

## Procedural provisions introduced by the Algerian legislator to combat cyber corruption crimes

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**Abstract---**Information corruption crimes are considered among the most dangerous criminal phenomena threatening societies at various levels, given that they constitute one of the greatest obstacles to economic and social development. What has increased their seriousness is that many of their forms are no longer domestic crimes committed within the territory of a single State, but have crossed national borders as a result of globalization on the one hand, and the development of the mechanisms and means of committing them in parallel with the evolution of modern information and communication technologies on the other hand. In order to confront these evolving crimes, the Algerian legislator undertook to update its legal system by issuing new legal texts, mainly represented by Law No. 06-01 relating to the prevention of and fight against corruption, or by amending the legal texts in force, such as the Code of Criminal Procedure, so as to include special methods of prosecution and investigation that respond to the dynamic and organized nature of these crimes.

**Keywords---**Information corruption, procedural provisions, electronic surveillance, infiltration, controlled delivery, statute of limitations, judicial prosecution.

### Introduction

The information revolution is considered one of the most prominent characteristics of the modern era. There is no doubt that this revolution has produced numerous positive effects by saving time, effort, and cost, and by making human life easier through the use of its technologies, such as computers and information networks. However, the excessive use of these technologies has simultaneously generated many negative effects, as it has significantly contributed to the emergence of new types of crimes characterized by the very features of these technologies. Among these are corruption crimes, which have not been spared from the adverse consequences of the information revolution.

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In light of the international consensus that corruption is no longer a matter of purely domestic concern, but rather a global phenomenon that transcends borders and affects international relations, the responsibility for combating it has become incumbent upon all states through the adoption of comprehensive and multi-dimensional approaches to ensure effectiveness.<sup>1</sup> Accordingly, traditional mechanisms in the field of combating corruption are no longer capable of confronting these new criminal forms, which are characterized by complexity, interconnection, organization, and professionalism. This situation has necessitated the adoption of new mechanisms and methods that keep pace with these developments.

Given the inadequacy of traditional methods used in investigation, inquiry, evidence-gathering, police custody, and judicial investigation to confront corruption crimes committed in the context of the information revolution, the Algerian legislator has introduced successive amendments and fundamental changes to the legislative framework. This was achieved by incorporating special procedural rules and measures aimed at expanding jurisdiction, establishing special investigative techniques, and strengthening the powers of the judicial police. This approach is commonly referred to as procedural combat.<sup>2</sup> The Algerian legislator has provided for these procedures within Law No. 06-01 relating to the prevention of corruption and its suppression, through which new investigative and inquiry methods for such crimes were introduced (First Section).

In addition, the legislator introduced further procedural innovations concerning judicial prosecution in corruption crimes, as stipulated in the Code of Criminal Procedure pursuant to its amendment by Law No. 06-22, as well as Order No. 15-02,<sup>3</sup> which established special criminal procedures designed to confront this serious criminal phenomenon (Second Section).

### **First Section**

#### **Special Investigative Techniques**

The Algerian legislator provided for special investigative techniques in Law No. 06-01<sup>4</sup>, particularly through Article 56 bis (01), which states:

"For the purpose of facilitating the collection of evidence relating to the crimes provided for in this law, controlled delivery may be resorted to, or special investigative techniques such as electronic surveillance and infiltration, in an appropriate manner and with the authorization of the competent judicial authority."

The legislator also incorporated these techniques through amendments to the Code of Criminal Procedure in 2006. These techniques include controlled delivery (First Requirement), electronic surveillance (Second Requirement), and infiltration (Third Requirement)

#### **Controlled Delivery**

The controlled delivery technique was first recognized in the Vienna Convention of 1988<sup>5</sup> against the illicit trafficking in narcotic drugs and psychotropic substances. It was later provided for in the United

<sup>1</sup> This is explicitly stated in the preamble of the United Nations Convention against Corruption, which was adopted by the United Nations General Assembly on October 31, 2003, and opened for signature at the conference held in Mexico between December 9 and 11, 2003, entering into force on December 14, 2005.

<sup>2</sup> The purpose of establishing this combating in the Code of Criminal Procedure is due to the fact that the public prosecution intends to attribute the criminal behavior to a specific person, but before that, it is necessary to collect evidence that proves it. Therefore, the legislator in the field of cybercrime had to stipulate the rules and bases of punishment for it (according to the Penal Code), and organize the criminal procedures followed during the stage of investigation, inquiry, and up to the trial (which are regulated by the Code of Criminal Procedure); Faisal Badri, *Combating Cybercrime in International and Domestic Law*, Thesis submitted for obtaining a Doctorate in Sciences, Specialization: Public Law, Faculty of Law, University of Algiers 01, Algeria, 2017/2018, p.41.

<sup>3</sup> Order No. 15-02 dated July 23, 2015, amends and supplements Order No. 66-155 dated June 8, 1966, which includes the Code of Criminal Procedure, Official Journal No. 40, issued on July 23, 2015.

<sup>4</sup> Law No. 06-01 dated February 20, 2006, includes the Law on Prevention and Combating of Corruption, Official Journal No.14, issued on March 8, 2006, amended and supplemented.

Nations Convention against Transnational Organized Crime, which defined it under Article 2.<sup>6</sup> The same definition was also adopted by the United Nations Convention against Corruption of 2003.<sup>7</sup>

As for the Algerian legislator, controlled delivery was adopted pursuant to the law relating to the prevention of corruption and the fight against it, as well as the law relating to the fight against smuggling of 2005. The Algerian legislator also referred to it in the amendment of the Code of Criminal Procedure in 2006. In this context, the provisions governing this newly introduced procedure will be examined by defining its concept (First Branch) and the conditions required for its application (Second Branch).

## First Branch

### Concept of Controlled Delivery

Controlled delivery is considered one of the most important techniques used in tracking illicit shipments, whether at the national or international level.<sup>8</sup> After being adopted and provided for in various international conventions, the Algerian legislator embraced this technique as a new method to combat corruption crimes committed in the context of the information revolution, pursuant to Article 56 of the Anti-Corruption Law. Prior to this, the Algerian legislator had referred to controlled delivery in the law relating to the fight against smuggling, under Article 40, which was expressly titled "Controlled Delivery".<sup>9</sup>

However, by referring to the Code of Criminal Procedure, which constitutes the general procedural framework for most criminal laws including the Anti-Corruption Law it is observed that no explicit provision regulates this technique, except for an implicit reference contained in Article 16 bis of the Algerian Code of Criminal Procedure.<sup>10</sup>

### First: Definition of Controlled Delivery

The Algerian legislator expressly provided for controlled delivery in Article 56 of the law relating to the prevention of corruption and the fight against it, and defined it in Article 2 / (k) of the same law,

<sup>5</sup> The Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; website: [https://www.unodc.org/pdf/convention\\_1988\\_ar.pdf](https://www.unodc.org/pdf/convention_1988_ar.pdf), date accessed: 17/02/2022, time accessed: 08:46; Algeria ratified it with reservations under Presidential Decree No. 95-41 dated January 28, 1995, which included the ratification, with reservations; on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances approved in Vienna on December 20, 1988, Official Journal No.07, issued on February 15, 1995.

<sup>6</sup> Article 2/(k) of the United Nations Convention against Transnational Organized Crime of 2000 stipulates: "The term 'controlled delivery' means allowing illicit or suspicious shipments to leave the territory of one or more states, pass through it, or enter it with the knowledge of and under the control of the competent authorities, in order to investigate a crime and identify the persons involved in its commission." This Convention also set some provisions for this method through Article 20, which is titled: "Special investigative techniques"; its first paragraph stipulates: "Each State Party, within the limits of its capabilities and according to the conditions provided in its domestic law, if the fundamental principles of its legal system allow, shall take the necessary measures to enable the appropriate use of the controlled delivery method, as well as what it deems appropriate for the use of other special investigative techniques...". It is noted from this Article that it primarily establishes the controlled delivery method as an innovative measure to confront transnational organized crime, then allows the possibility of resorting to other investigative techniques. The last paragraph of this Article permits the use of this method internationally through intercepting goods or allowing them to continue safely, or removing them, or substituting them entirely or partially.

<sup>7</sup> The United Nations Convention against Corruption stipulates this procedure under Article 2/(h), which included the definition of the controlled delivery method; it states: "The term 'controlled delivery' means allowing illicit or suspicious shipments to leave the territory of one or more states, pass through it, or enter it with the knowledge of and under the control of the competent authorities, in order to investigate a crime and identify the persons involved in its commission," which is the same definition as stated in the United Nations Convention against Transnational Organized Crime.

<sup>8</sup> Asma Antar, The Legal Framework of the Controlled Delivery Process, Algerian and Comparative Public Law Journal, Faculty of Law and Political Science, University of Djilali El-Yabous, Sidi Bel Abbes, Algeria, Vol. 7, No. 2, 13/11/2021, p.431.

<sup>9</sup> Article 40 of Order No. 05-06 dated August 23, 2005, concerning combating smuggling, Official Journal No.59, issued on 28/08/2005, amended and supplemented, states: "The competent authorities for combating smuggling may authorize, with their knowledge and under their supervision, the movement of illicit or suspicious goods to leave, pass through, or enter the Algerian territory for the purpose of investigating and combating acts of smuggling, based on the authorization of the competent Public Prosecutor."

<sup>10</sup> Article 16 bis of the Code of Criminal Procedure (amended by Order No. 06-22) implicitly stipulates controlled delivery through the phrase: "...or monitoring the destination or transfer of things, money, or proceeds from the commission of these crimes, or that may be used in their commission."

which reflects the importance attached to this technique. Accordingly, it is necessary to examine the legislative definitions of controlled delivery before outlining its main characteristics.<sup>11</sup>

### 1. Legislative Definitions of Controlled Delivery

The Algerian legislator defined controlled delivery in Article 2 / (k) of the Anti-Corruption Law as:

“The procedure that allows illicit or suspicious shipments to exit the national territory, pass through it, or enter it with the knowledge of or under the supervision of the competent authorities, for the purpose of investigating a crime and identifying the persons involved in its commission.”

This definition is derived from the definition contained in the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, and previously from the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The Algerian legislator also defined this technique in Article 40 of the law relating to the fight against smuggling. However, the Code of Criminal Procedure, following its amendment in 2006, changed its terminology by adopting the expression **“monitoring persons or monitoring the destination or transportation of objects, funds, or criminal proceeds”**, through a single provision only (Article 16 bis of Book Two, Chapter One). This occurred despite the introduction of two complete chapters devoted to special investigative techniques, namely interception of communications, recording of sounds and images, and infiltration. This raises questions as to why this technique was separated from other special investigative methods, even though they were initially grouped together in one provision under the Anti-Corruption Law.

This technique applies only to specific crimes listed exhaustively by law; however, differences exist regarding the scope of such crimes. Under the Anti-Corruption Law, controlled delivery is intended exclusively to combat corruption offenses enumerated therein, similar to other special investigative techniques. Conversely, Article 16 (6) of the Code of Criminal Procedure excludes corruption crimes from the scope of this technique. This contradiction appears to be the result of legislative oversight, since Article 16 bis of the Code of Criminal Procedure which introduced controlled delivery did not itself specify the crimes to which it applies, but instead referred to Article 16 preceding it. The latter concerns the extension of territorial jurisdiction of judicial police officers across the entire national territory for certain crimes, excluding corruption offenses.<sup>12</sup>

The Algerian legislator remedied this deficiency through the amendment of the Anti-Corruption Law in 2010, by adding corruption crimes to Article 16 (6) of the Code of Criminal Procedure<sup>13</sup> through Article 24 bis (1). Consequently, controlled delivery provided for under Article 16 bis may also be applied to corruption crimes.

The Moroccan legislator defined controlled delivery in Article 1-82 of the Code of Criminal Procedure<sup>14</sup> as:

“Controlled delivery is allowing an illegal shipment, or one suspected of being illegal, to enter, transit through, or leave Morocco without seizing it, or after partially or fully withdrawing or replacing it,

<sup>11</sup> Linguistically, "controlled delivery" is: Delivery comes from the verb "sallam" meaning to give; "he delivered the thing": he gave it to him; "he received the thing": he took it, seized it. Delivery thus means giving and handing over; Louis Ma'rouf, Al-Munjad in Language, Literature, and Sciences (Dictionary and Lexicon), Catholic Press, Beirut, Lebanon, no year of publication, p.348. As for the term "controlled," it comes from the verb "raqab" (to watch), meaning he watched and supervised the thing; surveillance or monitoring means guarding and observing the thing, and the origin of surveillance: waiting and watching, from a collection of language dictionaries and lexicons, available on the website: <https://islamic-content.com/dictionary/word/9254>, date accessed: 12/02/2022, time accessed: 13:38.

<sup>12</sup> Article 16/06 of the Algerian Code of Criminal Procedure states: "However, regarding the investigation and examination of drug crimes, transnational organized crime, crimes affecting automated data processing systems, money laundering and terrorism crimes, and crimes related to special foreign exchange legislation, the jurisdiction of the judicial police officer extends to the entire national territory"; it is noted here that corruption crimes are not concerned with the extension of jurisdiction.

<sup>13</sup> Article 24 bis 1/01 of Order No. 10-05 dated August 26, 2010, which supplements Law No. 06-01 dated February 20, 2006, concerning the prevention and combating of corruption, Official Journal No.50, issued on September 1, 2010, states: "Crimes stipulated in this law are subject to the jurisdiction of judicial authorities with extended jurisdiction according to the provisions of the Code of Criminal Procedure."

<sup>14</sup> Dahir cherif No. 1.02.255 issued on October 3, 2002, concerning the implementation of Law No. 01-22 related to criminal procedure, Official Journal No.5078, dated January 30, 2003, amended and supplemented; website: <https://www.refworld.org/>.

under the supervision of competent authorities, in order to determine the final destination of the shipment, investigate the crime, identify the perpetrators and involved persons, and apprehend them."

The Syrian legislator also defined it in Article 69 of Law No. 02 of 1993 on Narcotics<sup>15</sup> which states:

"The Minister of Interior may, based on the proposal of the Director of the Narcotics Control Administration, and after notifying the Minister of Justice and the Director of Customs, authorize in writing the passage of a shipment of narcotics through the territory of the state to another country, applying the controlled delivery system, if it is deemed that this action will help identify the persons collaborating in transporting the shipment and its intended destination."

Based on these legislative definitions and others<sup>16</sup>; we note that most legislations agree on the possibility<sup>17</sup> of resorting to this newly developed method if necessary, and most definitions clarify the purpose of this exceptional procedure, which is to identify the leaders of groups committing corruption crimes and to track their movements, methods, and organizational structures.<sup>18</sup> Controlled delivery is considered a form of international cooperation in combating contemporary crime, and it is one of the effective methods that facilitates the successful apprehension of criminals in flagrante delicto .

### **Second: Characteristics of Controlled Delivery**

The controlled delivery technique is characterized by a number of distinctive features, which may be summarized as follows:

- Controlled delivery has become a method applicable to all newly emerging crimes and their criminal proceeds, after initially being limited exclusively to drug-related offenses.
- It constitutes a modern investigative and inquiry technique used to detect and combat contemporary crimes, both at the national and international levels.
- Controlled delivery must be expressly provided for in national legislation, as it represents an exception to the general rules applied in most comparative legal systems.
- Allowing a suspicious shipment to continue its route outside the State constitutes a form of voluntary waiver by that State in favor of another State, in pursuit of a higher interest grounded in positive international cooperation to combat corruption crimes.<sup>19</sup>
- This technique relies on secrecy and strategic implementation in order to determine the appropriate moment for intervention and to prevent the offender from causing harm to public funds.<sup>20</sup>
- Controlled delivery is considered one of the special investigative methods employed by States to apprehend a greater number of organized crime networks involved in contemporary criminal activities.<sup>21</sup>

<sup>15</sup> Law No. 02 issued on April 12, 1993, Syrian Narcotics Law, amended and supplemented; website: <http://www.parliament.gov.sy/arabic/index>, date accessed: 25/04/2022, time accessed: 20:38.

<sup>16</sup> For more legislative definitions; see: Dalila Mubarki, Money Laundering, Thesis submitted for obtaining a Doctorate in Science, specialization: Criminal Law, Faculty of Law and Political Science, University of Hadj Lakhdar, Batna, Algeria, 2007/2008, p.294; Asma Antar, previous reference, pp.432-437.

<sup>17</sup> Badr Eddine El-Hadj Ali, Corruption Crimes and Mechanisms of Combating Them in Algerian Legislation, Thesis submitted for obtaining a Doctorate in Science, specialization: Private Law, Faculty of Law and Political Science, University of Tlemcen, Algeria, 2015/2016, p.236.

<sup>18</sup> Qasi Si Youssef, Strategy for Combating Drug Crimes at the International and Arab Levels, State Doctorate Thesis in Law, specialization: Public Law, Faculty of Law, University of Algiers 1, 2012, p.383.

<sup>19</sup> Dalila Mubarki, same reference, p.294.

<sup>20</sup> Badr Eddine El-Hadj Ali, same reference, p.237.

<sup>21</sup> This is what the jurist Hartmut Aden referred to, saying: "In the case of a controlled delivery, the police do not intervene as early as possible when they receive information about the preparation of the delivery of an illegal item, but they observe the facts to learn about other elements of the network involved in the crime"; HARTMUT Aden, The Effects at the National and Regional Level of International Police Cooperation: A Specific Multi-Level Governance System, Comparative Approaches of Police in Europe, L'Harmattan, Paris, 2003, pp.24.

## Second Branch

### Conditions Required for Conducting Controlled Delivery

Neither the Anti-Corruption Law nor the law on the prevention of smuggling expressly set out the conditions and procedures governing controlled delivery. This reflects the limited attention accorded by the Algerian legislator to this procedure, as no provisions specify its procedures, duration, conditions, or locations of implementation. This legislative deficiency necessitates a reconsideration of the relevant legal texts and the adoption of mechanisms capable of strengthening the effective use of this technique. By referring to the Code of Criminal Procedure specifically Article 16 bis it appears that the Algerian legislator defined the procedures to be followed when extending territorial jurisdiction across the entire national territory during operations involving the monitoring of persons, tracking the destination and transportation of funds, objects, or criminal proceeds. These provisions are also applicable to corruption crimes following the amendment of the Anti-Corruption Law in 2010. Accordingly, the conditions required for controlled delivery are as follows:

#### 1. Obtaining Authorization from the Public Prosecutor

Article 16 bis of the Code of Criminal Procedure provides<sup>22</sup>:

“A judicial police officer, and under his authority judicial police agents, may carry out such operations unless the competent Public Prosecutor objects after being informed...”

Article 56 of the Anti-Corruption Law likewise requires authorization through the expression “with the authorization of the competent judicial authority”. Additionally, Article 40 of the law on the prevention of smuggling stipulates this condition through the phrase “upon authorization of the competent Public Prosecutor”.

An examination of these provisions reveals that the Algerian legislator did not specify the nature of the required authorization to conduct controlled delivery. In both the Anti-Corruption Law and the anti-smuggling law, the legislator explicitly required authorization from the competent judicial authority<sup>23</sup> without clarifying whether such authorization must be written, its required elements, or the locations where the procedure may be carried out.

In contrast, Article 16 bis of the Code of Criminal Procedure refers merely to “notification” of the competent Public Prosecutor and the absence of objection, without defining the manner of notification or objection. This constitutes a legislative shortcoming that requires correction.

#### 2. Execution of Controlled Delivery by the Judicial Police

According to Article 16 bis of the Code of Criminal Procedure, the authority legally empowered to carry out controlled delivery operations consists of judicial police officers, assisted by judicial police agents. These individuals are legally authorized to investigate and detect corruption crimes.

Judicial police officers are exhaustively listed under Article 15 of the Code of Criminal Procedure<sup>24</sup> and may be classified into three categories:

<sup>22</sup> This also affirms Article 47/03 of the Algerian Constitution of 2020; which states: "No infringement on the rights mentioned in the first and second paragraphs except by a reasoned order from the judicial authority"; Presidential Decree No. 20-442 dated December 30, 2020, concerning the issuance of the constitutional amendment, ratified in the referendum of November 1, 2020, Official Journal No.82, issued on December 30, 2020.

<sup>23</sup> This authority is represented by the regionally competent Public Prosecutor; in his capacity as director of the judicial police activity according to Article 12/02 of the Code of Criminal Procedure which states: "The Public Prosecutor manages the judicial policing..."; as well as Article 36/01 of the same law: "The Public Prosecutor does the following: - manages the activity of the officers and agents of the judicial police within the jurisdiction of the court, and has all the authorities and powers associated with the status of a judicial police officer..."

<sup>24</sup> Article 15 of the Algerian Code of Criminal Procedure states: "The following enjoy the status of judicial police officer: 1) Presidents of municipal people's councils. 2) National Gendarmerie officers. 3) Police Commissioners. 4) Police officers. 5) Ranks in the gendarmerie, and gendarmes who have served at least 03 years and were appointed by joint decision of the Minister of Justice and Minister of National Defense, after approval by a special committee. 6) National Security Inspectors who have served at least 03 years in this status and were appointed by joint decision of the Minister of Justice and Minister of Interior and Local Authorities, after approval by a special committee. 7) Officers and non-commissioned officers attached to the military security services, appointed specifically by joint decision between the Minister of National Defense and Minister of Justice. The composition of the committee mentioned in this article and its management are determined by decree."

**a. Judicial police officers by virtue of their position**, namely:

- Presidents of municipal people's assemblies,
- Officers of the National Gendarmerie,
- Police commissioners,
- Police officers.

**b. Judicial police officers by appointment and after approval by a special committee**, including:

- Non-commissioned officers and gendarmes with at least three years of service, appointed by joint decision of the Minister of Justice and the Minister of National Defense after passing an examination and approval by a special committee;
- National security inspectors, appointed by joint decision of the Minister of Justice and the Minister of Interior and Local Communities.

**c. Members of the military security services**, provided they are officers or non-commissioned officers appointed by joint decision of the Minister of Justice and the Minister of National Defense.<sup>25</sup> No specific seniority is required for their appointment, and their jurisdiction is limited to corruption crimes committed within the military security sector.

In addition, the Public Prosecutor is considered a judicial police officer pursuant to Article 36 (1) of the Code of Criminal Procedure.

As for judicial police agents, Article 19 of the Code of Criminal Procedure defines them as police officers, gendarmes, and military security personnel who do not possess the status of judicial police officers. Their role consists in assisting judicial police officers, complying with their instructions, and collecting information leading to the identification of perpetrators of crimes.

### 3. Occurrence of a Corruption Crime

The third condition for resorting to controlled delivery is the occurrence of a corruption offense as defined under the Anti-Corruption Law. This procedure cannot be applied to all crimes indiscriminately, but only to those exhaustively enumerated under Article 16 of the Code of Criminal Procedure. These include drug-related crimes, transnational organized crime, offenses against automated data processing systems, money laundering and terrorism crimes, offenses relating to foreign exchange regulations, corruption crimes (added pursuant to the 2010 amendment), and smuggling crimes under Law No. 05-06.

## Section Two

### Electronic Surveillance

Among the special investigative methods arising from modern technological means, alongside the controlled delivery method, as provided in the law relating to the prevention and combating of corruption, there is also the method of electronic surveillance. It is noted that this method has been referred to by different terms; some call it electronic monitoring, interception of correspondence, voice recording, and photography; while others consider that resorting to this method, even if it is a procedure imposed by scientific development, constitutes, on the other hand, a violation of the right to privacy and individual freedoms <sup>26</sup>.

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<sup>25</sup> Amine Rakab, *Special Investigation Methods in Corruption Crimes in Algerian Law*, Memorandum for obtaining a Master's degree, specialization: Advanced Public Law, Faculty of Law and Political Science, University of Abu Bakr Belkaid, Tlemcen, Algeria, 2014/2015, p.25.

<sup>26</sup> Abdelali Hacha, *Legal Mechanisms to Combat Administrative Corruption in Algeria*, Thesis submitted for a Doctorate in Law, specialization: Public Law, Faculty of Law and Political Science, University of Mohamed Khider, Biskra, Algeria, 2012/2013, p.260; This procedure created the problem of balancing individuals' right to enjoy privacy, and their right not to have it violated without permission, with the State's right to maintain its internal and external security. Many international conventions emphasized the importance of respecting private life; Asma Antar, Maamer Hitala, *Special Investigation and Research Methods – Electronic Surveillance as a Model, Mediterranean Dialogue*, University of Djilali Yabes, Sidi Bel Abbes, Algeria, Volume 11, Issue 03, December 2020, p.420; The Algerian legislator stipulated the sanctity of private life in the 2020 Algerian Constitution through Article 47: "Everyone has the right to protect his private life and honor. Everyone has the right to confidentiality of his correspondence and private communications in any form... The law punishes any violation of these rights."

The Algerian legislator referred to this method in the Anti-Corruption Law under Article 56, without specifying its conditions or implementation procedures. The legislator remedied this deficiency by amending the Code of Criminal Procedure in 2006, dedicating a full chapter to this method, limiting its application to specific crimes provided by law, and making its use conditional upon restrictions explicitly stipulated by law; otherwise, the method is considered null and void<sup>27</sup>.

## Branch One

### The Concept of Electronic Surveillance

The Algerian legislator addressed the method of electronic surveillance in the amendment of the Code of Criminal Procedure in 2006, in Articles 65-05 to 65-10, within Chapter Four of Part Two of the first book of this law. It was named: interception of correspondence, voice recording, and photography. The legislator had previously referred to it in Article 56 of the Anti-Corruption Law, considering it one of the special investigative methods. It is noted that some have used the term "electronic monitoring" to refer to electronic surveillance, meaning interception of correspondence, voice recording, and photography; the term "electronic supervision" has also been used to refer to the electronic bracelet system, also called house arrest.<sup>28</sup>

The Algerian legislator defined the electronic monitoring system in Article 150 bis of Law No. 05-04 related to the regulation of prisons and social reintegration of detainees, as follows: "The status of electronic monitoring consists of the convicted person wearing, throughout the period mentioned in Article 150 bis-1, an electronic bracelet that allows knowing his presence at the residence specified in the decision issued by the judge responsible for the execution of sentences"<sup>29</sup>. Accordingly, electronic monitoring is one of the modern alternatives to short-term imprisonment, aiming to allow the convicted person to serve the sentence outside the prison, by requiring him to wear an electronic bracelet that permits tracking his presence at the specified time and place by the competent judicial authority<sup>30</sup>; it is a modern technology introduced to maintain judicial supervision and strengthen the presumption of innocence, implemented under the justice reform and modernization program<sup>31</sup>. Meanwhile, the Algerian legislator referred to electronic surveillance under the Anti-Corruption Law as such, and in the Code of Criminal Procedure it is called interception of correspondence, voice recording, and photography, without using the term electronic monitoring.

<sup>27</sup> The main reason for allowing the use of electronic surveillance, phone tapping, and interception of all types of correspondence was the events in the United States on September 11, 2001, which allowed several hesitant legislations to issue laws including these means; Nadia Tiab, Mechanisms for Combating Corruption in Public Procurement, Thesis for a Doctorate in Science, specialization: Law, Faculty of Law and Political Science, University of Mouloud Mammeri, Tizi Ouzou, Algeria, November 23, 2013, p.336.

<sup>28</sup> Professor Abdelhadi Drar believes that "Electronic Monitoring – the electronic bracelet – if practically applied on the ground, will inevitably give a positive image of the development of the judicial system in Algeria"; Abdelhadi Drar, The Electronic Monitoring System under Developments in Criminal Procedural Systems under Order 15-02, Journal of Legal Studies and Research, Faculty of Law and Political Science, University of Mohamed Boudiaf, M'sila, Algeria, Volume 02, Issue 01, January 10, 2017, pp.143,152; additionally, this allows saving expenses and achieving financial gains for the State under prison rationalization policies; Wiza Belasli, The Situation under the Electronic Monitoring System Using the Electronic Bracelet, Journal of Law and Liberties, Faculty of Law and Political Science, University of Mohamed Khider, Biskra, Algeria, Volume 06, Issue 01, April 25, 2018, p.147; The electronic bracelet is defined as: "The convict's obligation to reside in his home or place of residence during specified hours, being monitored through a transmitting device worn by the convict similar to a watch – electronic bracelet – which allows the monitoring center via central computer to know if the convict is present in the place and time specified by the executing authority"; Salem Omar, Electronic Monitoring as a Modern Method to Execute Deprivation-of-Liberty Sentences Outside Prison – Electronic Bracelet, 2nd Edition, Arab Renaissance Publishing, Cairo, Egypt, no publication year, p.09.

<sup>29</sup> Law No. 05-04 dated February 06, 2005, concerning the regulation of prisons and social reintegration of prisoners, Official Journal No.12, issued February 13, 2005, amended and supplemented. The electronic monitoring system was introduced in this law by Law No. 18-01 dated January 30, 2018, supplementing Law No. 05-04, Official Journal No.05, issued January 30, 2018.

<sup>30</sup> Mariam Boucharbi, Nesma Abbabsa, Electronic Monitoring as a Modern Penal Treatment Method "Under Law No. 18-01 Amending the Law on Prison Regulation and Social Reintegration of Prisoners", Journal of Legal and Political Research, Institute of Law, University Center of Tipaza, Algeria, Volume 03, Issue 06, January 31, 2019, p.196.

<sup>31</sup> Wiza Belasli, same reference, p.144.

The Algerian legislator did not define electronic surveillance as he did for the controlled delivery method although defining it is not the legislator's task but that of jurisprudence neither in the Anti-Corruption Law nor in the Code of Criminal Procedure. Jurisprudence has defined it as: "Continuous tracking of the criminal or suspect before and after committing the crime, then arresting him in flagrante delicto"<sup>32</sup>. Referring to the provisions of the Code of Criminal Procedure, this method consists of three forms: interception of correspondence (first), voice recording (second), and photography (third).

### **First: Definition of Interception of Correspondence**

Legally, correspondence means: "All written letters, whether sent by post or by private courier, as well as printed matter, parcels, and telegrams held by post or telegraph offices, whether in a closed or open envelope. Also included are letters on open cards when it is clear that the sender intended to keep them private"<sup>33</sup>.

Referring to Article 65-05 of the Code of Criminal Procedure, the Algerian legislator limited the correspondence that may be intercepted to those sent via wired and wireless communication means, excluding other correspondence means, unlike the French legislator who did not make such exclusions. Accordingly, we will address the definition of wired and wireless communications. The Algerian legislator defined this type of communication under Law No. 03-2000 concerning general rules related to post and wired and wireless communications, in Article 08/21: "Wired and wireless communications: any correspondence, sending, or reception of signals, signs, writings, images, sounds, or various information by wires, optics, wireless electricity, or other electrical-magnetic devices"<sup>34</sup>. In addition to these communications under Law No. 03-2000, there are electronic communications that may also be intercepted according to Article 65-05 of the Code of Criminal Procedure.

Communications were also defined under Article 02 of the law on special rules for the prevention of crimes related to information and communication technologies and combating them, as follows: "Electronic communications are any correspondence, sending, or reception of signs, signals, writings, images, sounds, or various information through any electronic means." From this definition, it is clear that electronic communications are a type of correspondence similar to ordinary correspondence<sup>35</sup>.

The Algerian legislator also defined electronic communications under Article 05 of Presidential Decree 15-261<sup>36</sup> as: "Correspondence, sending, or reception of signs, signals, writings, images, sounds, or information, by any means of landline or mobile phone." However, he did not define the method of intercepting correspondence; Article 65-05 is general and includes both traditional and electronic

<sup>32</sup> The Algerian legislator used the term "interception of correspondence", which has the same meaning as tapping; linguistically defined as: "tasannata-yatasannat, tasannutan, fa huwa mutasannit, tasannata fulan: meaning to eavesdrop, to listen secretly, to spy"; website: <https://www.almaany.com>, accessed May 14, 2022, 23:25; Defined by Professor Yasser Al-Amir: "An investigative procedure carried out secretly and violating the confidentiality of private conversations, ordered by the judicial authority in the legally specified form, aimed at obtaining immaterial evidence of a crime, and also includes eavesdropping on conversations, considered an important modern investigative tool used by the judicial police to confront serious crime, implemented through wired and wireless communication means." Yasser Al-Amir Farouk, *Monitoring Private Conversations in Criminal Procedures*, University Press, 1st Edition, Alexandria, Egypt, 2009, p.150.

<sup>33</sup> Ahmed Fathi Sorour, *The Mediator in the Code of Criminal Procedure*, Arab Renaissance Publishing, Cairo, Egypt, 1994, p.09; For more definitions see: Abdelali Hacha, previous reference, p.260; Boumediene Kaibish, *Special Investigation Methods in Corruption Crimes*, Journal of Law, Institute of Law, University Center Ahmed Zabana, Guelizian, Algeria, Issue 07, December 2016, p.305.

<sup>34</sup> Law No. 2000-03 dated August 5, 2000, setting general rules related to post and wired and wireless communications, Official Journal No.48, issued August 6, 2000, amended and supplemented.

<sup>35</sup> It is considered part of individuals' privacy, a right protected by domestic laws and international conventions; for example, Article 12 of the Universal Declaration of Human Rights issued by the UN General Assembly on December 20, 1948: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks"; website: <http://hrlibrary.umn.edu/arab/b001.html>, accessed May 18, 2022, 00:58.

<sup>36</sup> Presidential Decree No. 15-261 dated October 08, 2015, setting the composition, organization, and functioning of the National Authority for the Prevention and Combat of Crimes Related to Information and Communication Technologies, Official Journal No.53, issued October 08, 2015.

communications. Thus, interception of correspondence involves copying or recording correspondence via wired means such as landline phones, telegraph, and fax, and wireless means such as mobile phones, the Internet, email, and other modern technological means<sup>37</sup>.

Interception of correspondence is defined as: "Interception, recording, or copying of correspondence conducted via wired and wireless communication channels, which consists of data that can be produced, distributed, stored, received, or displayed"<sup>38</sup>. The French legislator defined it as: "Any receipt of correspondence, written or audible, regardless of the means of transmission and reception, wired or wireless, speech or signal, by the sender or another person, or addressed to him, recorded on magnetic, electronic, or paper media"<sup>39</sup>.

Considering that interception of correspondence, also called wiretapping<sup>40</sup>, is a special investigative method, the best definition is: "A secret monitoring process of wired and wireless correspondence within the framework of crime investigation and evidence gathering about suspects, conducted via wired communications such as landline phones and telegraph, and wireless communications such as mobile phones, the Internet, and email, using technical devices without the consent of the parties, based on judicial authorization from the competent authority"<sup>41</sup>.

### **Second: Voice Recording**

Speech and personal conversations are elements of human private life, through which secrets are exchanged and personal ideas are expressed without fear of eavesdropping<sup>42</sup>. Accordingly, the law prohibits recording them to protect the sanctity of private life; however, exceptions allow recording when it provides evidence confirming or refuting a crime of corruption.

The Algerian legislator allowed voice recording as a special investigative tool under Article 65-05 of the Code of Criminal Procedure, stating: "For capturing, fixing, broadcasting, and recording speech expressed privately or confidentially." The legislator limited voice recording to ordinary conversations and telephone calls, excluding other sounds such as meaningless speech, music, or noise. Voice recording is defined as: "Monitoring and recording telephone conversations and all communications conducted via wired or wireless means"<sup>43</sup>. It is also defined as: "Monitoring and recording verbal conversations privately or confidentially in public places such as cafes or clubs, or private places such as homes and rooms"<sup>44</sup>.

### **Third: Photography**

The Algerian legislator allowed photography under Article 65-05 of the Code of Criminal Procedure, as a modern technique introduced for investigating corruption crimes. Photography is done via photographic cameras, video recording, or remote devices<sup>45</sup>, using simple cameras, standard or digital video cameras, and any future devices.

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<sup>37</sup> Omar Hamas, *Financial Corruption Crimes and Mechanisms for Combating Them in Algerian Legislation*, Thesis for a Doctorate in Criminal Business Law, Faculty of Law and Political Science, University of Abu Bakr Belkaid, Tlemcen, Algeria, 2016/2017, p.271.

<sup>38</sup> Abdelrahman Khalfi, *Lectures on Criminal Procedures*, University of Abdelrahman Mira, Bejaia, 2016/2017, published online: <https://elmouhami.com/wp-content/>, p.72.

<sup>39</sup> Kour Tarik, *Special Investigation Methods*, "Forum on Administrative Corruption", Faculty of Law and Political Science, Oum El Bouaghi, 2010, p.04, cited in: Abdelali Hacha, previous reference, p.261; website: <https://www.legifrance.gouv.fr>, accessed January 26, 2022, 11:41.

<sup>40</sup> Here it is necessary to distinguish between phone call interception and placing a phone line under monitoring. The first is without the consent of the concerned person, the second is with consent or at the request of the person concerned.

<sup>41</sup> Sara Azzouz, Salima Azzouz, *Special Research and Investigation Methods in Corruption Crimes – A Study in Algerian Legislation*, Journal of Researchers for Academic Studies, University of Batna 01 – El Hadj Lakhdar, Algeria, Volume 08, Issue 03, June 2021, pp.47-64, p.50.

<sup>42</sup> Amine Rakab, previous reference, p.59.

<sup>43</sup> Meghni Ben Ammar, Bouras Abdelkader, previous reference, p.03; cited in: Abdelali Hacha, previous reference, p.261.

<sup>44</sup> Omar Hamas, previous reference, p.272.

<sup>45</sup> Abdel Fattah Qadri, *Procedural Rules in Corruption Crimes in Algerian Legislation*, Thesis submitted for a Doctorate (LMD) in Law, specialization: Private Law, Faculty of Law and Political Science, University of Larbi Tebessi, Tebessa, Algeria, 2021/2022, p.111.

An image is defined as: "Representation of a person through sculpture, photography, or film, reflecting not only physical aspects but also psychological aspects, showing emotions, suffering, deprivation, or happiness; thus, it reflects the personality as well as the face"<sup>46</sup>. Photography is defined as: "Capturing an image on a sensitive medium, differing from image transfer, which conveys the image to another location, either static or moving, as in television"<sup>47</sup>. It is also defined as: "A process used in crime investigation through photos and videos, where the camera lens provides vivid, accurate images of a location, event, or incident, employed to serve justice and reveal truth"<sup>48</sup>.

Professor Tiab Nadia defined it as: "A technical process capturing images of one or more persons even in private places, called photographic technique using precise devices"<sup>49</sup>. This procedure relies on using cameras or specialized devices to capture images and voices of suspects, to be used as material evidence<sup>50</sup>.

## Branch Two

### Conditions Required for Validity of Electronic Surveillance

Electronic surveillance involves individuals' rights and freedoms; therefore, the Algerian legislator made it an exceptional case, applied only if formal conditions (first) and substantive conditions (second) are met.

#### First: Formal Conditions

The formal conditions according to the Code of Criminal Procedure are:

1- **Judicial Authorization:** Article 65-05 requires prior authorization from the regional public prosecutor or the investigating judge in the case of opening an investigation<sup>51</sup>. Authorization is defined as: "A delegation issued by the competent authority to a judicial police officer, empowering him to carry out the operations."<sup>52</sup> The legislator required several conditions for validity:

- Prior written permission must be obtained<sup>53</sup>, phrased explicitly, such as "We order or authorize."
- The authorization must specify the locations (public, private, or residential) <sup>54</sup>
- The authorization must specify the crime justifying surveillance, and the crimes for which electronic surveillance is permitted, listed exhaustively.
- It must specify all elements necessary to identify the communications to be intercepted, such as the type of communication (mobile, fax...), the nature of correspondence to be monitored (call, telegraph, fax...), conversations to be recorded, and the identity of the person under surveillance<sup>55</sup>; start and end dates must also be included.

<sup>46</sup> Rachid Chemicham, The Right to the Image, Journal of Legal and Political Studies, Faculty of Law and Political Science, University of Amar Telidji, Laghouat, Algeria, Volume 05, Issue 01, January 05, 2019, p.159.

<sup>47</sup> Safia Beshaten, Legal Protection of Private Life – Comparative Study, Thesis for a Doctorate in Science, specialization: Law, Faculty of Law and Political Science, University of Mouloud Mammeri, Tizi Ouzou, Algeria, May 07, 2012, p.389.

<sup>48</sup> Nesrine Haj Abdelhafiz, Electronic Surveillance as a Legal Method for Detecting Economic Corruption Crimes in Algerian Law, Journal of Legal and Economic Studies, University of Amar Telidji, Laghouat, Algeria, Volume 05, Issue 01, June 06, 2022, p.1418.

<sup>49</sup> Nadia Tiab, previous reference, p.337.

<sup>50</sup> For more definitions see: Zelikha Tajani, Monitoring as a Procedure for Research and Investigation of Crimes, Journal of Legal and Political Research, Faculty of Law and Political Science, University of Jijel – Mohamed Seddik Ben Yahia, Algeria, Volume 07, Issue 01, June 15, 2022, p.1193; Abdelali Hacha, previous reference, p.262; Omar Hamas, previous reference, p.273; Nour Eddine Loujani, Special Research and Investigation Methods and Procedures, Study Day: Relationship between Public Prosecution and Judicial Police – Respect for Human Rights and Crime Fighting –, General Directorate of National Security, Algeria, December 12, 2007, p.8; Badr Eddine El-Hadj Ali, previous reference, p.243; Amine Rakab, previous reference, p.66.

<sup>51</sup> Here, the investigating judge has no right to issue a permit for electronic surveillance when it concerns the existence of evidence of a future corruption crime, as long as he has not yet been notified of the case file; Amine Rakab, previous reference, p.76.

<sup>53</sup> This is inferred from Articles 65 bis 5 and 65 bis 7/02 of the Code of Criminal Procedure.

<sup>54</sup> Abdelali Hacha, previous reference, pp.265-266.

<sup>55</sup> Article 65 bis 7 of the Code of Criminal Procedure.

- Authorization must be limited to a specific duration, not exceeding four (04) months, renewable under the same formal and temporal conditions, with the number of renewals left to the discretion of the public prosecutor or investigating judge, to prevent abuse and protect privacy<sup>56</sup>.

2- **Preparation of Operations Report:** Articles 65-09 and 65-10 require the authorized judicial police officer, or delegate from the competent judge, to prepare a detailed report for each operation, including interception, recording, technical arrangements, and voice recording, noting start and end times.<sup>57</sup> Recorded correspondence, conversations, and images are described or copied in another report filed in the case<sup>58</sup>.

3- **Surveillance Limited to Specific Crimes:** Article 65-05 enumerates specific crimes, including corruption, for which electronic surveillance is permitted<sup>59</sup>.

4- **Implementation by Judicial Police Officers and Oversight:** The legislator required<sup>60</sup> that electronic surveillance be carried out only by judicial police officers<sup>61</sup>, under direct supervision of the public prosecutor or competent investigating judge<sup>62</sup>, to avoid abuse<sup>63</sup>.

## Second: Substantive Conditions

Substantive conditions include:

1- **Surveillance in Preliminary Stages of the Case:** Surveillance must occur during preliminary stages, i.e., investigation or inquiry, and must be necessary to uncover particular criminal threats.<sup>64</sup>

2- **Secrecy during Electronic Surveillance:** Electronic surveillance procedures are confidential, conducted without the knowledge or consent of the person under surveillance<sup>65</sup>; all measures must respect professional secrecy. Judicial police officers are prohibited from disclosing investigation content; violators may be prosecuted for breaching professional secrecy.<sup>66</sup>

## Section Three

### The Infiltration Method

In addition to the previous two special investigative methods provided for in Article 56 of the Anti-Corruption Law, there is the infiltration method. The Algerian legislator first mentioned it in the same article and called it “penetration.” It is noted that the Algerian legislator mentioned this method in only one article while enumerating the special investigative methods, without specifying its procedures and conditions; however, it was later i.e., after the Law on the Prevention and Combating of Corruption issued in February 2006 a modification to the Code of Criminal Procedure in December of the same year, through which the Algerian legislator dedicated a full additional chapter to this method but changed its designation<sup>67</sup>

<sup>56</sup> Amine Rakab, previous reference, p.79.

<sup>57</sup> Sara Azzouz, Salima Azzouz, previous reference, p.54

<sup>58</sup> This is stipulated in Article 65 bis 10/01 of the Code of Criminal Procedure. The second paragraph of the same article allows copying and translating calls conducted in a foreign language, with the assistance of a translator assigned for this purpose

<sup>59</sup> These are the same crimes related to the previously mentioned controlled delivery method.

<sup>60</sup> This is inferred from Articles 65 bis 8, 65 bis 9, 65 bis 10 of the Code of Criminal Procedure.

<sup>61</sup> They are the persons specified in Article 15 of the Code of Criminal Procedure, mentioned in the first section of this chapter, except for heads of municipal popular councils.

<sup>62</sup> According to the fifth and sixth paragraphs of Article 65 bis 5 of the Code of Criminal Procedure.

<sup>63</sup> Meghni Ben Ammar, Bouras Abdelkader, previous reference, p.17; cited in: Abdelali Hacha, previous reference, p.267.

<sup>64</sup> It is also not permissible to use this method to obtain a confession from the accused regarding committing a corruption crime; Amine Rakab, previous reference, p.71; Faisal Badri, previous reference, p.2015.

<sup>65</sup> Badr Eddine El-Hadj Ali, previous reference, p.248.

<sup>66</sup> This is stipulated in Article 65 bis 6/01 of the Code of Criminal Procedure.

<sup>67</sup> The Algerian legislator used the term “penetration” in the corruption law, corresponding in French to “Infiltration”, and used the term “leakage” in the Code of Criminal Procedure, also corresponding in French to “Infiltration”, which shows that the Algerian legislator intended the same meaning. It would have been preferable to unify the terminology between the two laws.

### **Branche One: Concept of Infiltration**

Infiltration, or penetration, is considered one of the most important secret sources relied upon by criminal investigation since ancient times in uncovering obscure crimes, as it is a method known since ancient times<sup>68</sup>. However, it is observed that initially it was used for political purposes, whereas currently it is used for legal purposes to uncover contemporary crimes, including corruption offenses<sup>69</sup>. Since the Algerian legislator used two terms for the same meaning as mentioned above, most references have attempted to define it and specify its characteristics.

#### **First: Definition of Infiltration**

Due to the danger and complexity of this method, the Algerian legislator explicitly defined it in Article 65 bis 12/1: "Infiltration refers to the act of a judicial police officer or agent, under the responsibility of the judicial police officer in charge of coordinating the operation, monitoring persons suspected of committing a felony or misdemeanor by making them believe that he is acting with them, or is their partner, or is undercover." Through its amendment of the Code of Criminal Procedure, the Algerian legislator remedied the deficiency present in the Law on the Prevention and Combating of Corruption by precisely defining this method and specifying its conditions and procedures. It is noted that this legal definition is a literal translation of the definition of infiltration found in the French Code of Criminal Procedure, in Article 706-81/paragraph two.<sup>70</sup>

There are several doctrinal definitions of infiltration, including: "A field operation using an investigative method to collect material facts and evidence from within the criminal operation, as well as direct personal contact with suspects and defendants. This entails great risk requiring precision, focus, and proper planning" (.). Infiltration has also been defined as: "A legal means or procedure authorized for a judicial police officer during the execution of investigative tasks concerning certain serious and contemporary crimes, with the permission of the public prosecutor and under the supervision and monitoring of the judiciary, through which certain techniques and infiltration or penetration within the criminal group are used, and simulating participation in the crime, for the purpose of collecting evidence and identifying the perpetrators"<sup>71</sup>.

Infiltration is characterized by several practical and field definitions; practically, it is defined as: "Penetrating a place or organization that is difficult to enter, to uncover the intentions of criminal groups, due to the importance of obtaining a true picture of the environment targeted by the operation"<sup>72</sup>. From a field perspective, it is: "The act aimed at inducing a police officer or judicial police agent to commit a corruption-related crime from the perspective of general criminal law, or the practice that allows police officers or judicial police agents to commit offenses under anti-corruption legislation, by concealing their true identity and presenting themselves as accomplices or participants in corruption operations"<sup>73</sup>, in order to observe violations punishable by law".<sup>74</sup>

<sup>68</sup> ) In the Islamic era, it is established that the Prophet (peace be upon him) relied on information gathered by his spies for planning military campaigns, forming an integrated organization of guides and secret agents, providing them full support, thus learning most criminal movements against the Islamic state; Amine Rakab, previous reference, p.90; Belgium also adopted this in 1875 in a case before the "Grand" Court, where a police officer infiltrated a restaurant as a customer after information reached the police that the restaurant served out-of-season game meat, conducting the infiltration to inspect the crime; Amine Rakab, previous reference, p.92.

<sup>69</sup> Nadia Tiab, previous reference, p.344.

<sup>70</sup> Article 706 -81/02 C.P.P: "Infiltration consists, for an officer or a specially authorized judicial police agent under conditions fixed by decree and acting under the responsibility of a judicial officer coordinating the operation, in surveilling persons suspected of committing a crime or offense by posing to these persons as one of their co-authors, accomplices, or receivers." Code of Criminal Procedure, France, latest modification 01/09/2022, <http://www.legifrance.gouv.fr/codes/article-/C/LEGIARTI000006418851>

<sup>71</sup> Huda Zouzou, Infiltration as an Investigation Method in the Algerian Code of Criminal Procedure, Policy and Law Notebooks, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, Algeria, Volume 6, Issue 11, June 01, 2014, p.117.

<sup>72</sup> Ezzedine Wad'i, Infiltration as a Special Research and Investigation Method in Light of the Algerian and Comparative Code of Criminal Procedure, Academic Journal for Legal Research, Faculty of Law and Political Science, University of Abdelrahman Mira, Bejaia, Algeria, Volume 16, Issue 2, 2017, p.204.

<sup>73</sup> Nadia Tiab, previous reference, p.344.

<sup>74</sup> Saleh Abdelnouri, Controlled Delivery of Drugs and Psychotropic Substances, Scientific Symposium on "International Cooperation in Combating Drugs", Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, 2005, p.22.

From these definitions (whether legislative, doctrinal, or field), the infiltration method requires the assigned person to maintain constant contact with individuals who display serious indicators suggesting they are committing crimes within a criminal organization<sup>75</sup>.

### **Second: Characteristics of Infiltration**

From the definitions above, we conclude that the infiltration method has several characteristics, summarized as follows:

- The infiltration method is used to monitor persons suspected of committing a corruption offense, not to monitor the location of suspicious items, as in the controlled delivery method.<sup>76</sup>
- The infiltration method is a positive material procedure, meaning that the infiltrating person actively participates in committing the crime subject to the infiltration operation through performing unlawful acts specified by law.<sup>77</sup> This contrasts with the controlled delivery procedure, in which the judicial police officers or agent's task is merely observation without participating in the criminal acts.
- Infiltration is a secret mission, cloaked in confidentiality throughout all its stages and procedures<sup>78</sup>.
- The infiltration method relies on deception, disguise, and covert operation<sup>79</sup>, where the judicial police officer or agent uses cunning and deception to gain the suspects' trust, and to complete the infiltration without obstacles, police personnel resort to hiding their police identity under a false identity, either as ordinary individuals or as professionals in various fields in the environment targeted by the infiltration operation<sup>80</sup>.
- Infiltration is a field operation conducted in the criminal environment through contact and interaction with criminals, aimed at obtaining information about the criminal group, such as the number of criminals, the role of each member, the activities of the criminal group, and the territorial limits of their criminal acts.

### **Branche Two : Conditions Required to Conduct an Infiltration Operation**

The infiltration method is a new method for judicial policing, introduced in 2006 to keep pace with the evolution of crime. Due to its danger to the safety of judicial police officers and agents, the Algerian legislator restricted it with a set of formal and substantive conditions.

#### **First: Formal Conditions for Conducting an Infiltration Operation**

**A. Report Preparation:** According to Article 65 bis 13 of the Code of Criminal Procedure, the Algerian legislator required that, to implement the infiltration method, the judicial police officer responsible for coordinating the infiltration operation must prepare a detailed written report on all elements related to this operation before its commencement. The elements required in this report include all information related to the acts necessitating the use of infiltration, identifying the suspects involved in the crime, the methods used to deceive the perpetrators, and the locations to be infiltrated<sup>81</sup>...

<sup>75</sup> Michel Franchimont – ANN Jacobs, ADRTEN, Masset, Manual of Criminal Procedure, Larcier, Belgium, 3rd edition, 2009, p.337.

<sup>76</sup> Amine Rakab, previous reference, p.98.

<sup>77</sup> Nour Eddine Loujani, previous reference, p.18.

<sup>78</sup> Same reference, p.250. The purpose of this secrecy and concealment is to protect the officer or agent conducting the infiltration.

<sup>79</sup> Therefore, this method is also called “covert operations” in both the United Nations Convention against Transnational Organized Crime (Article 20/01) and the UN Convention against Corruption (Article 50), and it is also termed “secret operations” in the Arab Convention against Corruption (Article 26).

<sup>80</sup> Badr Eddine El-Hadj Ali, previous reference, p.250; Amine Rakab, previous reference, p.97; Abdelkader Rouis, Special Research and Investigation Methods and their Evidentiary Value in Criminal Evidence, Algerian Journal of Law and Political Science, Faculty of Law and Political Science, University of Tissemsilt, Volume 02, Issue 01, June 01, 2017, p.20.

<sup>81</sup> Nadia Tiab, previous reference, p.345.

Accordingly, the judicial police officer coordinating the infiltration operation is responsible for it<sup>82</sup>, hence the Algerian legislator obliged him, before starting the operation, to prepare this report. However, it is noted from Article 65 bis 18 of the Code of Criminal Procedure<sup>83</sup> that the legislator allowed the hearing of the judicial police officer responsible for the infiltration operation, and no one else, as a witness for this operation, despite not having entered the infiltration environment or observed the facts himself.

**B. Obtaining Permission from the Competent Authority:** Infiltration can only be conducted after obtaining authorization issued by the Public Prosecutor or the Investigating Judge, following notification of the Public Prosecutor according to Article 65 bis 11 of the Code of Criminal Procedure<sup>84</sup>, and the permission must meet formal conditions, otherwise it is considered null.

**B-1. Requesting Permission:** After the judicial police officer supervising the infiltration operation prepares the report mentioned above, this report must be accompanied by a request for authorization to conduct the operation and sent to the competent Public Prosecutor, who reviews the report and considers the necessity of the infiltration for investigation; the Public Prosecutor or Investigating Judge grants permission under the conditions set forth in Article 65 bis 15 of the Code of Criminal Procedure.

**B-2. Writing and Reasoning:** The Algerian legislator explicitly required that the permission granted for conducting infiltration be in writing, otherwise it is null, as stated in Article 65 bis 15/01 of the Code of Criminal Procedure: "The permission issued pursuant to Article 65 bis 11 above must be written and reasoned under penalty of nullity." In addition to being written, the legislator also required that the permission be reasoned, otherwise it is null. Reasoning means that the authorization must state the reason behind granting permission for infiltration. This differs from the electronic surveillance method, for which the legislator did not require reasoning, although it is considered one of the most intrusive methods affecting individual freedoms and private life<sup>85</sup>.

**B-3. Specifying the Crime and the Responsible Officer:** Article 65 bis 15/2 of the Code of Criminal Procedure states: "The permission must specify the crime justifying the use of this measure and the identity of the judicial police officer under whose responsibility the operation is conducted." From this article, we note that infiltration is only used for specific crimes enumerated in Article 65 bis 5 of the Code of Criminal Procedure, the same crimes related to the electronic surveillance method; however, the crime must be explicitly specified in the authorization.

**B-4. Duration of Infiltration:** The Algerian legislator required that the duration of the infiltration operation be specified in the authorization according to Article 65 bis 15/03 of the Code of Criminal Procedure, which states: "The authorization specifies the duration of the infiltration operation, which may not exceed four (04) months," including the start and end dates of the operation. The issuance date of the authorization should not be the same as the start date of the operation, but it must follow it by some time to allow proper preparation<sup>86</sup>.

The duration of infiltration can be extended after the legally prescribed period specified in the authorization for the first time, by the judge who authorized the operation if investigative necessities require it. It is noted that Article 65 bis 15/04 of the Code of Criminal Procedure did not specify how to renew it or the number of times; it simply states: "The operation may be renewed according to investigative requirements under the same formal and temporal conditions." Article 65 bis 17 of the same Code states that if the mandate expires and the infiltrating agent is unable to end the operation

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<sup>82</sup> The officer coordinating the infiltration is the judicial police officer legally responsible for the operation, coordinating the infiltrating agent(s), receiving periodic reports from them, and providing the necessary tools and means for research, investigation, and inquiry, between the authority authorizing the operation (Public Prosecutor) and the agent(s); Abdel Fattah Qadri, previous reference, p.86.

<sup>83</sup> Article 65 bis 18 of the Algerian Code of Criminal Procedure: "The judicial police officer under whose responsibility the infiltration operation is conducted may be heard as a witness regarding the operation without anyone else."

<sup>84</sup> Article 65 bis 11 of the Algerian Code of Criminal Procedure: "When investigative or inquiry necessities require it in one of the crimes mentioned in Article 65 bis 5 above, the Public Prosecutor or the investigating judge, after notifying the Public Prosecutor, may authorize under his supervision, as the case may be, the infiltration operation under the conditions stated in the articles below."

<sup>85</sup> Badr Eddine El-Hadj Ali, previous reference, p.251.

<sup>86</sup> Nour Eddine Loujani, previous reference, p.16.

safely, he may continue his activities without a renewal permit, provided it does not exceed four months; however, he must inform the judge who issued the authorization as soon as possible. If the automatically added four-month period expires and the infiltrating agent cannot end his activity, the competent judge may extend it for a third time as a maximum and for a period of four months.

Some believe that even under normal circumstances, the permit cannot be extended more than three times. If the operation is extended for a second four-month period according to Article 65 bis 15, and the infiltrating agent cannot terminate his activity after the second period, it can only be extended for another four months at most automatically<sup>87</sup>.

However, we observe that Article 65 bis 15/04 of the Code of Criminal Procedure is general and does not specify the number of times the duration can be renewed, while Article 65 bis 17 concerns the case of operation termination or expiry, and no other period was extended if the agent could not end the operation safely. Accordingly, the possibility of renewing the duration of infiltration is discretionary, subject to the judge's judgment who authorized it, giving him discretionary power and leaving the field open for multiple renewals under the cover of "investigative necessity," similar to electronic surveillance, which remains valid indefinitely without a maximum limit<sup>88</sup>.

## **Second: Substantive Conditions for Infiltration Operation**

It is not sufficient to meet the above formal conditions; some substantive conditions must also be met, such as conducting the method within the framework of investigation and research, secretly, and by competent authorities.

**A. Conducting Infiltration within Investigation:** This substantive condition is the first prescribed by the Algerian legislator regarding infiltration. Article 65 bis 11 the first article of Chapter Five entitled "Infiltration" states: "When investigative necessities require..." Accordingly, if sufficient evidence supporting suspicion and charges does not exist, there is no need to take risks and use this method, which should only be used when necessary and in cases of difficulty or lack of evidence to initiate public prosecution<sup>89</sup>.

The Algerian legislator did not differentiate between the investigative stage and judicial investigation stage when using infiltration; this operation is not limited to a specific investigation (such as in *flagrante delicto* or preliminary investigation<sup>90</sup>, but is only applicable to the crimes mentioned in Article 65 bis 5 of the Code of Criminal Procedure, including corruption crimes covered by Law No. 06-01<sup>91</sup>.

**B. Confidentiality:** Confidentiality is an essential and necessary condition for conducting and carrying out infiltration successfully. The judicial police officer coordinating the operation must maintain full confidentiality through:

**B-1. Use of a False Identity:** The Algerian legislator allowed, in Article 65 bis 12/02 of the Code of Criminal Procedure, the judicial police officer or agent responsible for the operation (coordinator) under the knowledge of the competent Public Prosecutor, to provide the infiltrating agent with false identity documents<sup>92</sup>, as this helps uncover many facts that cannot be discovered if the identity is disclosed. The legislator imposed severe penalties in case of revealing the true identity, according to Articles 65 bis /4,3,2 of the Code of Criminal Procedure<sup>93</sup>.

<sup>87</sup> Zakaria Ldgham Shikoush, *Legal System of Infiltration in Algerian Law*, Master's Thesis in Legal and Administrative Sciences, specialization: Criminal Law, Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla, Algeria, 2012/2013, p.76.

<sup>88</sup> Amine Rakab, previous reference, p.114.

<sup>89</sup> Sara Azzouz, Salima Azzouz, previous reference, p.57.

<sup>90</sup> Amine Rakab, previous reference, p.140.

<sup>91</sup> The infiltration method is an exceptional procedure permitted for a specific reason and purpose, and without this, the Public Prosecutor or investigating judge may not authorize it; otherwise, it is considered arbitrary; Fawzi Amara, *Interception of Correspondence, Recording of Voices, Photography, and Infiltration as Judicial Investigation Procedures in Criminal Matters*, Journal of Human Sciences, University of Mentouri Constantine, Algeria, Volume 21, Issue 01, June 30, 2010, p.248.

<sup>92</sup> Article 65 bis 12/02 of the Algerian Code of Criminal Procedure states: "A judicial police officer may use a false identity for this purpose..." using fictitious names and titles.

<sup>93</sup> Articles 65 bis 16/4,3,2 of the Code of Criminal Procedure: "Anyone who reveals the identity of judicial police officers or agents shall be punished with imprisonment from two (2) to five (5) years and a fine from 50,000 DZD to 200,000 DZD. If the

**B-2. Non-filing of the Authorization in the Procedural File:** Article 65 bis 15/final of the Code of Criminal Procedure states: "The authorization shall be filed in the procedural file after the completion of the infiltration operation." This indicates that the authorization for conducting infiltration is only placed in the procedural file after the operation ends. This ensures full confidentiality of the operation, restricted by the Algerian legislator to the ordering judge (Public Prosecutor or Investigating Judge) and the judicial police officer and the infiltrating agent<sup>94</sup>. Therefore, this method is formal in nature, aimed at maintaining secrecy during its execution.

**C. Competent Authorities to Conduct Infiltration:** According to Article 65 bis 12/01 of the Code of Criminal Procedure, the persons qualified to carry out infiltration are judicial police officers and agents prescribed by law, under the responsibility of the judicial police officer coordinating the operation.

Thus, infiltration is conducted under the responsibility of the judicial police officer authorized to carry out the entire operation (i.e., responsible for it), and this officer may execute it personally or through one of his agents. If the operation is executed by judicial police agents, the presence of the supervising judicial police officer is required. Article 65 bis 14 of the Code of Criminal Procedure also added the term "hired personnel" alongside officers and agents, who can be employed by the judicial police officers and agents to assist them in the infiltration operation.<sup>95</sup>

## Section Two

### Newly Introduced Judicial Follow-up Procedures to Combat Information Corruption Crimes

Corruption crimes committed in the context of the information revolution are characterized by their global nature, meaning that they are crimes not governed by specific geographical boundaries, in addition to their informational character. Therefore, these crimes have raised several legal issues related to judicial follow-up procedures<sup>96</sup>, particularly with regard to judicial jurisdiction, police custody, the non-prescription of prosecution in corruption crimes, the non-requirement of a complaint, etc. Judicial follow-up procedures are, as a general principle, subject to the general rules; however, within the framework of strengthening the procedural system to combat corruption crimes, the Algerian legislator has granted them certain specificities. Some of these procedures were introduced within the law relating to the prevention and fight against corruption (first section), while others were added through amendments to the Code of Criminal Procedure (second section).

#### First: The Issue of Extending Local Jurisdiction

Judicial jurisdiction is defined as: "the sovereign authority of the State that enables it to apply its national laws within its territory"<sup>97</sup>, and it is also defined as: "the limits determined by the Algerian legislator for the investigating judge to exercise investigative authority over the case brought before him"<sup>98</sup>. It should be noted here that jurisdictional rules in criminal matters are considered part of public order and may not be violated by agreement, and they may be raised at any stage of the proceedings.<sup>99</sup> What concerns us in corruption crimes is that the Algerian legislator has subjected them to the jurisdiction of courts with extended jurisdiction, as a departure from the general rules of jurisdiction.

disclosure causes violence, injury, or assault to any of these persons or their spouses, children, or direct ascendants, the penalty shall be imprisonment from five (5) to ten (10) years and a fine from 200,000 DZD to 500,000 DZD. If it results in death, the penalty shall be imprisonment from ten (10) to twenty (20) years and a fine from 500,000 DZD to 1,000,000 DZD, without prejudice to the application of Chapter One, Title Two, Book Three of the Penal Code where applicable."

<sup>94</sup> Hinda Ghazioui, Nawal Lassalej, Infiltration as a Mechanism for Investigating Criminal Evidence, *Comprehensive Law Journal*, Faculty of Law, University of Badji Mokhtar, Annaba, Algeria, Volume 01, Issue 01, June 01, 2021, pp.145-159, p.150.

<sup>95</sup> The term 'participant' refers to any person considered useful by the judicial police officer or agent executing the operation; they are free to choose them, including from the general public. The legislator did not specify their status or the authority responsible for employing them," Amine Rakab, previous reference, p.106. They also refer to guides and secret informants used during criminal investigation; Abdelali Hacha, previous reference, p.272.

<sup>96</sup> Judicial follow-up procedures refer to the judicial formalities in public prosecution arising from committing a corruption crime, initiated by competent legal and judicial authorities to enforce the prescribed penalties; Aqila Khalaf, previous reference, p.78; cited in: Abdelali Hacha, previous reference, p.236.

<sup>97</sup> Faisal Badri, previous reference, p.196.

<sup>98</sup> Mohamed Hazit, *Investigating Judge in the Algerian Judicial System*, Dar Houma, Algeria, 2010, p.43; note that the investigation studied here refers to the preliminary investigation conducted by the judicial police officer.

<sup>99</sup> Ahmed Al-Shafai, Nullity in the Algerian Code of Criminal Procedure, *Algerian Journal of Legal and Political Sciences*, Faculty of Law and Political Science, University of Ben Yousef Ben Khada, Algeria, Volume 38, Issue 2, June 15, 2001, p.117.

Article 24 bis 1/1 of the Law on the Prevention and Fight against Corruption provides that<sup>100</sup>: “The crimes provided for in this law shall fall under the jurisdiction of courts with extended jurisdiction in accordance with the provisions of the Code of Criminal Procedure.” By referring to the Code of Criminal Procedure, we find that the Algerian legislator has extended local jurisdiction to judicial police officers, the Public Prosecutor, and the investigating judge<sup>101</sup>. Territorial (local) jurisdiction of judicial police officers including the Public Prosecutor and the investigating judge in corruption crimes is determined by the territorial scope within which they exercise their ordinary powers, and they must adhere to this territorial scope in order to avoid the invalidity of the procedures they carry out<sup>102</sup>.

Given the nature and specificity of corruption crimes committed in the context of the information revolution, general procedural rules have become incapable of combating these crimes. Therefore, the Algerian legislator established the principle of extending local or territorial jurisdiction for judicial police officers as well as investigating judges. As for judicial police officers, the Algerian legislator extended their jurisdiction to cover the entire national territory in the field of investigation and inquiry into crimes. According to Article 16/5 of the Code of Criminal Procedure<sup>103</sup>, corruption crimes fall under extended jurisdiction. The Algerian legislator also approved the extension of local jurisdiction for judicial police officers when it comes to procedures for monitoring persons suspected of committing corruption crimes, or monitoring the destination or transfer of objects, funds, or proceeds derived from these crimes or that may be used in their commission<sup>104</sup>.

As for the investigating judge, in application of the general rule requiring separation between the prosecution stage and the investigation stage, the investigating judge may not initiate an investigation on his own initiative, but the case must be referred to him by another authority. He may also only investigate the case within the limits of the local jurisdiction legally assigned to him. Accordingly, the Algerian legislator defined the local jurisdiction of the investigating judge pursuant to Article 40/01 of the Code of Criminal Procedure, which provides: “The local jurisdiction of the investigating judge shall be determined by the place where the crime was committed, the place of residence of one of the persons suspected of having participated in its commission, or the place where one of these persons was arrested, even if the arrest occurred for another reason”<sup>105</sup>.

If the crimes referred to in the second paragraph of the same article are concerned including corruption crimes pursuant to Article 24 bis 1/1 of the Law on the Prevention and Fight against Corruption the Algerian legislator expanded the jurisdiction of the investigating judge to include the jurisdiction of other courts<sup>106</sup>, in accordance with regulatory provisions. Based on the referral to regulation, Executive Decree No. 06-348 dated 05 October 2006 was issued to determine how the local jurisdiction of the investigating judge is extended<sup>107</sup>. The national territory was divided into four specialized judicial poles as follows:

<sup>100</sup> This article was added by the Algerian legislator through the 2010 amendment to the Anti-Corruption Law under Order No. 10-05.

<sup>101</sup> Additionally, regarding personal jurisdiction, generally the judicial police officer or investigating judge has jurisdiction over all accused persons, but for corruption crimes, the offender must be a public official.

<sup>102</sup> Abdel Fattah Qadri, previous reference, p.56.

<sup>103</sup> Article 16/05 of the Code of Criminal Procedure: “Regarding the investigation of drug crimes, organized crime across national borders, offenses affecting automatic data processing systems, money laundering, terrorism, and crimes under special foreign exchange laws, the jurisdiction of the judicial police officer extends throughout the national territory.” Note: corruption crimes were not included in this article (amended 2006, after Law 06-01 on Corruption Prevention), but the Algerian legislator corrected this in the 2010 amendment to Law 06-01. Article 24 bis 1/03 of this amendment extends local jurisdiction over corruption and related crimes nationwide, mentioning the judicial police officer in earlier paragraphs.

<sup>104</sup> Article 16 bis of the Code of Criminal Procedure covers electronic surveillance and controlled delivery, as discussed in Chapter 1.

<sup>105</sup> According to general rules, the local jurisdiction of the investigating judge is determined by one of three criteria: crime location, residence of the accused, or place of arrest; for details: Abdel Fattah Qadri, previous reference, pp.57-59.

<sup>106</sup> Mohamed El-Amin Ben Slimane, Abdelrahman Khalfi, Exceptional Procedures in Corruption Crimes under Algerian Criminal Law, *Journal of Studies on Legal Rule Effectiveness*, University of Abdelrahman Mira, Bejaia, Algeria, Volume 04, Issue 01, October 19, 2020, p.149.

<sup>107</sup> Executive Decree No. 06-348 dated October 5, 2006, on extending local jurisdiction of some courts, Public Prosecutors, and investigating judges, Official Journal No. 63, October 8, 2006.

- 1- The Sidi M'Hamed Court Pole<sup>108</sup>
- 2- The Constantine Court Pole<sup>109</sup>
- 3- The Ouargla Court Pole<sup>110</sup>
- 4- The Oran Court Pole<sup>111</sup>

It is noted that the extension of the local jurisdiction of the investigating judge is subject to legal rules and procedures represented in the following:

The judicial police officer shall immediately inform the Public Prosecutor of the court where the crime occurred and notify him of the occurrence of the crime by submitting the original and two copies of the investigation procedures. The Public Prosecutor then sends the second copy directly to the Public Prosecutor General of the judicial council to which the competent court belongs, i.e., the competent criminal pole<sup>112</sup>.

If the Public Prosecutor General who received the copy of the investigation procedures considers that the crime falls within extended jurisdiction, judicial police officers operating within the jurisdiction of that court shall receive instructions directly from the Public Prosecutor of that judicial body<sup>113</sup>.

The Public Prosecutor General of the judicial council to which the competent judicial body belongs may request the procedures at all stages of the proceedings<sup>114</sup>. However, in the event of any dispute concerning local jurisdiction, the decision shall be made by the President of the judicial council within whose jurisdiction the court whose jurisdiction was extended is located, by means of a judicial order not subject to any appeal<sup>115</sup>.

## **Second: The Issue of Prescription in Corruption Crimes**

Prescription is a principle of law that has existed since ancient times in the legislations of states; however, its application in the field of corruption crimes has become an obstacle to combating these crimes, as it prevents the punishment and prosecution of those responsible for the crimes they committed<sup>116</sup>.

Prescription, in its general sense, is the lapse of a right due to the passage of a period of time from the date of its establishment. It applies in various branches of public and private law. In the criminal field, it applies in the Penal Code as well as the Code of Criminal Procedure. In the former, the principle applies to the lapse of punishment, while in the latter it applies to the lapse of criminal proceedings<sup>117</sup>. Criminal prescription is defined as: "The passage of a specific period of time determined by law, starting from the date of the commission of the crime, during which the State does not take any action to search for the perpetrator, resulting in the extinction of criminal proceedings. As for prescription of punishment, it is the prescription that runs in respect of an enforceable criminal judgment issued against a person who committed a crime and remains unenforced without any action being taken to

<sup>108</sup> Article 2 of Decree 06-348 extends the local jurisdiction of the Sidi Amhamed Court to: Algiers, Chlef, Laghouat, Blida, Bouira, Tizi Ouzou, Djelfa, Médéa, M'sila, Boumerdes, Tipaza, and Ain Defla.

<sup>109</sup> Article 3 of Decree 06-348 extends the jurisdiction of Constantine Court to: Oum El Bouaghi, Batna, Bejaia, Biskra, Tébessa, Jijel, Setif, Skikda, Annaba, Guelma, Bordj Bou Arreridj, El Tarf, El Oued, Khenchela, Souk Ahras, and Mila.

<sup>110</sup> Article 4 of Decree 06-348 extends the jurisdiction of Ouargla Court to: Ouargla, Adrar, Tamanrasset, Illizi, Tindouf, and Ghardaia.

<sup>111</sup> Article 4 of Decree 06-348 extends the jurisdiction of Oran Court to: Oran, Bechar, Tlemcen, Tiaret, Saida, Sidi Bel Abbes, Mostaganem, Mascara, El Bayadh, Tissemsilt, Naama, Ain Temouchent, and Relizane.

<sup>112</sup> Article 40 bis 1 of the Code of Criminal Procedure.

<sup>113</sup> Article 40 bis 2 of the Code of Criminal Procedure.

<sup>114</sup> Article 40 bis 3/1 of the Code of Criminal Procedure.

<sup>115</sup> Article 6 of Executive Decree No. 06-348.

<sup>116</sup> Mohamed Saleh Mahdawi, Criminal Limitation in Corruption Crimes, African Journal of Legal and Political Studies, University of Ahmed Draia – Adrar, Algeria, Volume 05, Issue 02, October 30, 2021, pp.180-193, p.181.

<sup>117</sup> Mohamed Saleh Mahdawi, *ibid.*, p.182; Eyad Haroun Al-Douri, Necessity to Exclude Criminal Limitation in Corruption Crimes (Analytical Study under Qatari Law), Algerian Journal of Comparative Law, Faculty of Law and Political Science, University of Abou Bakr Belkaid – Tlemcen, Algeria, Volume 03, Issue 05, June 1, 2020, p.5.

execute it.” Professor Fawzia Abdel Sattar also defined it as: “A means of eliminating the effects of the crime through the passage of time”<sup>118</sup>.

Despite the fact that prescription is considered one of the general principles of law, there are several legal systems that have denied it entirely i.e., for all crimes while others have adopted it but excluded it specifically for corruption crimes<sup>119</sup>, and others have established a long prescription period<sup>120</sup>. As for the United Nations Convention against Corruption, Article 29 thereof provides: “Each State Party shall, in accordance with its domestic law, where appropriate, establish a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention, and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.” It is noted that the Convention obliges States Parties to harmonize their domestic law regarding criminal prescription in corruption crimes with the provisions of this Convention by amending their criminal legislation and adopting a long prescription period or suspending it entirely in cases where the offender evades justice.

As for the position of the Algerian legislator regarding the principle of prescription, reference to the general rules shows that the Algerian legislator has adopted criminal prescription<sup>121</sup> through the provisions of the Code of Criminal Procedure. Article 07/01 of this Code provides: “Public prosecution in felony cases shall be time-barred after the lapse of ten complete years from the date of commission of the crime, if no investigative or prosecutorial action has been taken during that period.” This applies to felonies. As for misdemeanors, Article 8 of the same Code provides: “Public prosecution in misdemeanor cases shall be time-barred after the lapse of three complete years, and the provisions set out in Article 7 shall apply with regard to prescription.” In matters of infractions, Article 9 of the same Code provides: “Prescription in infraction cases shall be two complete years, and the provisions set out in Article 7 shall apply.”

As for the general rules, the Algerian legislator introduced an exception through Article 8 bis/01 of the Code of Criminal Procedure pursuant to its 2004 amendment: “Public prosecution shall not lapse by prescription in felonies and misdemeanors described as terrorist or subversive acts, or those related to transnational organized crime, bribery, or embezzlement of public funds.”

Furthermore, Article 54 of the Corruption Law, entitled “Prescription,” provides: “Without prejudice to the provisions set forth in the Code of Criminal Procedure, public prosecution and punishment shall not be subject to prescription for the crimes provided for in this law where the proceeds of the crime have been transferred outside the country. In other cases, the provisions of the Code of Criminal Procedure shall apply. However, with regard to the crime provided for in Article 29 of this law, the prescription period for public prosecution shall be equal to the maximum penalty prescribed for it.” Based on this article, the rules of criminal prescription in corruption crimes are determined according to the following cases:

1)- Where the proceeds of corruption crimes have not been transferred outside the country, the applicable rules on prescription are those provided for in the Code of Criminal Procedure, namely Article 8 thereof, considering that corruption crimes are misdemeanors. Thus, prescription in these crimes except for embezzlement of public funds and bribery occurs after the lapse of three complete years from the date of commission of the crime, provided that no investigative or prosecutorial action has been taken during that period. As for bribery, public prosecution does not lapse by prescription pursuant to Article 8 bis/01 of the Code of Criminal Procedure. The same rule previously applied to embezzlement of public funds; however, with the enactment of the Corruption Law, the Algerian legislator established a specific rule for this crime. Whereas public prosecution previously did not lapse

<sup>118</sup> Fawzia Abdessamar, *Explanation of the Code of Criminal Procedure*, Dar Al Nahda Al Arabia, 2nd edition, Cairo, Egypt, 2010, p.146.

<sup>119</sup> Like the Jordanian, Kuwaiti, Yemeni, and Qatari legislators, all of them excluded criminal limitation for corruption crimes, providing special provisions in anti-corruption laws.

<sup>120</sup> The Egyptian legislator extended the limitation period for some corruption crimes via the Egyptian Code of Criminal Procedure.

<sup>121</sup> The Algerian legislator adopted the principle of criminal limitation for public prosecution, as well as for penalties. Limitations are defined by crime type: felonies expire 20 years after final judgment (Article 613/01, Code of Criminal Procedure), misdemeanors expire 5 years (Article 614/01), and minor offenses expire 2 years (Article 615).

by prescription pursuant to the 2004 amendment of the Code of Criminal Procedure, it now becomes time-barred after ten complete years from the date of commission of the misdemeanor, pursuant to Article 54/03 thereof<sup>122</sup>.

If the perpetrator of this crime is a judge, a high-ranking official, a judicial police officer or agent, a person exercising certain judicial police powers, or a court clerk, the prescription period for the misdemeanor of embezzlement of public funds shall be twenty years, as it represents the maximum penalty prescribed for this category of persons pursuant to Article 48 of the Corruption Law.

2)- Where the proceeds of corruption crimes have been transferred outside the country, neither public prosecution nor punishment shall be subject to prescription pursuant to Article 54 of the Corruption Law<sup>123</sup>.

## Second Section

### Judicial Follow-up Procedures Provided for under Amendments to the Code of Criminal Procedure

The most important procedures introduced by the Algerian legislator to combat information corruption crimes provided for under the amendments to the Code of Criminal Procedure are the non-requirement of a complaint (first), the extension of the duration of police custody (second), and the prohibition on leaving the national territory (third).

#### First: Non-requirement of a Complaint in Corruption Crimes

The Public Prosecution is the authority competent to initiate and pursue public prosecution before criminal courts in corruption crimes under Algerian legislation. As a general rule, it is subject to the rules and procedures established under the general provisions, as criminal prosecution in such cases is automatic and subject to the principle of expediency known in the general rules.

However, in 2015, the Algerian legislator added Article 6 bis while amending the Code of Criminal Procedure, which explicitly required in some corruption crimes and not all that the initiation of public prosecution be based on a prior complaint. Any violation of this requirement would expose the bodies competent to issue such a complaint to criminal sanctions<sup>124</sup>. Nevertheless, the Algerian legislator repealed this article through another amendment to the Code of Criminal Procedure in 2019<sup>125</sup>, thereby abolishing the requirement of a complaint for initiating public prosecution in all corruption crimes. This was done with the aim of providing greater protection for public funds and came as a result of repeated calls from civil society<sup>126</sup>.

Corruption crimes provided for in the law relating to the prevention and fight against corruption do not require, for the initiation of public prosecution, the submission of a complaint by the injured party. This

<sup>122</sup> It would have been preferable for the Algerian legislator to exclude criminal limitation for embezzlement of public funds under Article 8 bis/01 of the Code of Criminal Procedure, considering it the most serious and widespread corruption crime involving public money, instead of subjecting it to criminal limitation under the 2006 anti-corruption law, after excluding it in the 2004 amendment.

<sup>123</sup> For more information on criminal limitation in corruption crimes, see: Amina Ahmed Bouzina, *Combating Corruption Crimes in Algerian Law*, Legal Book Publishing, Algiers, 2021, p.249; Mohamed Saleh Mahdawi, previous reference, p.186; Omar Hamas, previous reference, p.269; Abdelali Hacha, previous reference, p.239; Eyad Haroun Al-Douri, previous reference, p.10; Mohamed Hazit, *Exceptional Jurisdictions Granted to Prosecution and Investigation Authorities Regarding Corruption Crimes in Algerian Law*, Journal of Legal and Political Studies, Faculty of Law and Political Science, University of Mohamed Boudiaf – M'sila, Algeria, Volume 05, Issue 02, January 31, 2021, pp.373-374; Samira Adwan, *Specificity of Corruption Crimes in Algerian Law*, Academic Journal of Legal Research, Faculty of Law and Political Science, University of Abdelrahman Mira, Bejaia, Algeria, Issue 01, July 31, 2019, p.255.

<sup>124</sup> Article 3 of Order No. 15-02: "Public prosecution shall not be initiated against managers of fully or majority state-owned public economic institutions for acts of embezzlement, misappropriation, or loss of public or private funds, except upon prior complaint by the institution's social bodies as provided by commercial law and applicable legislation. Members of the social bodies who fail to report criminal facts are subject to the penalties provided by applicable law." The article addresses embezzlement of public funds.

<sup>125</sup> Law No. 19-10 dated December 11, 2019, amending Order No. 66-156 dated June 8, 1966, concerning the Code of Partial Procedures, Official Journal No. 78, December 18, 2019.

<sup>126</sup> Abdel Latif Wali, Amara Amara, *New Procedures for Suppressing Embezzlement of Public Funds*, Journal of Academic Studies, University of Batna 1, El Hadj Lakhdar, Algeria, Volume 07, Issue 01, 2020, p.711.

means that there is no impediment to initiating public prosecution automatically by the judicial police under the supervision of the territorially competent Public Prosecutor<sup>127</sup>.

As for crimes committed outside Algerian territory corruption crimes that fall within Algerian judicial jurisdiction<sup>128</sup>, the Algerian legislator restricted the initiation of public prosecution to the existence of a complaint from the injured party or a report from the authorities of the State in which the crime was committed, as provided for in Article 583 of the Code of Criminal Procedure<sup>129</sup>.

Accordingly, if an Algerian citizen commits one of the corruption crimes on the territory of a foreign State, Algerian authorities may prosecute the offender after the fulfillment of a set of conditions stipulated in Article 582/02 of the Code of Criminal Procedure, namely<sup>130</sup>:

- The crime must be a misdemeanor (which is the nature of corruption crimes under study).
- The crime must have been committed outside Algerian territory (which is facilitated in the context of the information revolution in general and information corruption crimes in particular).
- The offender must be of Algerian nationality.
- The offender must return to Algeria after committing the crime.
- The offender must not have been finally convicted by a foreign judicial authority.
- The misdemeanor must be committed against individuals (crimes committed against legal persons are excluded from the complaint requirement).

Accordingly, if the aforementioned conditions are met, the offender may be prosecuted before the Algerian criminal judge, provided that a prior complaint from the injured party or an official report issued by the authorities of the country where the crime was committed is available.

## **Second: Extension of the Duration of Police Custody**

Police custody or placement under custody is one of the procedures of inquiry and investigation into crimes<sup>131</sup>. It is carried out during the investigation and inquiry stage and is exercised by judicial police officers after notifying and obtaining the approval of the competent Public Prosecutor. The Algerian legislator has expanded the powers of judicial police officers in applying this measure in the field of investigation and inquiry into corruption crimes, given that this procedure is a serious act involving an infringement of personal liberty. Therefore, it may only be carried out in cases of *flagrante delicto*. The Algerian legislator also subjected it to judicial oversight, and it may not exceed 48 hours as a general rule pursuant to the Algerian Constitution<sup>132</sup>.

Based on the foregoing, police custody is considered a liberty-restricting measure, a temporary procedure for a short period legally defined, after which the detainee must be brought before the competent judicial authority. Whenever strong and coherent evidence exists indicating that a person committed or attempted to commit a crime, that person may be detained for a specific period, provided that the penalty for the crime is deprivation of liberty, by a judicial police officer in accordance with Article 65 of the Code of Criminal Procedure<sup>133</sup>.

<sup>127</sup> Hassina Cheroun, *Procedural and Substantive Provisions Introduced in the Law on Prevention and Combating Corruption, Rights and Freedoms Journal*, University of Mohamed Khider – Biskra, Algeria, Volume 04, Issue 02, March 1, 2016, p.204.

<sup>128</sup> Article 3/02 of the Algerian Penal Code: “The Penal Code applies to crimes committed abroad if they fall under the jurisdiction of the penal court according to the Code of Criminal Procedure.”

<sup>129</sup> Article 583 of the Code of Criminal Procedure: “Any act classified as a misdemeanor, whether under Algerian law or the law of the country where committed, may be prosecuted and judged in Algeria if the perpetrator is Algerian. Prosecution or judgment may only occur under conditions of Article 582/2. Furthermore, prosecution is only allowed if the misdemeanor was committed against an individual upon complaint to the Public Prosecutor or notification by authorities of the country where the crime occurred.”

<sup>130</sup> Badr Eddine El-Hadj Ali, previous reference, p.321.

<sup>131</sup> This procedure has several terms: “arrest” defined as “deprivation of liberty for a short period, by holding the person in a legally designated place,” also called “detention” or “stop”; Abdel Fattah Qadri, previous reference, p.61.

<sup>132</sup> Article 60/01 of the Algerian Constitution (amended 2020): “Detention under criminal investigation is subject to judicial oversight and shall not exceed 48 hours.”

<sup>133</sup> Article 65 of the Code of Criminal Procedure was amended in 2015 via Order 15-02, with paragraphs 1 and 2: “If preliminary investigation requires detention of a person suspected of a felony or misdemeanor punishable by imprisonment exceeding 48 hours, the person must be presented to the Public Prosecutor before expiry of this period. After interrogation, the Public Prosecutor may, with written authorization, extend detention for another 48 hours after reviewing the investigation file.”

Accordingly, when these legal conditions are met and pursuant to Article 65 of the Code of Criminal Procedure, persons suspected by a judicial police officer may be placed under custody for a maximum of 48 hours as a general rule. However, by referring to Article 65/03 of the same Code, it is found that the Algerian legislator established certain exceptions allowing the extension of the original custody period with authorization from the competent Public Prosecutor. Among these exceptions are corruption crimes. Article 65/03 of the Code of Criminal Procedure provides:

“However, the original duration of police custody may be extended by written authorization from the competent Public Prosecutor:

Three times if the matter concerns drug trafficking crimes, transnational organized crime, money laundering crimes, crimes related to special foreign exchange legislation, and corruption.”

From the text of this article, it is observed that the Algerian legislator allowed the judicial police officer, in cases involving a corruption crime provided for under the Corruption Law, to extend the original duration of police custody three times, i.e., up to a maximum of eight (08) days, provided that the following conditions are met:

- 1)- The existence of evidence giving rise to suspicion of the commission of a misdemeanor.
- 2)- The penalty for the misdemeanor must be deprivation of liberty<sup>134</sup>.
- 3)- The misdemeanor must be one of the corruption crimes provided for in the law relating to the prevention and fight against corruption.
- 4)- The police custody measure must be carried out by the judicial police officers referred to in the Code of Criminal Procedure.<sup>135</sup>
- 5)- The judicial police officer may not extend the original duration of police custody except by written authorization issued by the competent Public Prosecutor. Exceptionally, such authorization may be granted by a reasoned decision without presenting the person to the prosecution pursuant to Article 65/03 of the Code of Criminal Procedure. The Public Prosecutor before whom the detained person is presented may refuse the extension request without being obliged to provide reasons for such refusal<sup>136</sup>.

In addition to the conditions required to carry out the police custody measure mentioned above, the Algerian legislator surrounded it with certain safeguards and established some rights for persons placed under custody, including:

The right of the person to immediately contact his family and lawyer, and the right for them to visit him<sup>137</sup>.

The provision of food, appropriate accommodation conditions, and medical examination.

The imposition of judicial oversight over the police custody procedure. Judicial police officers must inform the territorially competent judicial authority, represented by the Public Prosecutor in his capacity as head of the judicial police, of persons placed under custody, and prepare a report containing the reasons and grounds for the custody. The Public Prosecutor visits these persons and records this in the designated register, and ensures the protection of detainees' rights and the conformity of their conditions with legal provisions<sup>138</sup>.

The necessity of presenting the person before the Public Prosecutor for questioning and examination of the investigation file.

The necessity that the visit take place in a special room ensuring the confidentiality of the conversation, and that its duration does not exceed thirty (30) minutes, all of which shall be recorded in a report.

<sup>134</sup> All corruption crimes under Law 06-01 are misdemeanors with imprisonment, allowing the judicial police officer to detain suspects if conditions are met.

<sup>135</sup> Assigning only the judicial police officer to perform detention provides procedural safeguards for the suspect; Abdel Fattah Qadri, previous reference, p.65.

<sup>136</sup> Abdel Fattah Qadri, *ibid.*, p.67; Mohamed Hazit, *Exceptional Jurisdictions Granted to Prosecution and Investigation Authorities Regarding Corruption Crimes in Algerian Law*, previous reference, p.366

<sup>137</sup> If the detained person is a foreigner, they have the right to contact their country and use a translator, per Article 51 bis 1 of the Code of Criminal Procedure.

<sup>138</sup> Abdel Fattah Qadri, *ibid.*, p.66.

Judicial police officers are required to inform persons placed under custody of the aforementioned rights provided for in Article 51 bis 1 of the Code of Criminal Procedure.

### **Third: Prohibition on Leaving the National Territory**

Among the special procedures and measures adopted by the Algerian legislator in the field of combating crimes in general and corruption crimes in particular is the measure or authority of prohibiting departure from the national territory. The legislator provided for this measure through the amendment of the Code of Criminal Procedure in 2015, in Article 36 bis 1/1, which provides:

“The Public Prosecutor may, for the necessity of investigations and based on a reasoned report from a judicial police officer, order the prohibition of any person against whom evidence exists suggesting his involvement in a felony or misdemeanor from leaving the national territory.”

One of the new powers granted by the Algerian legislator to the Public Prosecutor is to order the prohibition of any person against whom evidence exists indicating the commission of a felony or misdemeanor from leaving the national territory during the preliminary investigation stage, based on a reasoned report from the judicial police officer. This measure is issued for a period of three months, renewable once. If the matter concerns a corruption crime provided for under the Corruption Law, the legislator authorized the Public Prosecutor to extend the prohibition order until the completion of investigations pursuant to Article 36 bis 1/3 of the Code of Criminal Procedure<sup>139</sup>.

Given the seriousness of this measure and its impact on public freedoms and the constitutionally guaranteed right to freedom of movement<sup>140</sup>, the Algerian legislator established a number of conditions that must be met, namely:

- 1)- The committed crime must be classified as a felony or misdemeanor in general, and must be a corruption crime in cases where extension of the duration is possible. The prohibition order must be issued during the preliminary investigation stage.
- 2)- The existence of sufficient evidence against the person concerned suggesting his involvement in the commission of the crime. The Public Prosecutor is competent to assess this and enjoys absolute discretionary power in this regard.
- 3)- The existence of a necessity required by the preliminary investigations conducted by the judicial police, including fear of the person fleeing the national territory.
- 4)- The prohibition order on leaving the national territory must be issued in writing.
- 5)- The prohibition order must be issued based on a reasoned report from the judicial police officer<sup>141</sup>.

Accordingly, if the matter concerns preliminary investigations into a misdemeanor of corruption provided for by law, the Public Prosecutor who issued the prohibition order for a period of three (03) months may refrain from issuing an order to lift this prohibition regardless of the duration of the preliminary investigations, until their completion, receipt of the judicial police report, and his decision either to initiate public prosecution or to close the case<sup>142</sup>. The prohibition is lifted, pursuant to Article 36 bis 1 of the Code of Criminal Procedure, through the same formalities under which the prohibition order was issued, i.e., upon a request from the judicial police officer, which must also be reasoned, so that the competent Public Prosecutor may order the lifting of the prohibition on leaving the national territory<sup>143</sup>.

<sup>139</sup> Article 36 bis 1/3 of the Code of Criminal Procedure: “For terrorism or corruption crimes, travel ban may be extended until investigations are completed.” Note: no appeal is allowed against this measure, as no authority is empowered to review it.

<sup>140</sup> Article 49 of the Algerian Constitution 2020: “Every citizen has the right to freely choose their place of residence and to move within national territory; all citizens have the right to enter and leave national territory. Restrictions may only be imposed for a limited period and by a reasoned judicial decision.”

<sup>141</sup> Mohamed Hazit, *Exceptional Jurisdictions Granted to Prosecution and Investigation Authorities Regarding Corruption Crimes in Algerian Law*, previous reference, p.364.

<sup>142</sup> Amina Ahmed Bouzina, previous reference, p.256.

<sup>143</sup> Abdel Fattah Qadri, previous reference, p.131.

### Conclusion:

The Algerian legislator has adopted a new criminal policy aimed at combating information corruption crimes. It amended the Code of Criminal Procedure and activated the procedural rules contained therein, such as the introduction of special investigation methods and special procedures for initiating public prosecution, which were previously unknown in national legislation. However, a number of shortcomings and criticisms have been directed at these legislative texts. These are presented below, along with the results reached through this study, as follows:

- There are certain obstacles that hinder the implementation of investigation and inquiry operations into corruption crimes, as well as judicial prosecutions, such as functional immunity and the restriction imposed on the judicial authority to follow special procedures when criminal prosecution concerns members of the government, judges, and certain public officials.
- The Algerian legislator has introduced special investigation methods in the field of corruption crimes in general and information corruption crimes in particular, which are likely to expand the powers of the judicial police in this area.
- The Algerian legislator did not grant the controlled delivery method the necessary importance in comparison with the methods of infiltration and electronic surveillance, despite its consideration as one of the international methods for monitoring and tracking the movement of transnational criminal gangs.
- The necessity of using modern technological methods to detect advanced corruption crimes, such as fingerprint devices and opening an online platform to receive public complaints, verify them, while respecting confidentiality and not disclosing the identity of the complainant.
- The existence of certain obstacles that prevent the proper implementation of infiltration operations, such as the lack of sufficient means and financial resources available to the infiltrated agent. Moreover, the Algerian legislator does not allow the hearing of the infiltrated agent, despite his precise knowledge of all information related to both the crime and its perpetrators, which could be useful in the investigation.

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