

"Preventive measures against corruption crimes in the public and private sectors:
A study in light of Law N° 06-01 amended and supplemented"

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التدابير الوقائية من جرائم الفساد في القطاعين العام والخاص: دراسة في
ضوء القانون رقم 06-01 المعدل والمتمم

ZAADI MOHAMED DJELLOUL*, Akli M'hand oulhadj university-Bouira -

m.zaadi@univ-bouira.dz

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Abstract:

Corruption represents a phenomenon that all societies suffer from, regardless of their degree of development, and is embodied on the ground in a set of practices carried out by a number of political and administrative officials who misuse the powers entrusted to them in order to achieve the public interest.

In the face of the widespread of these practices, the Algerian authorities were forced to adopt a set of measures in order to limit them to the narrowest limits, perhaps the most prominent of which are those contained at the legislative level, and by renewal those adopted within the framework of Law N° 06-01 relating to the prevention of corruption, and relating to the training and proper selection of employees, and even subjecting them to proactive measures aimed at ensuring that they do not commit any corruption crime.

Key words: corruption crimes; preventive measures; legal protection; algerian legislation; codes of conduct.

Introduction:

Countries have paid special attention to combating the phenomenon of corruption, in view of its negative effects, which were not limited to a specific field, but rather extended to include various areas of life. Indeed, various reports record a terrible spread of practices related to the phenomenon of corruption during recent years due to the crises and fluctuations that countries have witnessed, whether related to the economic, social, or security aspect, which has prompted some individuals to resort to behaviors that contradict their professional obligations in order to obtain additional financial resources that are compatible and their needs, it also led others to provide undeserved benefits to some employees in order to obtain some specific services, or to obtain some jobs, or win some deals and contracts.

Algeria too, was not spared from the effects of corruption, which prompted public authorities to adopt a set of legal measures and procedures in order to put an end to this phenomenon, or at least limit it to the narrowest limits, perhaps the most prominent of these steps was Algeria's ratification of the United Nations Convention against Corruption in 2003 which was then followed by the adoption of Law N° 06-01 related to preventing and combating

* Corresponding Author

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corruption issued in 2006, in which we noted the great care taken by the Algerian legislator in detailing the preventive measures aimed at preventing the occurrence of behaviors described as corruption crimes before they are committed by any employee or elected official who may resort to such practices on the one hand, and on the other hand in order to avoid difficulties faced by countries in recovering the money that is stolen through this type of crime.

The importance of the study:

Studying the issue of preventive measures against corruption crimes in the public and private sectors is important, the most important dimensions of which can be summarized as follows:

-Corruption represents a phenomenon whose related practices have spread widely in various societies due to the deteriorating economic, social, security, and even military conditions in some countries, which has led a certain group of individuals to resort to this type of practice. The danger of this phenomenon also lies in its side effects, which put at stake the lives of millions who were forced, for example, to immigrate to other countries, risking their lives by resorting to criminal organizations that promised to facilitate their crossing of borders between countries;

-The negative impact that resorting to practices associated with corruption has on the existence of States, and their economic and social development, as most specialists in the field of criminal law and international law state that grand corruption occurring at the top of the State hierarchy would deprive large categories of individuals from resources and services they are in dire need of them, and the embezzlement of public funds by a number of political responsables and administrative officials would deprive the public treasury of capital necessary for the proper management of the State.

Objectives of the study:

The current study seeks to achieve a number of goals, perhaps the most prominent aspects of which are:

-Drawing the features of the concept of the phenomenon of corruption, by listing the various definitions attributed to it at the legal and doctrinal levels, and thus extracting the features relevant to it, and consequently distinguishing it from other similar crimes;

-Identifying the legal arsenal adopted by the Algerian legislator in order to prevent practices related to corruption crimes, and determining the extent of its effectiveness within the framework of the practice in this field.

The problematic:

It appears to us logically from what was mentioned above that the following problematic has been raised:

How effective is the legal arsenal adopted by the Algerian legislator within the framework of Law N° 06-01 to prevent practices related to corruption crimes?

Division of the study:

We decided to divide the current study into two complementary axes, within the first one, we address the conceptual framework of corruption crimes, where we listed the definitions attributed to them at the legal and doctrinal levels, and consequently we highlight the characteristics related to this phenomenon, while in the second axis we address the preventive measures programmed by the Algerian legislator to confront its negative effects, whether related to the public sector or the private sector.

Scientific methodology:

In preparing this study, we relied on a group of scientific methods, perhaps the most important of which is: the descriptive method that is compatible with the theoretical part of the study, specifically what relates to listing definitions related to the phenomenon of corruption at

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the doctrinal and legal levels, while we relied on the analytical method with regard to studying the extent of the effectiveness of the measures adopted by the Algerian legislator to prevent the occurrence of corruption crimes.

1-The conceptual framework of corruption crimes:

The issue of corruption has a close relationship with human rights. Indeed, most specialists in this field agree that corruption has effects on members of society that are similar to those caused by armed conflicts, and even exceed them in some cases when their effects are reflected on a wide group of individuals, and when their lives are exposed to danger due to the low conditions to which they are subjected, such as unemployment, hunger, disease, and other similar conditions, which have led some jurists to say that they allow corruption to be classified as a crime of persecution, as one of the basic forms in which crimes against humanity are embodied on the ground.

The discrepancy in opinions about the concept of corruption represents one of the obstacles imposed on it, which limits the effectiveness of the competent authorities in combating this phenomenon, as long as its nature is not specified in the various legal texts in this field (1.1), and consequently the difficulty of extracting the characteristics associated with it, which distinguishes it from other similar crimes (1.2).

1.1-Absence of a legal definition of corruption:

In this regard, it is noted that there is an absolute absence of similarity to this issue in international conventions, and the reference in this regard is initially to the United Nations Convention against Corruption of 2003, whose drafters did not address this issue directly, but rather referred to that in the preamble of the convention, and stated that corruption is no longer a local matter, but rather a transnational phenomenon that affects all societies and economies, which makes international cooperation to prevent and combat it necessary¹. It appears through this position that corruption is an international phenomenon that is not limited to the borders of a particular country, nor to a specific society in itself, and it affects the economies of countries in particular, in addition to its other effects, and that combating it cannot be done individually by each country individually, rather it requires countries to come together in the initiatives they take in every step they take in this field².

In keeping with the position affirmed by members of the international community in the majority of international conventions adopted at the regional and international levels, the Algerian legislator also did not define corruption in the law he issued in this regard, namely Law N° 06-01 relating to the prevention and combating corruption, as stated in Article 2: "In the meaning of this law, the following means: A) "Corruption": all crimes stipulated in Part Four of this law". Therefore, it is sufficient to refer to the part in which it enumerates the forms in which corruption crimes are embodied in the public and private sectors³.

At the doctrinal level, there are many definitions attributed to corruption, and its most prominent representatives across the world have tried to fill the gap left in this field. The example that sets in this regard is the definition presented by (XIZI LIU), who believes that corruption is: the public employee's exploitation of his powers in order to obtain private benefits that cannot be achieved legitimately⁴, as for Professor (U Myint) who defines corruption as: illegal and immoral exploitation of laws, interests, jobs, and government positions to achieve private gains⁵, while (Dinsha Mistree) attributes to corruption the following definition: behavior that violates the applicable regulations and laws that it conflicts with societal and functional values and ethics to achieve material or moral interests at the expense of the public interest, intentionally, whether overtly or covertly⁶.

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1.2-Characteristics of corruption crimes:

Based on the definitions listed above, it is possible to extract the characteristics associated with corruption crimes, which reflect the nature of this type of illegal behavior. These characteristics are as follows:

1.2.1-Confidentiality:

Corruption crimes are generally characterized by secrecy, due to the illegal nature of this type of behavior from a legal standpoint, and they also face rejection by society. Moreover, the parties involved in corruption crimes work hard to hide the crimes they commit under various justifications. For example, in the context of grand corruption committed at the highest levels of the State, the political official relies on concealing it under the name of the public interest or for security reasons due to their fear of the follow-up to which they will be exposed⁷.

1.2.2-Spread:

All members of the international community, regardless of their degree of development, suffer from the effects of corruption, a phenomenon that spreads terribly when a group of factors related to the environment in which the individual lives or his workplace. As for the first, the lack of control over the activities of public employees, and the weakness of religious principles, the lack of principles governing the behavior of individuals would create competition between individuals over who is creative in this field, as for the second, it is mainly related to the weak salary he receives, which pushes the employee in question to take devious paths in order to obtain additional sources of funds that meet his needs⁸.

1.2.3-Corruption crimes are cross-border crimes:

The technological development recorded by the world in recent years has led to a radical change in the crimes committed, and specifically in the way they are committed, as various countries recorded an explosion in fraud crimes through social media, and the process of hacking accounts, or even intercepting data, has increased. Corrupt officials have also adopted these electronic media to facilitate the commission of crimes related to the jobs they perform, by employing virtual space to achieve this goal, as there are no borders between countries, making them, in principle, cross-border crimes. However, this does not mean that all corruption crimes remain within the national framework, such as bribery and embezzlement, for example, but most corruption crimes are global crimes when they cross the borders of one country, whether in terms of the actions that compose them, or in terms of the effects resulting from them as the crime of money laundering because of the great risks it poses that threaten the international community, which requires national legislation to ease restrictions on applying punishment to those responsible for these crimes, such as the principle of bank secrecy⁹.

2-Measures to prevent corruption crimes in the public and private sectors in Law N° 06-01:

Algeria suffered, and is still suffering, from the effects of corruption, and its effects reached their peak on February 22nd, 2019, as one of the most prominent demands of the demonstrators was to combat corruption, which was one of the basic obstacles that exhausted their lives. This demand was also one of the basic principles according to which the 2020 Constitution was formulated, so it was not strange that the Algerian authorities have redoubled their efforts in recent years in order to effectively combat this phenomenon, and to this end, it relied on a wide arsenal of measures and mechanisms, in addition to the deterrent measures that the competent authorities are accustomed to applying, such as financial penalties and deprivation of liberty, a preventive system was introduced within the framework of Law N° 06-01, through which the Algerian legislator aimed to place proactive tools in the hands of the various Algerian

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institutions in order to prevent the occurrence of practices related to corruption crimes before they are committed through proper employee selection and training, whether in the public sector (2.1), or the private sector (2.2).

2.1-Preventing corruption crimes in the public sector:

The Algerian legislator adopted a number of preventive measures specifically to protect the public sector from corruption crimes, and focused within their framework on specific aspects that characterize public facilities and institutions of a public nature. These measures include in particular the issue of employment (2.1.1), and codes of conduct for public employees (2.1.2), and the field of concluding public transactions (2.1.3).

2.1.1-Preventive measures related to procedures for hiring public employees:

The Algerian legislator has obligated public facilities and institutions to a set of standards that the concerned departments take into account in the process of selecting their future employees, whether they are selected through a competition, or test, or interview, or on the basis of certification, and whatever the method relied upon, the committees authorized to do this task set it has in mind a set of standards, perhaps the most important of which are:

-Principles of efficiency, transparency, and objective standards such as merit, fairness, and efficiency. These standards would ensure the good functioning of the public facility by ensuring the employee's fair dealings with citizens, for example;

-The effort expended in this regard does not depend only on the selection of the employee, but also extends to include the next stage, which is the formation of individuals nominated to hold public positions most vulnerable to corruption, specifically by informing them of behaviors that conflict with their professional obligations, and how to avoid them;

-One of the most important reasons that prompts a public employee to commit practices related to corruption crimes is the low wages he receives, therefore, the Algerian legislator indicated the necessity of raising the wages of public employees to suit his daily needs, in addition to highlighting the need for him to benefit from adequate compensation that is appropriate to his professional obligations.

-The Algerian legislator finally emphasizes the sensitizing role of the Algerian administration, which is committed to educating its employees about the correct, fair and proper performance of their jobs and benefiting them from specialized training that increases their awareness of the dangers of corruption, and this is done through educational and training programs prepared by its departments in advance¹⁰.

The Algerian legislator has programmed a number of legal preventive mechanisms, which prevent the public employee from committing any crime of corruption, perhaps the most important of which is those related to declaring property, as the law on preventing and combating corruption requires the public employee to declare his property, and that in a step taken by the Algerian legislator in order to ensure transparency in political life and public affairs, and protect public property, and preserve the integrity of persons charged with public service. The declaration of property shall be in accordance with specific procedures, whereby the public employee shall submit a declaration of his own property during the month following the date of his appointment to his position or the beginning of his electoral term¹¹, provided that this declaration shall be renewed upon receipt of any significant increase in the financial liability of the public employee, and this shall be adhered to in the same manner with which he made the first declaration¹², and to ensure the integrity of the public employee, he was obligated to do so at the end of his electoral term, or at the end of his service¹³.

The property declaration includes an inventory of the real and movable property owned by the subscriber, and so that the latter does not evade this obligation through the devious methods he follows in this area, the declaration also includes what his minor children own, even

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if they are joint, of movables and real estate located in Algeria or in other countries, or in both of them¹⁴.

The Algerian legislator has specified the method of declaring property for each category of public employees; as for the President of the Republic, and members of Parliament, and the President of the Constitutional Council and its members, the Head of Government, and others who represent the executive authority, whether appointed or elected, the declaration of their properties shall be made before the first president of the Supreme Court, and its content shall be published in the Official journal of the people's democratic republic of Algeria within the two months following the date of the election of those concerned or their assumption of their duties¹⁵; as for the heads and members of elected local popular assemblies, it shall be before the National Commission for the Prevention and Combating Corruption, and shall be published by comment on the notice board at the headquarters of the municipality, as the case may be, within a month from the date of their appointment¹⁶, as for judges, they shall declare their properties before the first president of the Supreme Court¹⁷.

2.1.2-Codes of conduct for public employees:

One of the most important awareness measures programmed by the Algerian legislator is to oblige public facilities and institutions to establish codes and rules of conduct that define the framework that guarantees the proper, fair and appropriate performance of public functions and the electoral mandate¹⁸. The aim of this is to encourage integrity and honesty, as well as a spirit of responsibility among employees and elected officials. In this regard, the public employee is obligated to avoid all cases that involve a conflict between his private interests and the public interest, and in order to achieve this, he obligatorily informs the presidential authority to which he is subject of the occurrence of such cases, if this would affect the exercise of his duties fairly¹⁹.

2.1.3-Measures related to concluding public contracts and managing public funds:

Public contracts represent one of the basic means that public authorities rely on in order to complete their major projects, whether it concerns the construction of bridges, dams, public roads, or even social housing. They have been regulated by the Algerian legislator within the framework of presidential decree 15-247 relating to the organization of public transactions and public utility mandates, which defined public transactions as: "...Written contracts within the meaning of the applicable legislation, concluded in return for economic transactions with economic operators in accordance with the conditions stipulated in this decree, to meet the needs of the contracting authority in the field of works, supplies, services and studies"²⁰.

In view of the importance of public transactions, the drafters of Law 06-01 related to preventing and combating corruption paid special attention to defining the standards that must restrict the concerned authorities in assigning a public transaction to any economic contractor, and stated that the procedures followed in this field must be based on the rules of transparency and fair competition, and on objective criteria in general²¹, as he specified in particular by enumerating a set of rules, which are:

- Publicity of information related to the procedures for concluding public transactions;
- Preparing the conditions for participation and selection;
- Making decisions related to concluding public transactions according to objective and accurate criteria;
- Providing the opportunity to appeal to those concerned with the public transactions in the event of failure to respect its rules²².

As for the management of public funds, the Algerian legislator has obligated public facilities and institutions of all types to take all necessary measures to enhance transparency, responsibility and rationality in their management²³. It has focused in particular on the principle

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of transparency, which in its view refers to the commitment of public institutions, departments and bodies to the following steps:

- Adopting procedures and rules that enable the public to obtain information related to its organization and functioning, and how decisions are made therein;
- Simplifying administrative procedures;
- Raising public administration awareness of the dangers of corruption by publishing information on this subject;
- Responding to citizens' petitions and complaints;
- justifying administration decisions when they are issued against the interest of the citizen, and clarifying ways to appeal them²⁴.

2.2-Measures to prevent corruption crimes in the private sector:

The Algerian legislator has programmed legal measures, the aim of which is to prevent the commission of corruption crimes by employees in this sector. In this regard, two categories of measures can be distinguished as follows:

2.2.1-General measures:

The preventive measures programmed by the Algerian legislator to address corruption crimes are not limited only to the public sector, but also extend to the private sector. In this regard, the text of the rules related to this subject suggests strictness, as the Algerian legislator recommends taking the necessary measures to prevent the private sector's involvement in practices related to corruption, including disciplinary penalties that are appropriate to the crime and the perpetrator, and which ensure that they will not be repeated again²⁵. In order to achieve this goal, the concerned authorities must take the following steps:

- Strengthening cooperation between the agencies that detect and suppress corruption crimes and the concerned private sector entities, including moral and physical persons;
- Developing codes of conduct within institutions related to the private sector, whose role is to set standards and procedures that preserve the integrity of these entities and ensure that their employees carry out their work in a regular, fair and proper manner;
- Enhancing transparency between private sector entities;
- Preventing the misuse of procedures regulating private sector entities;
- Internal auditing of private institutions²⁶.

2.2.2-Accounting standards:

Accounting and auditing standards are relied upon to protect private sector entities from undertaking any suspicious transactions related to corruption crimes, for example, the economic company refrains from keeping accounts outside the legal books, and refrains from conducting any transactions without recording them in these books, or writing them down vaguely. In this regard, private sector entities are obligated to avoid all practices that may harm their accounts or lead to the demise of the company itself, such as recording fictitious expenses, using forged documents, or even deliberately destroying accounting documents before the end of the legal deadlines for preserving them²⁷.

2.2.3-Civil society participation in preventing corruption crimes:

The Algerian legislator emphasizes the need to encourage the participation of civil society with its various components in the task of preventing and combating corruption, and this necessarily passes through adopting transparency in how decisions are made in various institutions of a public and private nature, and enhancing citizens' participation in the management of their affairs, in addition to sensitizing national public opinion to the dangers of corruption by preparing educational and pedagogical programs, and finally enabling the media and the public to obtain information related to corruption crimes committed in light of what the

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law stipulates, and what is required by national security, public order, and the impartiality of the judiciary²⁸.

2.2.4-Measures to prevent money laundering:

Money laundering represents one of the most serious crimes recorded in the private sector as it is a crime composed of several other crimes, it also represents one of the most important practices resorted to by criminal and terrorist organizations, and consequently it is a cross-border crime. Based on this data, the Algerian legislator placed banks and non-bank financial institutions, including physical or moral persons who provide regular or irregular services in the field of money transfer or anything of value, to be subject to an internal control system that would prevent and detect all forms of money laundering²⁹.

Conclusion:

It appears from what was mentioned above that confronting corruption crimes in general and preventing them in particular requires significant efforts by public authorities, who are obligated to radically change their approach to this phenomenon. In other words, the challenge that local authorities must address is to give priority to the preventive dimension in the framework of the measures adopted in this field on the deterrent dimension, and this is embodied on the ground by betting on future generations of employees who hold positions in various public and private institutions through their good selection by strict examinations and competitions, in addition to their strict training, and their awareness of the dangers of corruption, so that the Algerian State thus ensures good governance in its various institutions and facilities in the framework of the strategy adopted for this purpose.

Moreover, it cannot be denied the role played by the Algerian authorities in confronting the phenomenon of corruption by adopting a number of legal texts, most notably Law No. 06-01 related to preventing and combating corruption, which laid the foundations on which the competent authorities rely in order to prevent the commission of crimes linked to corruption. However, this initiative, despite the moral endeavors it entails, has not been free from criticism, especially with regard to the concept of corruption, which was almost non-existent in the Law N° 06-01 above.

The completed study allowed us to come up with a set of results, perhaps the most important of which are:

-Corruption represents a phenomenon that has disturbed and continues to disturb members of the international community, including Algeria, which has not been spared from its effects, as a developing country, the spread of this phenomenon in its society and in its various strategic institutions and facilities would radically hinder its endeavor to grow and develop;

-There is no doubt that the Algerian public authorities have employed considerable capabilities in order to put an end to the phenomenon of corruption. In addition to the short-term measures they have adopted aimed at providing a radical response to the crimes that have already been committed by a number of officials and elected officials, they have also worked to create a new generation of these individuals aware of the dangers of corruption, which excludes the possibility for them to resort to this type of practices.

Through the completed study, we were able to uncover a number of legal gaps, and in order to fill them we recommend the following:

-Intensifying awareness and sensitization campaigns adopted by public authorities in order to clarify the idea of corruption to public opinion, including citizens, employees and elected officials, by exploiting traditional media such as television and radio, in addition to modern means of communication such as various social media outlets. The university will also have a

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pivotal role in this field through the forums, seminars organized by its professors and students on this subject;

-The necessity of amending Law N° 06-01 related to preventing and combating corruption, by removing ambiguity around some concepts, as is the case with the concept of corruption, which the Algerian legislator did not define, and within its framework he was content with referring to the forms in which it is embodied, as for the procedural level and what relates to the declaration of property, ambiguity surrounds the issue of an "unusual increase" that occurs in the capital of an employee or elected person, the value of which has not been determined, nor the criteria on which the judge relies in assessing it.

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