

Criminalizing Violations of the Principle of Transparency in Public Procurement as a Means to Combat Corruption

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Abstract---This article addresses the criminal justice framework established by the Algerian legislator to uphold the principle of transparency in public procurement. Transparency is regarded as a cornerstone in the fight against corruption and in ensuring fairness in public contracts. The study examines both substantive and procedural aspects of crimes that undermine transparency in the field of public procurement. The focus is placed on offenses that directly violate this principle, such as bribery in the context of public contracts or the receipt of commissions, which breach the duty of integrity. Other offenses include the granting of unjustified advantages in public procurement and the failure to disclose conflicts of interest. The article analyzes the legal elements of each offense, their manifestations, and legal consequences. It also outlines the punitive system applied to these crimes, presenting the main and supplementary penalties applicable to both natural and legal persons. In addition, it explores general provisions concerning aggravating and mitigating circumstances, exemptions, attempts, complicity, and the statute of limitations. Further, the article examines the procedural framework for crimes against transparency in public procurement. It discusses the authorities responsible for initiating criminal proceedings, special investigative techniques, trial procedures, and the execution of judgments, highlighting the legal safeguards guaranteed at every stage. This study offers a comprehensive understanding of the penal framework governing violations of transparency in public procurement. It underscores the need for more effective enforcement of legal provisions to combat corruption with resolution and efficiency. The goal is to ensure that transparency mechanisms are not merely ethical guidelines but binding rules that command compliance.

Keywords---Public procurement, Principle of transparency, Corruption, Deterrent mechanisms, Penal system, Procedural framework.

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Introduction

The principle of transparency is a key pillar in ensuring integrity in the awarding and implementation of public contracts. Its role is vital in combating corruption, promoting justice, ensuring equality, and fostering fair competition.

Article 9 of Law No. 06-01, amended by Ordinance No. 10-05 dated August 26, 2010, stipulates that procedures in the field of public procurement must be based on transparency, fair competition, and objective standards. Article 10 of the same law emphasizes the need to adopt measures that promote transparency, accountability, and rational management of public funds.

In this context, Law No. 23-21 on public procurement was enacted as part of comprehensive reforms aimed at simplifying procedures, promoting digitalization, and embedding transparency as a fundamental condition at every stage of the procurement process.

This legislative direction is reflected in several legal texts, including Article 46 of Law No. 23-12, which defines the core principles governing public procurement. Transparency of procedures is also reaffirmed in Presidential Decree No. 15-247¹ In its Articles 61, 82, 203, 204, 205, and 206, the law addresses the topic of publicizing and announcing public procurement contracts. Similar provisions appear in Articles 39 to 42 and Article 106 of Law No. 23-12.

Public procurement is one of the key instruments used by the state to implement public policies and meet diverse national needs. This function makes it essential to impose strict oversight and to uphold the values of integrity, fairness, and transparency at every stage of the procurement process. In this context, the principle of transparency holds significant importance. It is one of the main pillars of the public procurement system. It plays a vital role in curbing corruption and preventing mismanagement. It also helps to build trust between public authorities and economic operators. This principle is reflected in several key aspects, including:

- Ensuring equal treatment for all bidders;
- Guaranteeing free access to public procurement opportunities;
- Requiring transparency in procedures by mandating official public announcements—whether in the official bulletin, printed press, digital platforms, or through the designated public procurement portal;
- Prohibiting contracts with individuals or entities subject to disqualification;
- Ensuring the right to appeal, either before the Public Procurement Committee or the competent judicial authorities;
- Allowing for the termination of contracts in cases where bias or corruption is proven before, during, or after the awarding of the contract;
- Enforcing the principle of fair competition without distortion;
- Subjecting procurement procedures to internal oversight by the bid opening and evaluation committee, and external oversight by the Public Procurement Committee.

These foundations aim to ensure the efficient and ethical management of public procurement. They contribute to fostering mutual trust and to creating a fair and competitive business environment. They also reinforce administrative oversight² The Algerian legislator has introduced the Supreme Council for Public Procurement, Digitization and Economic Statistics³, the Preparation of the term sheets before

¹ Presidential Decree No. 15-247 of 16 September 2015 regulating public procurement and public utility mandates, GRC No. 50 of 20 September 2015.

² Article 103 of Law No. 23-12 of 05/08/2023 specifying the rules related to public procurement.

³ Article 104 of Law No. 23-12 of 05/08/2023 specifying the rules related to public procurement.

initiating any procedure to call for competition⁴, and the creation of the electronic portal for public procurement⁵. Including a declaration of integrity when concluding public contracts is one of several measures introduced to promote transparency. However, the mere incorporation of this principle into legal and regulatory texts is not sufficient on its own. It cannot remain only an ethical guideline or a preventive recommendation. Without the support of an effective criminal justice framework, capable of deterring violations, such measures lack real impact.

To that end, the Algerian legislator has established a legal framework that criminalizes specific conduct directly related to the breach of transparency in public procurement. These provisions are included in Law No. 06-01 on the prevention and fight against corruption, as well as in special regulations governing public procurement. Among the criminal offenses are bribery in public contracting, receiving commissions in violation of the duty of integrity, the granting of unjustified advantages, and failure to declare conflicts of interest. Such actions undermine the principle of transparency and open the door to manipulation and deviation in public contracting processes.

To support this criminalization, the legislator introduced a comprehensive penal system that targets both individuals and legal entities. This includes a set of general provisions related to aggravating and mitigating circumstances, legal exemptions, and attempted or associated criminal acts. The goal is to ensure proportionality in sentencing and increase the effectiveness of deterrence.

Evaluating the efficiency of this system requires examining the extent to which the penalties achieve deterrence. It also involves analyzing the criminal policy adopted by the legislator and proposing necessary legal reforms to strengthen and safeguard transparency against manipulation.

Based on this, the central research question of this article can be formulated as follows: What are the criminal mechanisms for enforcing transparency, accountability, and rationality in the management of public funds, and how can these mechanisms help reduce corruption in public procurement?

To answer this question, the article is structured around two main axes: Crimes Affecting Transparency in Public Procurement

The Procedural Framework Governing Transparency-Related Offenses in Public Procurement

This analysis relies on both descriptive and inferential legal methods, with a focus on examining legal texts that mandate the application of transparency in public procurement. Transparency remains a foundational step in the broader strategy to combat, or at least limit, the spread of corruption.

Axis One: Crimes Affecting Transparency in Public Procurement

Transparency is one of the essential foundations of good governance in public procurement. It plays a key role in building trust between public institutions and economic operators. It also ensures the efficient and effective use of public resources.

However, violations of this principle through criminal acts pose serious challenges to modern legal systems. These violations undermine the credibility and integrity of public contracting processes. This section focuses on analyzing the crimes related to breaches of transparency in public procurement. It offers definitions of these offenses, outlines their legal classification, elements, and different forms. The aim is to highlight the risks such violations pose to public interest.

This axis covers two key areas:

The specific offenses that breach transparency in public procurement.

The penal framework applied to these violations.

Offenses Related to Public Procurement

⁴Article: 17 of Law No. 12-23 of 05/08/2023 Specifying the Rules Relating to Public Transactions

⁵Article 105 of Law No. 23-12 of 05/08/2023 Specifying the Rules Relating to Public Procurement

The field of public procurement is particularly vulnerable to corruption, due to its direct link with the allocation of financial resources meant to serve the public good. In response, the Algerian legislator has given considerable attention to embedding the principle of transparency as a preventive measure. In addition, a set of deterrent measures has been adopted to combat crimes that violate transparency in public procurement. The objective is to reduce the waste of public funds.

This criminal policy rests on core principles that must be upheld in the conclusion and execution of public contracts. Among these are: ensuring equality among bidders, enhancing procedural transparency, providing legal remedies, respecting competition, and guaranteeing public disclosure of procedural steps such as bid opening. Crimes that undermine transparency in the management and implementation of public contracts are therefore subject to legal scrutiny. One of the most significant among these is:

a. Bribery in the Field of Public Procurement

Bribery is among the most serious forms of corruption, due to its direct and negative impact on the integrity of public administration and the management of public funds. Its danger increases significantly when it infiltrates the public procurement sector, which is financially and legally sensitive. When a public official or a person tasked with a public service accepts an undue benefit in exchange for breaching their official duties, this constitutes a clear violation of the principles of equality and transparency. It results in the misuse of public funds and weakens citizens' trust in institutions.

Recognizing its severity, the Algerian legislator criminalized this offense in the aforementioned Anti-Corruption Law (Law No. 06-01), after having removed it from the Penal Code. This reflects a shift toward specialized legal treatment of corruption-related offenses within the framework of public procurement⁶ Previously, this offense was criminalized under Article 128 bis 1.

Bribery is not merely an individual act of misconduct; It is a criminal behavior that intersects with the economic interests of the state and undermines public trust in government institutions. For this reason, the Algerian legislator has paid particular attention to addressing this issue by introducing clear legal provisions within the Anti-Corruption Law. Article 27 specifically criminalizes bribery in the field of public procurement, considering its particular nature and the dual harm it causes to both public administration and economic operators.

The aim of this section is to examine the concept of bribery in public procurement (Section One), followed by an analysis of its legal classification under Algerian law (Section Two).

The legal understanding of bribery has evolved alongside changes in administrative practices and the increasing complexity of corruption. It no longer refers only to money offered in exchange for a service. It now includes any undue benefit requested or accepted by a public official who exploits their position to influence the contracting process.

In the context of public procurement, this offense has a specific character. It directly affects public funds and violates the principles of fair competition and equality in contracting. Bribery, in general, is defined as an agreement between a public official and another party to offer or accept an undue benefit in exchange for performing or refraining from performing an act within the scope of their duties. However, in public procurement, bribery takes a more serious form. It involves the official's misuse of authority or influence during the preparation or execution of a contract to secure personal gain. This increases its gravity and links it to systemic corruption within administrative bodies.

⁶ Ahmed Bouchareb, "Legal and Institutional Mechanisms for the Prevention and Combating of Corruption in the Field of Public Procurement", University of Algiers 3, Journal of the Researcher Professor for Legal and Political Studies, Vol. 01, No. 07, 2017, p. 358.

Article 27 of Law No. 06-01 on the Prevention and Fight Against Corruption states: "Shall be punished with imprisonment from ten (10) to twenty (20) years and a fine ranging from 1,000,000 to 2,000,000 Algerian dinars, any public official who, directly or indirectly, accepts or attempts to accept for themselves or for another, any compensation or benefit of any kind, during the preparation or negotiation of a contract, agreement, or addendum entered into on behalf of the state, local authorities, public administrative institutions, industrial or commercial public institutions, or economic public institutions."

From this provision, it is clear that the Algerian legislator considers bribery in public procurement a serious offense. It is classified as an aggravated misdemeanor due to its potential impact. The law prescribes a severe penalty to reflect a strong punitive approach, aiming to protect the foundations of administrative governance.

This offense is classified among crimes related to public office. It involves the abuse of position or influence to interfere in contracting procedures, thereby undermining the principle of equality between competing economic actors.

From a legal standpoint, the offense falls under the category of "affirmative crimes par excellence" as it involves a concrete, positive act—namely, accepting or seeking a benefit in exchange for a service. The Algerian legislator has aligned with international trends in criminalizing this form of bribery. This is consistent with the United Nations Convention against Corruption (2003), which calls for the criminalization of bribery in public contracting and the promotion of transparency in procurement processes⁷

Bribery in Public Procurement: A Distinct Offense

Bribery in the context of public procurement carries a distinct character compared to other forms of bribery. This distinction is due to several key reasons:

- It directly undermines the principle of transparency in public contracting, which is a fundamental element of good governance in modern public administration.
- It often involves large sums of money, given that public contracts are concluded to implement large-scale and sensitive projects of public interest.
- It takes place at a critical stage of administrative decision-making, namely the contract award phase, which must be surrounded by strict legal safeguards.

For these reasons, this form of bribery is not viewed as an ordinary offense. It poses a serious threat to the integrity of public contracting and justifies its classification under a dedicated article in the Anti-Corruption Law. It also warrants the imposition of aggravated penalties.

Constituent Elements of Bribery in Public Procurement

In order to establish criminal liability for bribery under anti-corruption legislation, the law requires the presence of specific legal elements. These elements define the criminal act and distinguish it from other unlawful behaviors. Their presence is necessary for the offense of bribery in public procurement to be established under Law No. 06-01.

1. Legal Element (Rukn Shar'i)

Law No. 06-01 of 20 February 2006, relating to the prevention and fight against corruption in Algeria, criminalizes the bribery of public officials in general through Article 25. However, due to the serious

⁷ United Nations Convention against Corruption, ratified by Presidential Decree No. 04-128 of 04/19/2004, GRC, No. 26.

nature of bribery in public procurement and its impact on the integrity of public finances and administrative processes, a separate provision—Article 27—was dedicated to this specific offense. This article imposes stricter penalties and reflects the legislator's intent to treat it as a particularly grave crime⁸

2. Presumed Element

The offense of bribery in public procurement requires the presence of a specific legal status in the offender. The individual must qualify as a public official in the broad sense. This includes, in particular, those who are legally authorized to conclude contracts on behalf of the state or any of its public entities⁹ Distinctive Nature of Bribery in Public Procurement.

Bribery in this context has a distinct character compared to other forms. This distinction arises for several reasons:

- It directly undermines the principle of transparency in public contracting, which is a foundation of good governance in modern administration.
- It often involves substantial sums, since public contracts typically fund sensitive and high impact initiatives.-
- It occurs during a pivotal administrative phase—contract award—which should be subject to strict legal oversight.

Given these facts, bribery in public procurement is not treated as ordinary misconduct. It poses a serious threat to contractual justice. That is why the Anti Corruption Law dedicates a specific article to it and prescribes higher penalties.

Constituent Elements of the Offense

Criminal liability for bribery under Law No. 0601 requires certain foundational elements. These elements must all be present to properly define the offense under public procurement.

2. Presumed Element

The perpetrator must hold the status of a public official in the broad legal sense. Specifically, they must be legally authorized to conclude contracts on behalf of the state or its public entities. This differs from Article 128 bis 1 of the Penal Code, which imposes bribery liability without requiring the offender's status as a public official.

3. Physical Element (Rukn al-Maaddi)

For bribery under Article 27 to be established, two conditions must be present:

- a. **Criminal Conduct:** The official must have accepted or attempted to accept a benefit—financial or otherwise—either directly or indirectly. This benefit may go to the official or a designated third party.
- b. **Related Occasion:** The acceptance must be tied to a specific act: preparation or negotiation leading to the award or implementation of a contract, agreement, or addendum on behalf of the state or its public bodies.

4. Intent (Rukn al-Ma'nawi)

Bribery is an intentional crime. The public official must know the action is unlawful and deliberately seek the benefit in exchange for influencing the public procurement process.

⁸ Zoulikha Zouzou, Public Procurement Crimes and Mechanisms to Combat Them in the Light of the Law on Corruption, Master's Thesis, Specialization in Criminal Law, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, Algeria, 2012, p. 106.

⁹ Nawal Majdoub, Ahmed Baaziz, "Crimes affecting public contracts in light of the Algerian legal system," African Journal of Legal and Political Studies, Ahmed Draria University, Adrar, Algeria, Vol.01, Issue 02, 2017, p. 16.

Forms of Bribery in Public Procurement and Their Impact on Transparency

Bribery can take various forms depending on the procurement stage and involved actors. These variations complicate detection and prosecution. They also carry different legal consequences—from administrative annulment of contracts to criminal penalties. The following sections outline these forms and their harmful effects on transparency.

A. Forms of Bribery

- **During the introduction of tender documents:** The official may include biased or restrictive conditions to favor a specific bidder. This undermines formal competition and voids the contract's legal legitimacy.
- **During bid evaluation and selection:** Committee members may favor a particular bidder by awarding undue marks or rejecting stronger offers, in exchange for material benefit or future promises. Such conduct damages the integrity of procurement and leads to poor outcomes.
- **During contract execution:** An official may receive a bribe to overlook implementation faults, such as using substandard materials or tolerating delivery delays. This practice critically harms project quality and leads to public financial loss.

B. Impact on Transparency

- **Undermining fair competition:** Bribery during contract award violates principles of equal opportunity and transparency, opening the door to favoritism and administrative bias.
- **Public fund waste:** Contracts awarded via corruption often go to unqualified parties or result in overpricing and low-quality outcomes. Public resources are thus squandered without achieving desired goals.
- **Erosion of public trust:** Persistent bribery in procurement erodes trust among economic operators and investors. It damages confidence in public institutions and may deter investment and hinder development¹⁰

B. The Crime of Granting Undue Advantages

The offense of granting undue advantages in the field of public procurement is one of the most visible forms of administrative corruption. It occurs when a public official exploits their position to favor one economic operator without lawful justification. This acts undermines the principles of competition, transparency, and equality. The crime has specific legal characteristics due to its direct impact on the integrity of public contracting mechanisms.

Granting undue advantages is a serious breach of the rules governing fair competition. It affects both the quality of services and the efficiency of public spending. It is considered one of the most severe violations of transparency and equality in public procurement. Its seriousness lies in its institutional nature and its link to decision-making positions within the public administration. Recognizing its gravity, the Algerian legislator has criminalized this conduct explicitly under the Anti-Corruption Law. This section will examine the concept of the offense (first) and its legal characterization under Algerian law (second).

1. Definition of the Crime of Granting Undue Advantages

This offense occurs when a public official grants an unwarranted benefit or preference to one bidder at the expense of others. It typically takes place during the awarding of public procurement contracts or the delegation of public services. Such conduct is contrary to the legal and regulatory frameworks that guarantee free competition and equal treatment of candidates. It leads to a violation of both fairness and transparency in the procurement process.

¹⁰ Iman Ben Odeh, *Administrative Corruption in Algeria between Text and Practice*, Ph.D. Thesis, Administrative Law, Faculty of Law and Political Science, University of Oran 2, Algeria, p. 114.

Some legal scholars define this act as: “An unlawful act committed by a public official who favors one bidder in a public contract by granting them an advantage that is neither based on objective criteria nor legally justified, thereby harming the principle of equal opportunity among competitors.”

2. Legal Characterization of the Crime of Granting Undue Advantages

The crime of granting undue advantages is among the most serious offenses that threaten the principle of transparency in public procurement. The Algerian legislator has dedicated a specific provision to it in Article 26/01 of Law No. 06-01, as amended by Law No. 11-15. This article states: “*Shall be punished by imprisonment of two (2) to ten (10) years and a fine of 200,000 to 1,000,000 Algerian Dinars, any public official wholly knowing grants another person an undue advantage during the awarding, endorsement, or amendment of a contract, agreement, or public procurement deal, in violation of legislative and regulatory provisions relating to freedom of competition, among candidates, and transparency of procedures*”¹¹ It is clear from this provision that the legislator considers this offense a form of administrative corruption that infiltrates the procedures of awarding public contracts. This occurs when a public official intervenes in favor of a specific economic operator without any legal basis. Such conduct constitutes a serious violation of the principle of equality and equal opportunity. From the legal characterization of this offense, several key points emerge:

- It is an intentional crime, meaning that the law requires the public official to act with the willful intent to grant an undue advantage.
- The offender must be a “public official”, as defined in Article 2 of the same law.
- The criminal act involves a breach of the legislative and regulatory framework governing the procedures for awarding and executing public contracts.
- The purpose of the act is to secure an unjustified benefit for one party over others. This constitutes an act of corruption that is criminalized to protect public funds and maintain trust in the administration.

The legislator has imposed a severe penalty for this offense due to its harmful impact on both the economic and administrative systems. It enables certain parties to manipulate public contracting processes, which ultimately undermines the public interest.

Elements of the Crime of Granting Undue Advantages

The offense of granting undue advantages is considered a specific criminal offense. For it to be established, the law requires several interconnected legal elements. It is not sufficient that an unlawful benefit is granted; It must also be accompanied by a clear criminal intent and a violation of the regulations governing public procurement.

In this context, we will analyze the legal elements of the offense of granting undue advantages as outlined in Algerian law, through the following components:

1. The Legal Element (Rukn Shar'i)

The legal element is represented by the existence of a statutory provision that criminalizes the act and prescribes a penalty. This reflects the principle of legality in criminal law: “No crime and no punishment except by law.”

This offense derives its legal foundation from Article 26 of the Anti-Corruption Law, as previously cited. The wording of the article indicates that the legislator has addressed this crime in a specific and separate provision, recognizing its distinct nature. It directly violates the principle of equality among competitors in public procurement.

¹¹ Article 26 of Law No. 06-01 of 20 February 2006 on the Prevention and Combating of Corruption, as amended and supplemented by Law No. 11-15 of 2 August 2011, GR, Algeria, No. 44.

Several legal studies have emphasized that this legal element forms the basis of judicial classification of the offense. The text of the article is explicit in identifying the specific nature of the act as a form of administrative-functional corruption, particularly in the sensitive domain of public contracting¹². It is evident that this article reflects the legislature's strong commitment to criminalizing all forms of misconduct in public procurement procedures.

Presumed Element

For procurement-related crimes under the Anti-Corruption Law—such as the offense of granting undue advantages—the offender's status is crucial. The perpetrator must be a public official or possess an official position allowing influence over any stage of contracting—whether preparation, award, or execution. This includes anyone with decision-making authority or advisory influence in granting the advantage.

Material Element (Rukn al-Maaddi)

The material element comprises two essential components:

a. Criminal Conduct

This involves concluding or endorsing a contract, agreement, procurement, or addendum in direct violation of legislative and regulatory norms. These norms govern freedom of application, equal treatment of candidates, and transparency in procurement procedures. Signings signals formal contract conclusion, while endorsement refers to pre-execution approval, involving internal, external, and regulatory oversight.

Algerian Law No. 2312 establishes the general rules for public procurement and mandates multiple oversight layers. Article 94 subjects public procurements to internal oversight, external oversight, and supervisory oversight. Internal prior oversight is addressed by Article 96 of Law No. 2312 and Articles 156–162 of Presidential Decree No. 15247 of September 16, 2015. These mechanisms are carried out by the contracting administrative bodies or within the contracting department itself. They aim to verify compliance of procurement actions with invoices and operative guidelines. This approach serves to institutionalize the principle of transparency and replace the earlier two-committee system (bid opening and bid evaluation) with a unified oversight body.

Algeria's legislative reforms—including Article 26 of Law No. 2321 (August 6, 2023)—reinforce the principles of open access to procurements, equal treatment of applicants, and transparency of procedures. These are mirrored in:-

- Article 5 of Presidential Decree No. 15247 (September 16, 2015), regulating public procurement and public service delegation.-
- Article 9 of Law No. 0601 (February 20, 2006), relating to corruption prevention, which mandates that procurement procedures be based on transparency, integrity, fair competition, and objective standards.-

Specifically, these rules call for:

- **Public disclosure** of procurement procedures;
- **Advance preparation** of participation and selection criteria;
- **Inclusion of a declaration of integrity** at the time of contract award;
- **Clear and objective decision-making criteria** for contract award;
- **Effective appeal mechanisms** to contest noncompliance in procurement¹³Article 56 of Law No. 23-12 stipulates the following: "In addition to the right of judicial appeal provided under the

¹²-Nawal Hebeili, *The Crime of Granting Unjustified Privileges in the Field of Public Procurement, A Comparative Study*, Master's Thesis, Criminal Law, Faculty of Law and Political Science, University of Annaba, Algeria, 2013, p. 42.

applicable legislation, a contractor who objects to the provisional awarding of a public contract, its cancellation, the declaration of ineffectiveness, or the annulment of the procedure within the framework of a call for tenders or negotiated procedure after consultation, may file an appeal before the competent contracts committee."

Accordingly, the process of awarding public contracts is founded upon the following fundamental principles:

- **Principle of Free Access to Public Procurement:** This principle requires that every economic operator who meets the necessary conditions has the right to participate in any contract organized by public administrations or institutions, unless excluded under Article 67 of Presidential Decree No. 15-247.
- **Principle of Free Competition:** This principle mandates granting all candidates access to the documents related to the public contract or agreement, in accordance with Article 47 of Law No. 23-21. The contracting authority must provide economic operators with the tender specifications and all documents related to the public procurement. This enables them to obtain all relevant information regarding the subject of the service, technical and financial conditions, and the deadline for submitting bids. Such transparency encourages the submission of competitive offers that benefit both the contracting authority and the public interest.
- **Principle of Equality Among Candidates:** This principle is a result of the constitutional amendment of 2020, particularly Article 27. It complements the principle of free competition and requires respecting the deadlines for submitting bids for all contractors without discriminations¹⁴. This principle requires that all bidders submit their offers on an equal footing with other competitors, respecting the required conditions, deadlines, and prescribed procedures without discriminations. This is clearly established by the Algerian legislator in Article 5 of the Public Procurement Law.
- **Principle of Transparency in Procedures, i.e., Resorting to Public Announcement:** This principle serves as a means to achieve the previous principles such as equality, free access, and fair competition. It requires that the contract be announced through public advertising. It also calls for the public opening of the envelopes containing the application files and the technical and financial offers. This is stipulated in Article 46 of Law No. 23-12 dated August 5, 2023, which sets the general rules for public procurement.

The law mandates public advertising, specifically through the press, in the following cases: open tender, limited tender, and open tender with minimum capacity requirements for the competition. Announcements for calls for tenders must include a set of mandatory information. They must be drafted in Arabic and at least one foreign language, and published compulsorily in the official bulletin of public contracts¹⁵ And at least in two national daily newspapers, or through the electronic press¹⁶ In addition, the contract must be advertised through the electronic portal established under Article 205 of Law No. 23-12. This portal's content and regulations were organized by the ministerial decree dated November 17, 2013¹⁷ of public procurements, how they are conducted and how to exchange

¹³ Material: 09 of Law No. 06-01 dated 02/20/2006, relating to the prevention and fight against corruption, amended by Order No. 10-05 dated 08/26/2010, Official Gazette, No. 50, dated 09/01/2010.

¹⁴ Constitutional Amendment of 2020, issued by Presidential Decree No. 20-442 dated 30-09-2020, GRC, No. 82, dated 12-30-2020.

¹⁵ Advertising through the official bulletin of the economic operator's transactions is in addition to an official publication prepared periodically by the state based on a decision by the Minister of Commerce. This publication includes a written bulletin specifically related to the public transactions concluded by the public operator. The purpose of this bulletin is all advertisements related to public transactions. In this context, see Articles 02-03 of Decree No. 116-84 dated 05/12/1984 establishing a special bulletin on contracts concluded by public operators, J.R.G.J., No. 20, dated 05/15/1984.

¹⁶ Refer to the texts of Articles 39-42 of Law No. 23-12

¹⁷ The Algerian legislature has established the electronic portal to facilitate the exchange of information in the field of public procurement, as indicated in articles 203 to 206 of Presidential Decree No. 17-247 and article 105 of Law No. 23-12, which specifies the general rules related to public procurement.

information in the electronic way¹⁸The principle of transparency must be observed during the opening of the envelopes containing the application files and the technical and financial offers. This procedure must take place in a public session at the date and time specified in Article 69 of Decree No. 15-247. The contracting authority is required to invite all candidates or contractors to attend the envelope opening session, either through the competition announcement or by sending a notification to the relevant candidates or contractors. This process enhances transparency in public procurement by ensuring openness, which allows participants to review the stages of the competition and inspect its results.

The purpose of the criminal act is to grant an unjustified advantage to a third party, meaning the preferential treatment of one competitor over another. This may take the form of providing privileged information or awarding additional points in the technical or financial evaluation to one competitor but not to others. Consequently, this crime requires that the beneficiary of the undue advantage be a party who, for example, is granted a contract through a simplified negotiation procedure despite exceeding the legally established financial threshold¹⁹.

The Mental Element

The mental element of the crime of granting unjustified advantages in public procurement requires two components: criminal intent on the part of the employee, which includes both knowledge and will to commit the act; and a specific intent to deliberately grant unjustified advantages to others. This is done with full awareness of the employee's official status, authority, and the violation of legal procedures.

Forms of the Crime of Granting Unjustified Advantages and Its Impact on the Principle of Transparency

The crime of granting unjustified advantages is a serious offense that threatens the transparency and credibility of the public procurement system. It involves corrupt administrative behavior that results in deliberate and unlawful favoritism towards a specific economic operator at the expense of other competitors. This crime can take various forms, depending on the stage of the procurement process in which it occurs—whether during the drafting of tender documents, the evaluation of bids, or the final awarding of the contract.

Due to the damage these behaviors cause to the principle of transparency, effectively stripping it of meaning, the legislator addressed them in Article 26 of the Law on the Prevention and Fight Against Corruption. This article clearly defines the legal nature of this criminal act. This section will first examine the different forms of this crime as manifested in practice. Then, it will consider its serious repercussions on the principle of transparency in public procurement.

Forms of the Crime of Granting Unjustified Advantages

The forms of this crime vary according to the stage at which the criminal act takes place and may include:

- Granting an advantage during the drafting of tender documents, where a public official inserts technical or financial conditions tailored specifically to favor one operator, thereby effectively excluding other competitors.
- Discrimination during the evaluation of bids, by awarding undue points or marks to certain bids over others that better meet the requirements, resulting in a pre-determined outcome.

¹⁸ The Ministerial Decree dated 11/17/2013 specifies the content of the Public Procurement Portal, the methods of its management and the methods of exchanging information through the electronic method, GRC, No. 21, dated 04/09/2014.

¹⁹ Mohamed Hazit, *Mechanisms for Combating Corruption Crimes in Algerian Legislation*, First Edition, Dar Belkis, Casablanca, Algeria, 2023, pp. 153-154.

- Bias in the award phase, where the contract is granted to a specific operator despite their failure to meet the required legal or technical conditions.
- Granting exceptional deadlines or financial payments without legal justification, which represents a form of administrative bias violating the principle of equality among operators.

These and similar behaviors constitute the concrete manifestations of the crime as set out in Article 26 of the amended Law on the Prevention and Fight Against Corruption. This law criminalizes the act of an employee granting unwarranted advantages, directly or indirectly, within the process of awarding or executing a public contract. The intent is to harm free and fair competition or to violate the principles of equality and transparency among competitors.

Impact of the Crime on the Principle of Transparency in Public Procurement

The crime of granting unjustified advantages is among the most serious offenses undermining the principle of transparency in public procurement. This is due to its nature, which breaches the rules of fair competition and equality among contractors.

A contractor who benefits from such advantages gains an unlawful edge over others. This undermines oversight mechanisms and anti-corruption measures, creating opportunities for networks of favoritism and collusion between public officials and economic operators.

Moreover, this crime strikes at the core of the transparency principle, which is based on public announcement, equal opportunity, access to information, and adherence to equality and openness.

Granting advantages without legal justification negates these principles, turning the public procurement system into a tool for illicit enrichment and the waste of public funds.

Consequently, the existence of such crimes erodes public trust in administration and weakens the effectiveness of public policies aimed at sustainable development.

The spread of these practices highlights weaknesses in internal and external oversight mechanisms and reveals structural problems in procurement management. This situation calls for stricter penalties and the activation of preventive, administrative, and judicial oversight tools simultaneously.

Purpose of the Criminal Act

The act aims to grant an unjustified advantage to another party, meaning the preferential treatment of one competitor over another. This could be through providing privileged information or increasing the technical or financial scores of one competitor's offer over others. Therefore, this crime requires that the beneficiary of the undue advantage be the party awarded, for example, a contract through simplified negotiation procedures despite exceeding the legally established financial limit²⁰.

The Mental Element

The mental element of the crime of granting unjustified advantages in public procurement consists of two components. The first is the criminal intent of the employee, which includes their knowledge and will to commit the act. The second is the specific intent to deliberately grant unjustified advantages to others, accompanied by awareness of their official position, authority, and the violation of legal procedures.

C- Crime of Failure to Report Conflict of Interest

The crime of conflict of interest is defined under Article 34 of the Law on the Prevention and Fight Against Corruption. It states: "Any public employee who violates the provisions of Article 9 of this law shall be punished by imprisonment from six months to two years and a fine ranging from 50,000 to 200,000 Algerian dinars."

²⁰ Mohamed Hazit, *Mechanisms for Combating Corruption Crimes in Algerian Legislation*, First Edition, Dar Belkis, Casablanca, Algeria, 2023, pp. 153-154.

The Algerian legislator adopted the concept of conflict of interest as a mechanism to prevent and combat corruption. It was established as a constitutional principle in Article 24, paragraph 3, of the 2020 constitutional amendment, which provides: "Every public employee must avoid any situation of conflict of interest in the performance of their duties."

This principle is also reflected in Article 28 of Law No. 11-10 of 2011 related to municipalities, which prohibits any member of the Municipal People's Council from attending council sessions when discussing matters that concern them or in which they have a personal interest. Violation of this rule renders the council's decisions null and void.

This article refers to Article 60 of the Municipal Law, which states: "Neither the president of the Municipal People's Council nor any council member in a situation of conflict of interest with the municipality—whether personally, through their spouses, ancestors, descendants to the fourth degree, or legal representatives—may attend deliberations on such matters. Otherwise, such deliberations shall be considered invalid."

Articles 67 to 70 of Law No. 23-12 dated 05/08/2023 on public procurement also address this issue. They require that when a public employee's private interests conflict with those related to the preparation, awarding, or supervision of a contract, they must recuse themselves from the task, inform the competent authority, and notify the contracting party.

Moreover, Article 45 of Decree No. 06-03 dated 15 July 2006, related to the fundamental law governing public service, refers to this obligation²¹ It also refers to the case of conflict of interest, as it stipulates as follows: "Every public official, regardless of his position in the administrative ladder, shall be prohibited from possessing interests of an interest inside or outside the national territory that affect his independence or constitute an obstacle to the normal performance of his duties in an institution subject to the control of the department to which he belongs or which is related to this department, under the penalty of being subject to the disciplinary offenses stipulated in this law."

Article 8 of the Corruption Law also stipulates that the public servant must inform the peaceful authority in the event of a conflict of interest with the public interest, which would affect the regular exercise of his duties, and even more so, the legislator has criminalized in the text of Article 34 of the Corruption Law, any official who violates this obligation and is punished from six months to two years and fined from 50,000 to 200,000 DZD.

It is interesting to note that the Algerian legislator has not clarified the meaning of the conflict of interest that the employee is obliged to comply with in the Corruption Law, where those who violate it are subject to penal penalties, while an employee who violates Article 45 of the Public Employment Law is subject to administrative procedures, and also violating them according to the Municipality Law entails the penalty of annulment of the deliberation, and violating them according to the Public Procurement Law results in resignation.

It is also important to note that the burden of proof is on the public official to know whether his private interests conflict with the public interest or not, and in cases that have not been limited by the legislator, but have made their significance in separate texts and contradict them between administrative sanctions and punitive sanctions.

²¹ Decree No. 06-03 of 15 July 2006 amending and supplementing the General Basic Law of the Public Service, GJC, No. 46 of 2006

The nominal goal sought by the Algerian legislator through the constitutionalization of the rule of conflict of interest is to seek to consolidate transparency and integrity and to give preference to the public interest over the private.

Conflict of interest is one of the most threatening aspects of transparency in the field of public procurement, as it constitutes a fundamental violation of the rules of neutrality and integrity that must be shown by the awarding parties to the deals, especially if it is ignored or not declared. The Algerian legislature has approved this crime in the framework of Law 06/01 on Article 34 of the Prevention and Combating of Corruption²², which calls for studying it in terms of its concept and adaptation, as well as its pillars, and then addressing its images and effects on the transparency of public procurement.

The Concept of the Crime of Failure to Report a Conflict of Interest and its Legal Adaptation

Through this research, we will clarify the concept of the crime of failing to report a conflict of interest (first) and then address its legal adaptation (second).

Concept of the crime of failing to report a conflict of interest

The crime of failing to report a conflict of interest means the refusal of a public person or his equivalents to declare a situation in which he may have a direct or indirect personal interest, which may affect his performance of his duties or his decision-making related to public transactions. This interest is represented in a financial, family, commercial or other relationship, which may make him biased or impartial in his handling of the transaction file. This harms the principle of transparency and undermines the credibility of the administrative apparatus, as well as exposes public funds to waste and mismanagement. A crime is committed only if the following are met:

Condition of the presence of the public official in a situation of conflict of interest: Referring to Article 08 of Law No. 06-01,²³ which stipulates that "the public official is obliged to inform the presidential authority to which he is subject if his private interests conflict with the public interest or if this may affect the normal exercise of his duties."

B. Failure to inform the Presidential Authority:

Directly, this offense requires the employee's neglect of the duty of notification specified under Article 8 of the Anti-Corruption Act²⁴.

Legal Adaptation of the Crime:

The crime of failing to report a conflict of interest is based on the text of Article 34 of Law 06-01 on the Prevention and Combating of Corruption, which stipulates the following: "Any public official who violates the provisions of Article 9 of the Law shall be punished by imprisonment from six months to two years and from 50,000 to 200,000 DZD²⁵.

This offense is distinguished from the offense of granting unjustified privileges, since the offense in the case of non-reporting is merely abstention, without the need to prove the existence of a biased decision or a realized interest. It is also different from the offense of bribery, which is based on reciprocity, whereas this offense punishes the mere breach of the moral and legal duty to disclose.

Elements of the crime of failing to report a conflict of interest

²² Article 34 of Law No. 06-01 of February 20, 2006, No. 14 of March 8, 2006, as amended and supplemented.

²³ Article 08 of Law No. 06-01 of February 20, 2006, No. 14 of March 8, 2006, as amended and supplemented.

²⁴ Amal Yaish Tamam, "The New Forms of Criminalization Introduced under the Law on the Prevention and Combating of Corruption", Journal of Jurisprudence, Mohamed Khidir University of Biskra, Algeria, No. 05, 2017, p. 101.

²⁵ Article 34 of Law 06-01 of 20/06/2006 on the Prevention and Combating of Corruption, GR, GC, Algeria, No. 14 of 03/08/2006, as amended and supplemented by Decree No. 05-10 of 08/26/2010.

The crime of failing to report a conflict of interest, like other crimes, is based on legal elements that are required for the establishment of criminal liability, and we will address them as follows: the supposed element (a), the legal element (b), the material element (c), and the moral element (d).

Supposed Element: In order for the presumed element of the misdemeanor of failure to report a conflict of interest, the offender must have the status of being a public official in its broad sense, i.e., according to the Corruption Law.

The Legal Pillar

The legal element is represented in the existence of a legal text that criminalizes the act committed andifies a criminal penalty for it, and with regard to the crime of failing to report a conflict of interest, the legal element is embodied in Article 34 of the aforementioned Order 06-01, and this crime was introduced under it, and this text is the legal basis on which criminal prosecutions in this type of crime are speculated.

The material element

Criminal Conduct: This element is embodied in a clear breach of the duty to declare:

Abstention: It is achieved when a person deliberately ignores the statement despite knowing that there is a relationship that leads to a conflict of interest.

Negligence or negligence: It is an unintentional form of conduct, but the legislator also criminalizes it if there is a clear legal duty that has not been²⁶respected

The existence of an actual relationship of conflict of interest: It means any interest that would affect neutrality, such as friendship, kinship, or financial relations, as it is implicit in the law in a broad sense.

D. The moral element (criminal intent):

The crime requires the existence of criminal intent in both forms:

General Criminal Intent

Knowledge of a conflict of interest with management is not reported²⁷.

Special Criminal Intent:

It appears in the intention to retain private interest or to avoid the consequences of the declaration, which is an indication of the existence of a special criminal intent. Criminal intent requires knowledge of the situation of conflict of interest and the desire to hide it from the contracting or supervisory body, i.e., the offender is aware that the situation is contrary to the rules of integrity and yet chooses to conceal it for a private benefit, such as winning the deal or helping a close party²⁸

Forms of Conflict of Interest in the Field of Public Procurement and its Impact on the Principle of Transparency.

The declaration of a conflict of interest is one of the most prominent integrity requirements in the field of public procurement, as it is a preventive mechanism aimed at ensuring the neutrality of both employees and economic dealers. However, a breach of this obligation, whether by deliberate silence or by providing incomplete information, constitutes a criminal offense with multiple forms that vary according to the stage at which it is committed. The seriousness of this crime is manifested in the distortion of the conduct of contractual procedures and the violation of the principle of equal

²⁶ Abdelmajid Al-Abed, *Public Procurement and Administrative Corruption*, Don I, Dar Al-Hoda, Algeria, 2020, p. 101.

²⁷ Abdelkader Bouguerra, "The Responsibility of the Public Aid for Conflict of Interest", Intervention at the National Forum on the Ethics of the Public Service and the Mechanisms for Promoting It, University of Souk Ahras (University of Souk Ahras), Algeria, 2022, p. 6.

²⁸ Nadia Zaoui, "Prevention of Conflicts of Interest in Algerian Legislation", *Journal of Law and Society*, University of the Valley, Algeria, No. 10, 2020, p. 112.

opportunities, which undermines the confidence of customers in the procurement system and negatively affects the principle of transparency in public management.

Forms of Conflict of Interest in the Field of Public Procurement

There are many forms of conflict of interest in public procurements, and in this research, we will address the two most important cases, which are the stage of preparing the transaction (1) and the stage of preparing the term sheet (2).

1. Preparation of the public transaction:

This situation is represented in the period before the conclusion of the transaction, in which the public servant makes administrative or financial decisions related to the preparation of the transaction, and at the same time he may be a party to a private activity or interest related to the field of the transaction, and this situation is one of the most prominent manifestations of conflict of interest, as this is likely to negatively affect the objectivity and impartiality of the employee and affect the principle of integrity in administrative and financial management. It takes one of the following two forms:

- The public servant must be practicing a commercial or professional activity that has an advance and the subject of the transaction, which may affect his impartiality in making preparatory decisions.
- They have a direct contractual or financial interest in the transaction that he prepares, which affects the proper performance of his duties related to the preliminary procedures of the transaction²⁹.

2- Preparation of the Term Sheet:

This stage is considered one of the most dangerous stages of the public transaction process, as it includes the technical and technical details and administrative conditions that determine the form and content of the benefit transaction, and it is the stage that may witness the greatest amount of manipulation in the event of a conflict of interest, as the employee in charge of preparing the term sheet may include certain specifications aimed at adapting it for the specific economic dealer or excluding others. Non-neutral, it empties the process of its competitive content and violates the principles of transparency, equality and equal opportunities among contracting customers..

1. The Impact of Conflict of Interest on the Principle of Transparency in Public Procurement

Breach of the duty to report conflicts of interest is a direct attack on the principle of transparency, as it leads to:

A. Harming the principle of neutrality and integrity in evaluating offers and awarding deals:

This opens the way for bias and favoritism.

(b) Undermining the principle of equal opportunities among economic operators: by giving preference to a party with an undeclared relationship.

2. Lack of trust in the contractual process, whether on the part of the customers or the public opinion: which weakens the legitimacy and credibility of the public administration.

3. Encouraging administrative and financial corruption, by passing deals in favor of illegal partners: This may lead to the waste of public funds and the low quality of works or services³⁰.

Second: The Penal System for Crimes of Violating Transparency in Public Procurement:

In view of the seriousness of the crimes of breaching transparency in the field of public transactions and the undermining of the principles of integrity and equality in public transactions, the Algerian legislature has adopted a diverse penal system in line with the nature of these crimes, distinguishing between the penalties imposed on natural persons and those imposed on legal persons

²⁹Abderrazak Brahimi, "The Crime of Conflict of Interest in the Field of Public Transactions and the Penalties Prescribed for it in Algerian Legislation and Some Comparative Legislations", Journal of the Researcher Professor for Legal and Political Studies, University of Martyr Hamma Lakhdar El Oued, Algeria, Vol. 04, No. 02, 2019, p. 1928.

³⁰Hafida Ben Sulayem, "The Role of Declaring Conflicts of Interest in Preventing Corruption", Journal of Legal and Political Studies, University of Tebessa, Algeria, Issue 12, 2022, p. 96.

The penal system is one of the most prominent legal means to ensure transparency in the field of public transactions, as the role of punishment is manifested in achieving public and private deterrence, especially in light of the serious violations in this field, which, as we have said, threatens the principles of integrity and equal opportunities. The Algerian legislature has regulated this system through the provisions of the Anti-Corruption Law 06/01³¹, Law No. 06-24 amending and supplementing the Penal Code³², in addition to the Public Procurement Law No. 23-12³³

Accordingly, we will present the original and supplementary penalties for the natural person for crimes of violating transparency, then the original and supplementary penalties for the legal person for crimes of violating transparency in public procurement, and finally the general provisions of the penalty for crimes of violating transparency in public procurement.

1. Penalties prescribed for a natural person for crimes of violating transparency:

The Algerian legislature has approved a set of criminal penalties that affect natural persons who commit crimes of violating transparency in the field of public transactions, and these penalties aim at public and private deterrence and ensure integrity in public administration. We will discuss them in (Section II).

1. Original Penalties:

The original penalties approved by the legislator for natural persons vary according to the nature of the crime committed, as they range from imprisonment to a fine according to what each incident requires, and this is what we will explain below:

1-1 Penalty of imprisonment:

Referring to the aforementioned Prevention and Anti-Corruption Law, we find that the duration of imprisonment varies according to the seriousness of the crime, so we find it in the crime of conflict of interest from 6 months to 02 years, and from 02 to ten years in the crime of granting unjustified privileges, and it can exceed that in the crime of bribery in public transactions, where it ranges from 10 to 20 years.

1-2: Penalty of Fine:

They are often imposed in conjunction with imprisonment, and their value is proportional to the seriousness of the criminal act, and may reach 1,000,000 DZD, as stipulated, for example, in Article 26, paragraph 2, of the Anti-Corruption and Anti-Corruption Act³⁴. It amounts to a maximum of 2,000,000 DZD for the crime of bribery in public transactions. It should be noted that the original penalties are subject to the discretion of the judge within the limits stipulated by law, based on the seriousness of the acts and the degree of responsibility.

2. Supplementary Penalties:

In addition to the original penalties, the legislature has imposed supplementary penalties of a deterrent and preventive nature, as the latter are among the important means used by the legislator to strengthen private deterrence in cases of public procurement, as follows, according to Article 9 bis 1 of Law 06-23³⁵:

Deprivation of civil and political rights, in particular the right to stand for office, to be elected and to hold public office, and to be prohibited from exercising a job or activity related to crime, for a period of up to ten years, which may be permanent in certain cases;

³¹- Law 06-01 of 20/06/2006 on the Prevention and Combating of Corruption, GR, GC, Algeria, No. 14 of 03/08/2006, as amended and supplemented by Decree No. 05-10 of 08/26/2010,

³²-Law No. 06-24 of 04/28/2024, amending and supplementing Ordinance No. 66-156 of 06/08/1966 containing the Penal Code, JRG, No. 30.

³³- Law 23-12, dated 05/08/2023 specifying the general rules related to public procurement, GR, GC, Algeria, No. 51, dated 06/08/2023.

³⁴- Article 26 of Law No. 06-01 of 20 February 2006 on the Prevention and Combating of Corruption, as amended and supplemented by Law No. 11-15 of 2 August 2011, GR, Algeria, No. 44.

³⁵- Article 09 bis 1 of Law 06-23 of 20 December 2006, amending and supplementing the Penal Code, JRC, Algiers, No. 84, 12-24-2006.

- Exclusion from participation in public procurements, which is a procedure of a judicial administrative nature that prevents a person from contracting with the State or local communities;
- Confiscation of proceeds or means used in crime, whether funds or equipment;
- Publication of the judicial verdict in newspapers or on official platforms to enhance moral and social deterrence;

The newly introduced complementary penalties also include confiscation, seizure, and freezing of property resulting from corruption crimes, as well as the return of what was embezzled or the value of the benefit or profit obtained, even if it was transferred to the assets of the convicted person, his descendants, brothers, spouse, or in-laws, whether that money remained as it was or was converted into other gains, as well as the declaration of the invalidity of the contract or deal or the lack of its effects by the judicial authorities examining the case.³⁶ These are penalties that are commensurate with the nature of economic crimes and contribute to drying up the sources of corruption.

Second: Penalties imposed on legal persons in crimes of violating transparency in public procurement

The Algerian legislator adopted the principle of the criminal liability of a legal person for crimes committed on its behalf by its agencies or representatives, which is what is stipulated in Article 51 bis of the Penal Code, and in view of the seriousness of the acts committed in the field of public contracts, the law has established a set of original and complementary penalties against legal persons. Accordingly, we will address (the original penalties in (a), then (the complementary penalties (b).

A: Original penalties:

Within the framework of the criminal liability of legal persons, the Algerian legislator has established penalties that are consistent with the nature of the legal entity..

1: Fine:

This is the basic penalty, and the maximum penalty prescribed for a natural person is doubled, according to Article 18 bis 1 of the Penal Code, the second paragraph of which states: "A fine equal to one to five times the maximum fine prescribed for a natural person in the law that punishes the crime."

2: Solution:

Any dissolution of the legal entity and its removal from the commercial or administrative register, which is one of the most serious penalties and is pronounced if the crime constitutes the main activity of the institution, Article 18 bis of the Penal Code³⁷.

B: Additional penalties:

A set of additional penalties are applied to legal persons, the most important of which are::

- Temporary or permanent exclusion from public contracts;
- Temporarily closing the establishment or some of its branches for a period not exceeding 5 years;
- Confiscation of proceeds of crime;
- Publishing the court ruling of conviction;
- Prohibition from practicing a professional or social activity.

These penalties are applied based on the seriousness of the crime and the extent of the involvement of the legal entity's representatives in it. These penalties also constitute an important part of the mechanism for deterring and preventing corruption in the field of public procurement..

³⁶ The two materials 51-55 of Law No. 06-01 on the prevention and fight against corruption, as amended and supplemented.

³⁷ Law No. 24-06, dated 04/28/2024, amending and supplementing Order No. 66-156, dated 06/08/1966 containing the Penal Code, Official Gazette, No. 30.

Third: General provisions for punishment in crimes that undermine transparency in public procurement

A: Aggravating circumstances, exemption from penalties and mitigation thereof.

The criminal judge is subject to discretionary power in assessing the prescribed penalty, which allows him to mitigate or aggravate the penalty according to the circumstances of the commission of the crime. The articles are considered...Articles 53, 54, 55 of the Penal Code provide the basic framework that regulates these circumstances.

1: Cases of emphasis

Aggravating circumstances apply if the crime is committed by a public employee who exploits his position or commits it while performing his duties, which is a situation that applies to many public procurement crimes, as the article indicates. Article 48 of the Anti-Corruption Law increases the penalty from 10 to 20 years for repeat offenses committed within an organized group³⁸.

2- Cases of exemption from penalties and mitigation:

This is stated in the article49 of the Anti-Corruption and Prevention Law, which states the following: "Whoever commits or participates in one or more of the crimes stipulated in the law and, before initiating the follow-up procedures, informs the administrative or judicial authorities or the relevant parties about the crime and helps to identify its perpetrators, shall benefit from the excuses exempting him from the penalty stipulated in the Penal Code, and who, after initiating the follow-up procedures, helps to arrest one or more of the persons involved in its commission³⁹.

Accordingly, the penalty is mitigated or exempted if the perpetrator voluntarily reports the crime before the crime is discovered, or if he contributes to revealing the rest of the perpetrators, or returns the money obtained⁴⁰.

B: Provisions of initiation, participation and prescription

1- Provisions for initiation and participation

According to the text of the article: Article 52 of the Anti-Corruption Law, which states the following: "The provisions relating to participation stipulated in the Penal Code shall apply to the crimes stipulated in this law. Attempts to commit crimes stipulated in this law shall be punished with the same crime itself⁴¹.

Referring specifically to the Penal Code in the text of Article44, which states the following: "An accomplice in a felony or misdemeanor shall be punished with the penalty prescribed for the felony or misdemeanor." Therefore, we distinguish the following cases:

- The partner is an employee who is punished with the same penalty as the principal perpetrator;
- The perpetrator is a common person and Article 44 of the Penal Code applies to him, which is the same penalty prescribed for the original perpetrator.

The perpetrator is a commoner and the accomplice is an employee. Article 382 bis of the Penal Code applies to him.⁴²

As for the commencement of corruption crimes, including crimes related to transparency in public transactions, we refer to the provisions of Article 52 of the Corruption Act;

Attempts to commit crimes related to public contracts are punishable by the same penalty as the completed crime, if criminal intent is proven and the implementation of the act has begun. Partners,

³⁸ Material:48 of Law 06-01, dated 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria No. 14, dated 03/08/2006, as amended and supplemented by Order No. 05-10, dated 08/26/2010.

³⁹ Material:49 of Law 06-01 of 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria, No. 14, of 03/08/2006, as amended and supplemented by Order No. 05-10, of 08/26/2010.

⁴⁰ Abdelkader Bouzid, Explanation of the Anti-Corruption Law, no date, Dar Al-Ma'rifa, Algeria.2020, p. 211.

⁴¹ The material52 of Law 06-01, dated 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria, No. 14, dated 03/08/2006, as amended and supplemented by Order No. 05-10, dated 08/26/2010.

⁴² Law No.24-06, dated 04/28/2024, amending and supplementing Order No. 66-156, dated 06/08/1966 containing the Penal Code, Official Gazette, No. 30.

instigators, and contributors are also punished in accordance with the articles of the Penal Code related to criminal participation.⁴³

2 Statute of limitations

This is stated in the article 54 of the Anti-Corruption and Prevention Law states the following: “Without prejudice to the provisions stipulated in the Code of Criminal Procedure, the public lawsuit and the penalty shall not be time-barred for the crimes stipulated in this law in the event that the proceeds of the crime are transferred outside the country. In other cases, the provisions stipulated in the Code of Criminal Procedure shall apply...”⁴⁴

In this case, we distinguish between the crime of bribery in public contracts punishable by Article 27 of Law No. 06-01 on the issue of statute of limitations, where, according to the text of Article 8 bis of the amended and supplemented Code of Criminal Procedure, it is a crime that is not subject to a statute of limitations. As for the misdemeanor of granting unjustified privileges to others in the field of public contracts, or what is called the misdemeanor of favoritism, as well as the crime of failure to report a conflict of interest, unless the criminal proceeds are transferred abroad, they are subject to the normal provisions of statute of limitations in the misdemeanor article stipulated in the Code of Criminal Procedure.

Public procurement crimes are among the most prominent manifestations of administrative and financial corruption, as they are directly linked to the protection and proper management of public funds. Given the seriousness and complexity of these crimes, Algerian lawmakers have attached great importance to the procedural process followed in their regard, beginning with the initiation of public prosecution, through the stages of investigation and inquiry, and ending with trial and the implementation of judgments..

This track is characterized by procedural specificities that are compatible with the nature of these crimes, in terms of the persons involved or the nature of the evidence, which requires the use of special investigative methods and balanced legal guarantees, in order to achieve effective prosecution without prejudice to the rights of the parties. We will discuss these three stages in detail in this section through three main points: initiating public prosecution in public procurement crimes (first), then search, investigation and inquiry procedures in the field of public procurement (second), and finally, trial and implementation of judgments in public procurement crimes (third)..

First: Initiating public prosecution in public procurement crimes

Filing a public lawsuit represents the first step in criminal intervention in public procurement crimes, as it is the primary gateway to the remaining stages of judicial processing. Given the specific nature of these crimes, which are often complex in terms of their technical and financial structure, initiating a lawsuit requires a set of legal and procedural requirements, as well as the involvement of competent authorities capable of assessing the nature of the criminal acts and uncovering their dimensions.

1- The authorities responsible for initiating public action:

The initiation of public prosecution is a fundamental step in the procedural process to combat public procurement crimes, as it represents the starting point for prosecuting perpetrators before the competent judicial authorities. The importance of this stage is particularly evident in crimes related to the violation of the principle of transparency, given the problems they raise regarding proving acts and the overlapping interests and pressures associated with them. In this context, the Algerian legislator has worked to identify the bodies with the authority to initiate public prosecution, whether those belonging

⁴³ Youssef Boussah, *The Legal System of Corruption Crimes*, no date, Dar Al-Ulum, Algeria. 2021, p. 144.

⁴⁴ The material 54 of Law 06-01, dated 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria, No. 14, dated 03/08/2006, as amended and supplemented by Order No. 05-10, dated 08/26/2010.

to the judiciary or to the administrative oversight bodies, with the aim of ensuring the effectiveness of combating these crimes and achieving general and specific deterrence. Based on this, in this section, we will discuss the bodies competent to initiate public prosecution in public procurement crimes. We will address the Public Prosecution as the main party in initiating the lawsuit (a), then the High Authority for Transparency and Prevention of Corruption as the competent oversight body (b), followed by specialized judicial police officers (c), and finally, individuals and civil society in terms of their role in reporting and contributing to uncovering these crimes (d)..

The Public Prosecution as the main party in initiating the lawsuit

The Public Prosecution represents the cornerstone in initiating public proceedings, as the Algerian Code of Criminal Procedure stipulates in its Article: 29. The Public Prosecution represents society and ensures the implementation of the law. It therefore has broad authority to initiate public prosecution, whether spontaneously or based on a complaint or report issued by regulatory bodies or citizens.

The role of the prosecution in corruption cases is exceptionally specific, given the complexity of these cases. This has prompted the legislature to designate specialized prosecution offices within national criminal poles to combat economic and financial crime, such as the Economic and Financial Criminal Pole of the Sidi M'hamed Court in Algiers. The tasks of these prosecution offices include examining audit reports, legalizing facts, issuing orders to open investigations, or dismissing unfounded complaints⁴⁵.

The Public Prosecution initiates the public lawsuit, as a general principle, because it represents society. In public transactions, if the Audit Board, during its oversight, finds facts that carry a criminal character, the file is sent to the regionally competent Public Prosecutor for the purpose of legal prosecution, and the Minister of Justice is informed of this. In the event of the collection or possession of illegal sums by natural or legal persons, it immediately reports to the competent authority in order to recover the sums due to the state, by all legal means..⁴⁶

B: The High Authority for Transparency and Prevention of Corruption

This body was established by law.06-01 on the prevention and fight against corruption. It has the authority to monitor, direct, and analyze corruption-related phenomena. It has the power to refer cases to the judiciary whenever serious suspicions arise, particularly in cases of manipulation of public contracting procedures, inflated invoices, or favoritism in project awards.

The High Authority for Transparency also monitors the implementation of the national strategy for preventing corruption and promotes a culture of reporting by receiving complaints and supporting whistleblowers. Its reports serve as an objective basis for initiating legal proceedings.⁴⁷ The article has been constitutionalized. Article 204 of the 2020 Constitutional Amendment established the High Authority for Transparency, Prevention and Combating Corruption, an important step towards giving this authority a new impetus and a more effective vision in its role in combating corruption. Prior to this, the National Authority for the Prevention and Fight against Corruption was constitutionalized under Article 202 of the 2016 Constitutional Amendment. Article 204 of the 2020 Constitution defined the High Authority for Transparency, Prevention and Combating Corruption as an independent institution. It is therefore a constitutional oversight institution similar to the Constitutional Court, the Audit Court, and the National Independent Authority for Elections. This replaces the National

⁴⁵ Abdelghani Badi, *A Brief Introduction to the Algerian Criminal Procedure Code*, Dar Houma, Algeria, 1st ed.3, 2021, p. 145.

⁴⁶ Hussain Oumria, "The Algerian Legislator's Trends in Investigating and Detecting Corruption Crimes in the Field of Public Procurement," *Tabna Journal of Academic Scientific Studies*, Aflu University Center, Algeria, Vol.05, Issue 02, 2022, p. 738.

⁴⁷ The material 22 of Law 06-01, dated 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria, No. 14, dated 03/08/2006, as amended and supplemented by Order No. 05-10, dated 08/26/2010.

Authority for the Prevention and Fight against Corruption, which was established pursuant to Article 18 of Law 06-01. Its role was purely advisory, as the constitutional legislator emphasized the independence of this institution, considering independence as a fundamental element in achieving its objectives⁴⁸.

If the High Authority for Transparency, Prevention and Combating Corruption notices a violation of the rules of integrity and transparency, it may notify the regionally competent public prosecutor after taking the measures specified in Article 10 of Law 22/08. The Supreme Authority may, in the event of serious elements confirming the existence of unjustified wealth of a public employee, submit a report to the Public Prosecutor at the Sidi M'hamed Court for the purpose of issuing precautionary measures to renew banking operations or seize property for a period of three months by means of a judicial order issued by the President of the same court. Accordingly, the Supreme Authority for Transparency, Prevention and Fight against Corruption has become able to inform the Public Prosecution of facts and actions that carry a criminal description, after the role of the National Authority for the Prevention and Fight against Corruption was limited to notifying the Minister of Justice of the observed violations, who is the one who assesses the appropriateness of the prosecution, and this restricts its authority to initiate public prosecution⁴⁹.

A: Specialized judicial police

Specialized judicial police agencies, such as the General Inspectorate of Finance, Customs and Tax Services, and the Economic Security Department of the Judicial Police, intervene within the framework of preliminary investigations that require technical expertise and precise specialization. These agencies conduct financial investigations, review contracts, monitor money flows, and investigate the ownership of assets related to transactions.

The judicial police of the National Gendarmerie, especially in the search and investigation units, (BRI) or the Economic Crimes Combating Division, carries out precise missions in tracking down officials involved in institutional corruption networks, and transmits its reports to the Public Prosecution Office to take the necessary decisions⁵⁰.

The article states: Paragraph 56, paragraph 1 of the Anti-Corruption Law states the following: "In order to facilitate the process of collecting evidence related to the crimes stipulated in this law, it is possible to resort to controlled delivery or follow special investigative methods such as electronic surveillance and hacking, as appropriate and with the permission of the competent judicial authority. Accordingly, this text includes all crimes stipulated in the Anti-Corruption Law, and the investigative methods through it are: - controlled delivery, electronic surveillance, - hacking⁵¹.

D: Individuals and civil society as a source of reporting

Citizens, including public employees and competitors in contracts, play a growing role in initiating lawsuits, through complaints mechanisms or reporting suspected fraud, especially if they have credible documents or evidence. It should be noted here that the law 06-01 Provides special legal protection to whistleblowers and witnesses from administrative or social retaliation, thus encouraging effective reporting⁵².

⁴⁸ Bin Obaid Siham, "The specificity of the role of the High Authority for Transparency, Prevention and Combating Corruption in combating corruption from the perspective of Law No.22-08", Journal of Rights and Freedoms, Ferhat Abbas University, Setif 1, Volume 11, Issue 1, 2023, pp. 340, 341.

⁴⁹ Malaika Asia, "The High Authority for Transparency, Prevention and Combating Corruption in Light of the Law 22/08, Journal of Legal and Political Thought, University of Annaba, Volume 06, Issue 02, 2022, p 867.

⁵⁰ Zubeir Hamdani, Specialized Judicial Police and its Role in Combating Transactional Crimes, Master's Thesis, Criminal Law Specialization, Faculty of Law and Political Science, University of M'sila, Algeria. 2021, p 77.

⁵¹ Fiya Samia, a lecture on judicial jurisdiction in public procurement crimes, Mila Judicial Council, 2017, p. 18.

⁵² Material: 45 of Law 06-01, dated 06/20/2006, relating to the prevention and fight against corruption, Official Gazette, Algeria, No. 14, dated 03/08/2006, as amended and supplemented by Order No. 05-10, dated 08/26/2010.

In this context, the authorities rely on national electronic platforms such as the National Interest Portal for reporting corruption, which reflects the development of methods of detection and response while maintaining confidentiality.

Cancellation of the prior complaint requirement to initiate public prosecution in unintentional management crimes:

The Algerian legislator introduced the article6 bis by virtue of Order No. 15-02 dated July 23, 2015 amending and supplementing the Code of Criminal Procedure, which restricted the inadmissibility of initiating a public lawsuit against managers of public economic institutions whose capital is fully owned by the state or with mixed capital for management actions that lead to embezzlement, damage or loss of public or private funds, except on the basis of a prior complaint from the social bodies of the institution. However, in 2019, the Code of Criminal Procedure was amended.⁵³ And he cancelled the article6 bis and thus cancelled the condition of prior complaint that restricted the Public Prosecution from filing it. However, on the occasion of the opening of the judicial year 2025 and based on the speech of the President of the Republic on the occasion, he called for the necessity of lifting the criminalization of management actions to protect honest managers and enhance the protection of managers. After that, the protection of managers was codified in the draft of the new Code of Criminal Procedure amended in 2025 and the legislator introduced Article 8 thereof, which brought back the registration of the complaint again, i.e. bringing back the text of Article 6 bis of 2015. In this regard, we note that the legislator had stipulated the complaint condition in the texts of Articles 128 bis of the Penal Code, which are related to the misdemeanor of favoritism, as well as the felony of collecting commissions on the occasion of concluding a public contract, which was stipulated in Article 128 bis 1 of the Penal Code. This was before the issuance of Law No. 06-01, by virtue of which these articles were repealed and replaced by Article 26 thereof, and the legislator maintained the text of Article 119 bis of the Penal Code, related to the crime of clear negligence causing damage to property.

Second: Procedures for searching, investigating and investigating public procurement crimes.

Investigation, research and investigation procedures into crimes that violate the principle of transparency in the field of public procurement are among the crucial stages in combating corruption and ensuring respect for this principle, in accordance with the text of Article4 of Law No. 06-01. These procedures aim to ensure the validity of procedures for concluding and implementing public contracts, and to detect any manipulation that may affect the national economy and consequently public expenditures, and then impose penalties on perpetrators of related crimes. In this section, we will present the methods used in research and investigation using modern and advanced technologies, as well as the procedures followed in judicial investigations to ensure the course of justice. Accordingly, we will address the techniques and methods of investigation (a), then the judicial investigation (b).

A: Special investigation techniques and methods

The methods and techniques used to investigate economic crimes, particularly those related to corruption in public procurement, are an essential part of investigations. Advanced techniques, such as wiretapping, controlled delivery, and field investigations, contribute to uncovering complex crimes that are difficult to prove using traditional methods..

1. Eavesdropping and electronic surveillance

Recording voices and conversations recorded by electronic devices is not evidence that carries conclusive proof, as it is like other evidence subject to the discretionary authority of the criminal judge, which the latter enjoys in accordance with the text of Article212 of the Code of Criminal Procedure,

⁵³ Law No.:19-10 dated: December 11, 2019 amending and supplementing the Code of Criminal Procedure, O.R.G.J., No. 78, dated: December 18, 2019.

which is dedicated to the principle of freedom of proof and judicial conviction in their belief⁵⁴ So, searching the phone or recording is not evidence in itself, but rather a means or tool for listening to or replaying the conversation that helps in revealing the truth. Naturally, it remains merely a method for revealing the circumstances and course of the case.⁵⁵

Article 17 states that electronic monitoring is Article 10 of the Anti-Corruption and Prevention Law stipulates electronic surveillance, stating, "...or following special investigative methods such as electronic surveillance..." Through this, we find that the Algerian legislator mentioned electronic surveillance as an example, but not limited to it, but he did not provide any definition for the procedure of electronic surveillance as he did with controlled delivery. However, by referring to the general procedures, and through the amended and supplemented Code of Criminal Procedure, we find that the legislator mentioned means that are known to be of the nature of electronic surveillance, in Articles 7 bis, 8 bis and 10 bis of the Code of Criminal Procedure.⁵⁶

2- Controlled delivery and tracking of funds movement

Controlled delivery is an advanced method in corruption investigations. This method relies on sending suspicious money or implicated documents to the accused person under security surveillance, enabling authorities to track the movement of funds and identify individuals involved in these illegal transactions. This method can lead to the gathering of strong evidence against the individuals involved and strengthen the investigation by identifying those involved in the corruption operations..

This method is typically used in major transaction crimes involving large sums of money or complex transactions. By tracing the money, authorities can identify suspects and confirm their involvement in corruption related to public procurement. This method is essential for combating organized crime that exploits legal loopholes in public procurement procedures.⁵⁷.

3- Covert investigations and field surveillance

Undercover investigations and field surveillance are crucial in identifying corruption in public procurement. Authorities, such as the National Gendarmerie and the Economic Police, track suspicious individuals without their knowledge by recording their movements, monitoring their communications, and collecting physical evidence. These measures often go unnoticed, making them one of the most effective methods in public procurement investigations..

These undercover investigations are conducted by specialized economic investigation teams, monitoring suspicious financial activities and business relationships between the parties involved. Field investigations also include collecting testimony, taking photographs, and reviewing documents that may contain sensitive information regarding suspicious public transactions. Field investigations are a detailed analysis of activities taking place behind closed doors and play a pivotal role in uncovering corruption.:

judicial investigation

Corruption crimes in public procurement require thorough investigations and strict judicial procedures, as the competent judge intervenes to determine whether the evidence is consistent with the accusations collected during the initial investigation phase..

1- Initial investigation procedures

⁵⁴ Material:212 of Order 66-155, dated 06/08/1966, containing the Code of Criminal Procedure, Official Gazette, Algeria, No. 65, 2020.

⁵⁵ Maghni Ben Amar, Abdelkader Bouras, Wiretapping and Intercepting Correspondence as a Mechanism for Preventing Corruption Crimes, National Forum, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, Algeria.2008, p. 8.

⁵⁶ The matter66-155, dated 06/08/1966, including the Code of Criminal Procedure, O.G., O.G., Algeria, No. 48, issued on 06/10/1966.

⁵⁷ Kamal Abdelkader, "Confidential Investigations and Modern Techniques in Financial Investigations," Journal of Economic Justice, University of Constantine2, Algeria, Issue No. 09, 2021, p. 144.

Judicial investigation procedures begin with a preliminary investigation, which is often conducted under the supervision of the judicial police or the competent judicial authorities. At this stage, initial evidence related to the alleged crimes is collected. Initial procedures include document review, investigation of suspicious public transactions, inspection of premises related to the transaction, or even investigations of suspects who may have knowledge of the substance of the crime..

At this stage, the scope of the crime must be clarified, whether it is limited to simple financial manipulations or includes complex corruption operations such as bribes or illegal commissions. The investigating judge may take decisions such as detaining individuals or searching premises containing important documents. During the preliminary investigation, investigators seek to gather preliminary evidence to support the legal cases against the accused.⁵⁸

2- The role of the investigating judge in corruption cases

The investigating judge is a key player in judicial proceedings related to corruption in public procurement. He or she is responsible for reviewing evidence, monitoring the progress of investigations, and making decisions regarding the continuation of the investigation. The investigating judge relies on the documents and testimonies collected during the preliminary investigation and may issue arrest warrants for suspects or request sentences if the evidence is complete.

Judicial investigations into corruption cases require a high level of impartiality and transparency from the investigating judge, as political or social pressures may affect the integrity of the investigation. The judge is the primary guarantor of the rights of the accused and must respect suspects' legal safeguards, such as the right to defense and the right to a fair trial.

3- Legal guarantees for suspects

Although investigating corruption crimes requires rigorous evidence gathering, it is essential to ensure the rights of defendants in these cases. Legal safeguards protect accused individuals from arbitrary or infringed constitutional rights, such as the right to defense and the right to a fair trial. Judicial investigations must be impartial and impartial, and conducted in accordance with human rights laws. Legal safeguards may include access to legal counsel, a public trial, and giving suspects the opportunity to defend themselves against the charges against them⁵⁹.

III. Trial and Enforcement of Judgments in Public Procurement Offenses

The trial stage represents a decisive point in the procedural path of any criminal case. However, it takes on a more complex character in cases involving public procurement offenses. These cases are marked by the specificity of the subject matter, the nature of the parties involved, and the overlap between legal, financial, and technical aspects. As a result, judicial procedures must be adapted to this complexity, both in terms of trial rules and the enforcement of issued judgments. This is especially relevant in light of growing public expectations regarding anti-corruption efforts.

This section addresses the referral to the judiciary and fair trial guarantees (A), judicial rulings in public procurement cases (B), and the enforcement of judgments and asset recovery mechanisms (C).

A. Referral to the Judiciary and Fair Trial Guarantees

The trial stage is one of the most important procedural phases in dealing with offenses that undermine transparency in public procurement. It plays a vital role in delivering justice and preventing impunity. This stage must be preceded by a precise legal referral to the competent judicial bodies. Such referral allows for the proper legal classification of the offense and the assessment of its seriousness under anti-

⁵⁸ Khaled Bakhit, *Legal Measures in Judicial Investigations*, PhD Thesis, Criminal Law Specialization, Faculty of Law and Political Science, University of Constantine, Algeria.2019, p. 205

⁵⁹ Mohamed Boumediene, *Legal Guarantees for Suspects in Financial Cases*, PhD Thesis, Criminal Law Specialization, Faculty of Law and Political Science, University of Oran, Algeria.2018, p. 56.

corruption laws. Ensuring fair trial guarantees is fundamental for protecting the rights of the accused and for ensuring the effectiveness of judicial proceedings.

This part will address the referral to the competent judicial authorities (1), followed by the legal classification of the acts and the assessment of their severity (2).

1. Referral to Competent Judicial Authorities

In every public procurement corruption case, and following the conclusion of the investigation, the case must be referred to the appropriate judicial body. The referral is made based on the legal nature of the offense and takes into account whether it is a misdemeanor or felony. It also considers the status of the accused, whether a senior official, elected representative, or economic operator. In practice, most of these cases are referred to specialized sections created by Executive Decree No. 21-327 of 2021, which established specialized sections for corruption cases, annexed to courts and judicial councils throughout the country.⁶⁰ Judges with expertise and experience in economic crimes are assigned to oversee these cases, enhancing the quality of judicial processing.

Penal pole of Sidi M'hamed Court

The local jurisdiction of the Sidi M'hamed Court, its public prosecutor and its investigating judge extends to the courts of the following judicial councils: Algiers, Chlef, Laghouat, Blida, Bouira, Tizi Ouzou, Djelfa, Medea, M'Sila, Boumerdes, Tipaza, and Aïn Defla.

Penal pole of the Constantine Court and the Oran Court:

The local jurisdiction of the criminal pole of the Court of Constantine extends to the courts of the following judicial councils: Constantine, Oum El Bouaghi, Batna, Bejaia, Biskra, Tebessa, Jijel, Setif, Skikda, Annaba, Gamla, Bordj Bou Arreridj, El Tarf, El Oued, Khenchela, Souk Ahras, and Mila. As for the criminal pole of the Court of Oran, it extends to the courts of the following judicial councils: Oran, Bechar, Tlemcen, Tiaret, Saida, Sidi Bel Abbes, Mostaganem, Mascara, El Bayadh, Tissemsilt, Naama, Ain Temouchent, and Relizane.

Criminal pole of the Ouargla court

Local jurisdiction extends to the courts of the following judicial councils: Ouargla, Adrar, Tamanrasset, Illizi, Tindouf, and Ghardaia⁶¹

Legal qualification and assessment of the seriousness of acts

At this stage, the judiciary faces challenges related to adapting the facts attributed to the accused, especially in cases where administrative acts overlap with criminal acts, such as granting unjustified privileges, or adapting cases of administrative negligence as abuse of influence. This requires relying on judicial and financial expertise, and even calling in specialists in public procurement to help understand the technical procedures adopted in each case.⁶² The issue of qualifying joint liability also arises in transactions that have passed through several administrative committees, which makes proving criminal intent extremely difficult in some cases.

Judicial principles of trial

The trial process is subject to a set of principles derived from national legislation and international agreements, perhaps the most prominent of which are:

⁶⁰ Ahmed Saudi, *Criminal Procedure Law in Light of Jurisprudence and Judiciary*, ed.4, Dar Houma, Algeria, 2021, p. 332.

⁶¹ Omria Hussein, the previous reference, p.194

⁶² Abdelkrim Boujlida, *Judicial Investigation into Economic Crimes*, Master's Thesis, Criminal Law Specialization, Faculty of Law and Political Science, University of Ouargla, Algeria.2020, p. 67.

The presumption of innocence, which requires the prosecution to prove the charge with evidence, and prohibits treating the accused as a convict until a final judgment is issued⁶³.

- The right to defense, as the judge is obligated to allow the accused to review the file and present testimonies and defenses.⁶⁴.
- Public hearings, which enhances public confidence in the integrity of the judiciary and ensures transparency, unless the court decides otherwise based on legal justifications.⁶⁵.

for-Judicial rulings in public procurement cases

1. The variety of penalties between original and complementary

The cases brought before the Algerian judiciary show a remarkable diversity in the rulings issued in public procurement cases, ranging from imprisonment or suspended imprisonment, financial fines, bans on candidacy or contracting, and confiscation of property..

The law stipulates that⁶⁶ On the obligation to pronounce some additional penalties, such as dismissal from public office or prohibition from contracting, when it is proven that the crime harmed a public interest or resulted in an illegitimate benefit for the accused.⁶⁶.

2. Practical application of property confiscation

Confiscation is one of the most important punitive measures in corruption cases. It differs from a fine in that it is applied to the funds resulting from the crime and not just to the accused's personal assets. Article4

From Law 06-01 on mandatory confiscation when a causal relationship between the crime and the gains achieved is proven.

Confiscation is divided into two types:

- **In-kind confiscation** It directly affects the object of the crime (such as real estate or money resulting from the transaction).
- **Alternative confiscation** The court resorts to it when it is not possible to seize the suspicious funds, and issues a ruling obligating the accused to pay an amount equal to the value of the illicit gains.⁶⁷.

3- Appeals and levels of litigation

A convicted person has the right to appeal criminal judgments within the stipulated time limits, provided that the formalities related to the procedures and legal representation are respected. The Supreme Court has witnessed a significant number of appeals in public procurement cases, including decisions related to the violation of the right to defense or the judge's exceeding the limits of legal qualification.⁶⁸.

C. Enforcement of Judgments and Mechanisms for Asset Recovery

National Mechanisms for Enforcing Judgments

The enforcement of rulings issued in public procurement cases is entrusted to the Public Prosecution, in coordination with relevant state bodies such as the Ministry of Finance and the National Body for the Prevention of Corruption. The procedures include:

⁶³ Material: Article 56 of Presidential Decree No. 20-422, dated 12/30/2020, regulating certain provisions of public procurement, Official Gazette, No. 82, issued in 2020.

⁶⁴ Material:100 of Order 66-155, dated 06/08/1966, containing the Code of Criminal Procedure, Official Gazette, Algeria, No. 48, issued on 06/10/1966.

⁶⁵ The material285 of Order 66-155, dated 06/08/1966, containing the Code of Criminal Procedure, Official Gazette, Algeria, No. 48, issued on 06/10/1966.

⁶⁶ The material26 of Law No. 06-01, dated February 20, 2006, relating to the prevention and fight against corruption, amended and supplemented by Law No. 11-15, dated August 2, 2011, Official Gazette, Algeria, No. 44.

⁶⁷ Abdel Hamid Zerrouki, Confiscation as a Mechanism to Combat Financial Corruption, no date, Dar Houma, Algeria.2021, p. 89.

⁶⁸ Hakim Shalalqa, Legal Guarantees in Corruption Cases, no date, Dar Al-Imam Malik, Algeria.2020, p. 175.

- Enforcing confiscation orders.
- Freezing bank assets.
- Organizing public auctions for seized property.
- Executing detention or imprisonment orders.

According to reports issued by the Court of Auditors, the enforcement of these rulings sometimes encounters administrative obstacles or limited cooperation from certain departments. This highlights the need to strengthen inter-agency coordination⁶⁹.

Asset Recovery through International Judicial Cooperation

Given the cross-border nature of offenses related to public procurement, Algeria has placed particular emphasis on activating international cooperation mechanisms. These efforts include:

- Issuing international letters rogatory.
- Requesting the freezing of assets through INTERPOL or bilateral agreements.
- Submitting recovery requests in accordance with the United Nations Convention against Corruption.

Algeria has succeeded, in several cases, in retrieving funds that were transferred abroad. A notable example is the “Sonatrach” case, where assets were recovered in cooperation with the Italian and German judiciaries⁷⁰.

The Role of Administrative Judiciary in Safeguarding the Principle of Transparency

The application of criminal law is not limited to the criminal judiciary. It is complemented by the role of administrative courts, especially in cases involving the annulment of suspicious contracts or the recovery of funds disbursed without justification. Legal action may be pursued through public prosecution or through claims for recovery initiated by affected administrative bodies, such as municipalities or executive departments. The Public Procurement Law provides that any contract proven to involve fraud is subject to annulment. In such cases, the contractor is required to return all amounts received and may also be liable for compensation when necessary.

Thus, in addition to the right to administrative appeal, ...⁷¹ The Algerian legislator has granted the economic operator the right to seek redress before the administrative courts. This is established in Article 804, paragraph three, of the amended Code of Civil and Administrative Procedures. The article assigns jurisdiction to the administrative court in whose territorial scope the contract is signed or executed. This applies to all disputes related to administrative contracts, regardless of their nature. To ensure the right to judicial appeal, the legislator distinguishes between the types of claims that fall under the jurisdiction of the urgent administrative judge and those that are handled by the court of substance. The urgent judge is competent to rule on claims involving breaches of publicity or competition obligations. This is provided under Article 946 of the Code of Civil and Administrative Procedures

⁷²The law has allowed for the submission of a petition to the administrative court in cases where the obligations of publicity or competition—required in the awarding of administrative contracts and public

⁶⁹ Report of the Court of Auditors, Algeria, 2022, p. 114.

⁷⁰ Ahmed Ben Souana, “Experiences of International Cooperation in the Recovery of Looted Assets,” *Law and Justice Journal*, Mohamed Khider University of Biskra, Algeria, Issue No.11, 2023, p. 57.

⁷¹ The article states: Article 56 of Law No. 23-12 states the following: “In addition to the right of judicial appeal provided for in the applicable legislation, a contractor who objects to the provisional award of a public contract, its cancellation, the declaration of futility, or the cancellation of a procedure, within the framework of a call for tenders or a post-consultation negotiation procedure, may file an appeal with the competent procurement committee.”

⁷² See article:946 Paragraphs one, two and three of Law No. 09-08, dated February 25, 2008, containing the Code of Civil and Administrative Procedure, amended and supplemented by Law No. 22-13 dated July 12, 2022, J.R.G.J., No. 48, of 2022.

procurement—are violated. This mechanism helps to limit abuses related to breaches of the principles of transparency and competition, or to invalidate certain terms of the contract.

As for claims submitted to the regular administrative section, they vary in nature. These include:

- **Challenges to the provisional award**, which question the legality of the procedure used to select the contractor or claim violations of the rules concerning offers, financial and technical guarantees, pricing, quality, and standards.
- **Annulment actions**, which may be filed against decisions such as:
 - the opening of bids,
 - the evaluation committee's decision,
 - the award of the contract,
 - the call for tenders,
 - exclusion from participation in public procurement,
 - the provisional awarding of a contract,
 - the cancellation of the public contract,
 - or the declaration of the process as void⁷³.

Conclusion

This study addressed one of the most pressing challenges facing modern public administration: the issue of transparency in public procurement as a tool to prevent and reduce corruption. Due to its connection with public funds and the broad discretionary powers granted to the administration, public procurement is a sensitive area that often gives rise to irregularities and abuses. For this reason, it has become one of the primary sectors targeted for legal and administrative reform in many countries, especially Algeria.

The analysis showed that transparency is not merely a theoretical slogan. It is a legal and institutional principle reflected in a set of formal and substantive procedures that accompany every phase of the public procurement process. These include identifying the needs, preparing the specifications, announcing the call for bids, selecting the contractor, implementing the project, and supervising and evaluating its outcomes. The Algerian legislator has demonstrated a clear understanding of the importance of this principle by embedding it in several key legal texts, including:

- The 2020 Constitution, which explicitly states in Article 139 that public procurement falls under the scope of legislation—an unprecedented step at the constitutional level.
- **Law No. 06-01** on the prevention and fight against corruption, which introduced preventive rules and mechanisms such as asset declarations, anti-bribery provisions, and regulations against abuse of power.
- **Presidential Decree No. 15-247** and Law No. 12-23 of 2023, which together marked a qualitative shift through procedural simplification, digitalization, and the reinforcement of competition and transparency.

The study also revealed that transparency operates on three key levels:

1. **Legal Transparency:** This refers to the presence of clear legal texts that guarantee access to information, prohibit discrimination, and precisely regulate procedures, standards, and deadlines.
2. **Procedural Transparency:** This appeal appears through advance public notices, mechanisms, publication of temporary awards, documentation of procedures, and the prevention of tailoring contract terms to favor specific bidders.

⁷³ Muhammad Hazit, the previous reference, p.50.

3. **Institutional Transparency:** Perhaps the most crucial level, this concerns the role of oversight bodies, the independence of procurement committees, the activation of digital platforms, and the assurance of both internal and external auditing.

However, the practical implementation of transparency has revealed several structural shortcomings, such as:

- The slow pace of effective digitalization, despite its legal mandate.
- **Weak training** among public managers in contract law and legal oversight.
- The persistence of bureaucracy and conflicts of interest within some administrative bodies.
- The underuse of appeal rights by contractors, often due to professional or political concerns.

If the main objective of transparency is to prevent corruption, then the failure to apply it properly inevitably leads to procurement-related crimes. These include the failure to declare conflicts of interest, and other violations that undermine neutrality and administrative integrity. The study concludes that the Algerian penal framework, despite being extensive, still needs greater precision and alignment with recent legislative developments, particularly Law No. 23-12. It also highlights the need to strengthen the independence of the administrative and financial judiciary in resolving disputes related to public procurement.

General Findings

1. Transparency is the cornerstone of the legal system governing public procurement. It serves as an effective preventive mechanism to reduce administrative and financial corruption.
2. The Algerian legislator has affirmed this principle in various legal texts. However, its implementation in practice remains limited due to structural and organizational challenges.
3. The success of transparency depends on the readiness of public administration in terms of digital tools, human resources, and openness to public oversight, including the media, citizens, and civil society.
4. Crimes related to public procurement are often a direct result of lack of transparency or internal collusion. This highlights the need for a specialized and strict criminal justice framework.
5. The relationship between transparency and oversight is complementary. Transparency prevents, while oversight detects and punishes. Neither can succeed without the other.

Recommendations

Legislative Level

- Issue the implementing regulations for Law No. 23-12 to enable effective application on the ground.
- Amend Law No. 06-01 to ensure it aligns with the new public procurement legal framework.
- Include public procurement crimes as a distinct category in the Penal Code or in a specialized law.

Administrative and organizational level

- Activate the public procurement electronic portal fully and make it the only official platform for announcements and procedures.
- Control of the platform should be centralized at the Ministry of Finance and decentralized at the provincial level.
- Train administrative staff in managing this platform. Improve internet access across public institutions. Train economic operators on the platform's use.
- Enforce continuous training for procurement managers, especially in transparency, oversight, and neutrality.
- Establish internal monitoring units in public administrations to detect corruption indicators during procurement stages.

- Universities should contribute through seminars and academic events involving all procurement officials at both executive directorates and local governments.
- Ongoing training should be provided for local government staff, in coordination with key stakeholders such as the budget controller, the Court of Accounts, the General Inspectorate of Finance, the High Authority for Transparency and Anti-Corruption, and public accountants.
- Promote a culture of transparency throughout society.

Judicial and Oversight Level

- Expand the powers and resources (human and technical) of oversight bodies.
- Encourage citizens and economic operators to file administrative appeals without fear and strengthen their legal protection.
- Speed up judicial procedures related to public procurement disputes to avoid delays in public projects.

Strategic Final Vision

Establishing transparency in public procurement requirement is not merely an ethical or administrative. It is a legal obligation, and its violation must result in sanctions. It is also a strategic choice. Transparency builds trust between citizens and the administration. It supports sustainable development and ensures fair management. When procedures are transparent, information is accessible, oversight is effective, and sanctions are enforced, the foundation is laid for a clean and accountable administration. This is the kind of administration that meets public expectations and protects public funds from misuse.

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