may arise from the adoption of a concurrent jurisdiction between the E.F.C.P. and T.W.E.T.J. **(Section 1),** the legislator establishes procedural framework, giving the priority to the jurisdiction of the E.F.C.P. **(Section 2).**

Section 1: Subjecting Corruption Offenses to the Concurrent Jurisdiction

According to the article 211 ter of the code of criminal procedure, the prosecutor of the republic, the investigating judge, and the president of the E.F.C.P. exercise a jurisdiction concurrently to that resulting from the application of the articles 37, 40 and 329 of the code of criminal procedure, with respect to the corruption offenses specified by the law N° 06-01 and related offenses, in addition to the offenses provide for by the following texts:

- The articles 119 bis, 389 bis, 389 ter, 389 quarter, 398 quinquies of the criminal code.

- The ordinance N° 96-22 relating to the repression of the infringement of the legislation and the regulation of exchange and capital movement from and to the abroad.

- The articles 11, 12, 13, 14, and 15 of the ordinance N° 05-06 relating to the fight of the smuggling.

Although the legislator did well to recognize the concurrent jurisdiction with respect to the corruption offenses because this is essential to avoid proceedings nullities when a case would not be claimed by the E.F.C.P. In addition, the concurrent jurisdiction is logical for the sole reason that the jurisdiction scope of E.F.C.P. involves only the corruption offenses of high complexity within the meaning of the article 211 quinquies of the code of criminal procedure. In that case, the concurrent jurisdiction scope is, however, limited to the aforementioned offenses.

Therefore, we consider that the legislator should have either allowed exclusive jurisdiction to the E.F.C.P. with respect to corruption offenses of high complexity and concurrent jurisdiction with respect to other offenses referred to in the articles 25 to 47 of the law 06-01 which they do not involve the “high complexity” criterion, or limited exclusively the jurisdiction of the E.F.C.P. to the aforementioned offenses, all the more so as the legislator has adopted the two approaches with regard to other

= portant règles particulières relatives à la prévention et à la lutte contre les infractions liées aux technologies de l’information et de la communication, J.O.R.A.D.P. N° 47, published on August 16, 2009.

offenses.

In fact, if the offenses related to the information and communication technologies[1] fall coincidentally within the jurisdictional scope of the E.F.C.P. and the National criminal pole for the fight against offenses related to information and communication technologies[2], the E.F.C.P. would have compulsory jurisdiction over these offenses[3]. In addition, on one hand, the legislator has granted the National criminal pole for the fight against offenses related to information and communication technologies exclusive jurisdiction over both the offenses related to information and communication technologies of high complexity[4] and certain offenses provided for in articles 211 bis 24 of the code of criminal procedure including the offenses breaching the state security or the national defense. On the other hand, he also provides that the prosecutor of the republic, the investigating judge, and the president of the aforementioned pole exercise a concurrent jurisdiction with that resulting from the application of articles 37, 40, and 329 of the code of criminal procedure[5].

In the same context, by extending the territorial jurisdiction of the tribunal within the tribunal sitting at the chief tower of the Algiers court to whole the national territory with regard to the terrorism offenses and transnational organized offense, the legislator on one hand has allowed the prosecutor of the republic and the investigating judge to exercise a concurrent jurisdiction to that resulting from the exercise of jurisdiction by the T.W.E.T.J. in accordance with articles 37 and 40 of the code of criminal procedure over the terrorism and subversive offenses provided for by the criminal code, the offenses provided for by the law N° 05-01[6] in particular its article 3 and 3 bis[7], the transnational organized offense qualified as a felony (crime). On the other hand, he has also granted the prosecutor of the republic and the investigating judge exclusive jurisdiction over the terrorism offenses provided for in dashes 6, 9, 10, 12, and 13 of article 87 bis and the paragraph 2 of article 87f of the

[1] About the definition of these offenses See art. 211 bis 22 of the code of criminal procedure in: Ordonnance N° 21-11 du 16 Moharram 1443 correspondant au 25 août 2021 complétant l'ordonnance N° 66-155 du 8 juin 1966 portant code de procédure pénale, J.O.R.A.D.P.A. N° 65, published on august 26, 2021. See also the definition set forth in: Loi N° 09-04 *supra* note 25.

[2] According to the article 211 bis 22 of the code of criminal procedure This pole has created within the tribunal sitting at the chief town of the Algiers court in charge of the prosecution and judicial investigation in respect of the offenses related to the information and communication technologies and related offenses. Furthermore, the said pole has jurisdiction for judging the aforementioned offenses when they constitute misdemeanors (délits).

[3] See art. 211 bis 28 of the code of criminal procedure in: Ordonnance N° 21-11, supra note 26.

[4] See art. 211 bis 25 of the code of criminal procedure in: *id.*

[5] See art. 211 bis 27 of the code of criminal procedure in: *id.*

[6] See : Loi N° 05-01 du 27 Dhou El Hidja 1425 correspondant au 6 février 2005 relative à la prévention et à la lutte contre le blanchiment d'argent et le financement du terrorisme, J.O.R.A.D.P. N° 11, published on February 9, 2005.

[7] See art. 211 bis 16 of the code of criminal procedure in: Ordonnance N° 21-11, supra note 26.

criminal code and the related offenses[1].

Section 2: The Procedural Framework Reflecting the Priority of the Jurisdiction of the Economic and Financial Criminal Pole

For the purposes of embodying the priority of the jurisdiction of the E.F.C.P. over the corruption offenses, the legislator has established for proceedings to be followed (**Subsection 1**) resulting in some procedural effects (**Subsection 2**).

Subsection 1: Claiming and Relinquishing the File Case

After being informed of one of the corruption offenses pursuant to article 40 ter of the code of criminal procedure, the prosecutor of the republic of either the tribunal territorially competent in accordance with paragraph 1 and 2 of the article 37 of the code of criminal procedure, forward without delay, by any means, the copies of information reports and investigation proceedings carried out by the judicial police to the prosecutor of the republic within the E.F.C.P.[2]. If the latter considers that the offense in question falls within its jurisdiction, he, upon the opinion of the general attorney, claims the file of the proceedings during either the phase of the preliminary investigation, or the prosecution, or the juridical investigation[3].

Replying to the prosecutor of the republic within the E.F.C.P. requests claiming the file of proceedings, the prosecutor of the republic territorially competent pursuant to paragraph 1 of the article 37 issues a decision of relinquishment in favor of the former if the proceedings are related to the preliminary investigation and the prosecution phases[4]. In the event that a judicial investigation is opened, the said prosecutor refers the request aimed at claiming the file of the proceedings, to the investigating judge, assigned to the case in question. The latter issues an order of relinquishment in favor of the investigating judge of the E.F.C.P.[5].

When the file of the proceedings is pending before T.W.E.T.J., during the preliminary investigation and prosecution phase or the judicial investigation phase, the relinquishment in favor of the prosecutor of the republic or the investigating judge is made on request of the former, in conformity with the articles 211 bis 9 and 211 bis 10. In addition, when the prosecutor of the republic of T.W.E.T.J. observes that there are new elements which may lead to claiming the file by the prosecutor of the E.F.C.P. he may inform the latter. However, if the file of the proceedings is pending before a tribunal of general jurisdiction and there have simultaneous claims of the file by the prosecutor of the republic of the E.F.C.P. and the one of the T.W.E.T.J., the

[1] See art. 211 bis 18 of the code of criminal procedure in: *id.*
[2] See art. 211g of the code of criminal procedure in: Ordonnance N ° 20-04, *supra* note 11.
[3] See art. 211 bis 7 and 211 bis 8 of code of criminal procedure in: *id.*
[4] See art. 211 bis 9 of code of criminal procedure in: *id.*
[5] See art. 211 bis 10 of code of criminal procedure in: *id.*

jurisdiction falls *ex officio* to the former[1].

In another context, if a member of the government, judge of the Supreme Court, the council of state, or the tribunal conflicts, a wali, a president of court, a president of an administrative tribunal, a general attorney of a court, or a representative of public ministry (commissioner of state) at administrative tribunal, is likely to be charged with one of corruption offenses committed in the course of or in connection with the performance of his duties, the prosecutor of the republic, either at the tribunal of general jurisdiction or the T.W.E.T.J., apprised of the case forwards the proceedings file, through his immediate superior, to the general attorney at the supreme court who, in turn, informs the first president of the supreme court who assigns the case to a T.W.E.T.J. other than the T.W.E.T.J. within whose judicial district the presumed performs his duties[2].

Nevertheless, when the prosecutor of the republic at the E.F.C.P. claims the file of the proceedings before the tribunal of general jurisdiction or the T.W.E.T.J., upon the opinion of the general attorney at Algiers court, during the preliminary investigation or the persecution phase the aforementioned proceedings are not applicable[3]. That means the jurisdiction E.F.C.P. over the corruption offenses committed by the persons specified in paragraph 1 of the article 573 of the code of criminal procedure may be activated without referral of the case file by the first president of the Supreme Court and all related proceedings.

Subsection 2: Procedural Effects of the Case File Relinquishment

Once a decision or an order on the relinquishment of the file of the proceedings is issued respectively by the prosecutor of the republic and the investigating judge at either the territorially competent tribunal of general jurisdiction or the concerning T.W.E.T.J., the competent prosecutor of the republic transmits the file of the proceedings and all related documents and the exhibits to the prosecutor of the republic at the E.F.C.P. the relinquishment results in the devolution of power of direction and control of the activities of judicial police, in particular that belonging to the central anti-corruption office[4], to the prosecutor of the republic and the

[1] See *id.*
[2] See paragraph 1 of art. 573 of the code of criminal procedure thus amended in 2020 in: *id.*
[3] See paragraph 2 of art. 573.
[4] See art. 24 bis of the law N° 06-01 *supra* note 5, in: ordonnance N° 10-05 *supra* Note 7. Concerning the composition, the organization and the modalities functioning see: décret présidentiel N° 11-426, du 13 Moharram 1433 correspondant au 8 décembre 2011 fixant la composition, l'organisation et les modalités de fonctionnement de l'office central de répression de la corruption, J.R.A.D.P. N° 68, published on December 14, 2011. Amended by : Décret présidentiel N° 14-209 du 25 Ramadhan 1435 correspondant au 23 juillet 2014, J.R.A.D.P. N° 46, published on July 31, 2014.

investigating judge[1] with regard to the performed acts, the ongoing acts and the acts to be performed.

Consequently, regardless of the jurisdiction upon which they depend the officers and agents of the judicial police receive directly the instructions from the prosecutor of the republic at E.F.C.P., and the instructions and letters rogatory from the investigating judge at this judicial body[2].

However, the arrest warrants and the remand in custody orders continue to be enforceable until a contrary order taken by the investigating judge at the E.F.C.P. Hence, the latter ensures that the proceedings of the remand in custody are legal and regular. Furthermore, the proceedings of the prosecution and the judicial investigation and the formalities taken prior to the relinquishment of the file of the proceedings continue to produce their effects and cannot be renewed[3]. This is the case, *e.g.* for the request of the prosecutor of the republic to open a judicial investigation in accordance with article 67 of the code of criminal procedure, a criminal complaint with an application to join the proceedings as a civil party pursuant to article 72 of the code of criminal procedure, and all the acts and orders[4] taken by the investigating judge such as the search and seizure pursuant to article 81 and the onwards of the code of criminal procedure, hearing of witnesses pursuant to article 88 and the onwards of the code of criminal procedure, and the interrogation and confrontation pursuant to article 100 and the onwards of the code of criminal procedure.

In any case, the relinquishment of the file of the proceedings results in the application of the code of criminal procedure provisions throughout the phases of the criminal action, *i.e.* the initiation and exercise of the criminal action, the judicial investigation and the trial[5].

[1] Noting that under the code of criminal procedure the investigating judge does not have a power of direction and control of the activities of the judicial police. While, in accordance with article 11 of this code, the direction of the judicial police is assigned to the prosecutor of the republic within whose area of jurisdiction it performs its functions, the control power is conferred to the indictment chamber which exercises this power pursuant to article 206 and onwards of the code of criminal procedure.

[2] See art. 211 bis 14 of the code of criminal procedure in: ordonnance N ° 20-04, *supra* note 11.

[3] See art. 211 bis 13 of the code of criminal procedure in: Id.

[4] About the orders that can be taken by the investigating judge during the judicial investigation see art. 109 and the onwards of the code of criminal procedure.

[5] See art. 211 bis 15 of the code of criminal procedure in: ordonnance N ° 20-04, *supra* note 11.

Conclusion:

By creating of the E.F.C.P. the corruption offenses become torn between the jurisdiction of the latter and the T.W.E.T.J. and by examining this, we have reached the following conclusions:

- The institution of the E.F.C.P. aims to concentrate the human and material means in a one jurisdiction what the high complexity of certain corruption offenses requires.

- The E.F.C.P. and the T.W.E.T.J. have concurrently the jurisdiction over the corruption offenses, but by restricting the jurisdiction of the E.F.C.P. to the corruption offenses of high complexity, the legislator suggests that the scope of the concurrent jurisdiction is limited to this type of offense.

- Due to the national character and the nature of the subject-matter jurisdiction of the E.F.C.P. the legislator has logically opted for the priority of the E.F.C.P.'s jurisdiction over the jurisdiction of the T.W.E.T.J.

- The priority of the E.F.C.P.'s jurisdiction, is subject to the claim of the file of the proceedings by the prosecutor of the republic at this judicial body.

- As a corollary of the concurrent jurisdiction, the non-claim of the file case does not prevent the T.W.E.T.J. from exercising its jurisdiction over the corruption offenses in question.

- Determining whether a corruption offense is of high complexity falls within the jurisdiction of the prosecutor of the republic at E.F.C.P, when he claims the file of the proceedings.

- The claim of the file of the proceedings concerns the phase of the preliminary investigation, or the prosecution or the judicial investigation, *i.e.* when the case reaches the trial phase before the T.W.E.T.J., the latter can continue to rule on the case and the prosecutor of the republic at E.F.C.P. cannot claim the file of the proceedings.

- The relinquishment of the file of the proceedings does not affect the proceedings taken prior to the claim of the file of the proceedings such as the arrest warrants.

In addition to the aforementioned, we suggest that the legislator confers, on the one side, an exclusive jurisdiction upon the E.F.C.P. over the corruption offenses of high complexity and, on the other side, a concurrent jurisdiction upon the E.F.C.P. to that resulted from the application of the articles 37, 40, and 329 of the code of criminal procedure, or he just has to recognize only the exclusive jurisdiction for the E.F.C.P.

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