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# *Transparency in Algerian Public Procurement: Legal, Judicial, and Technological Approaches to Combating Corruption*

# مبدأ الشفافية في الصفقات العمومية في الجزائر: مقاربة قانونية، قضائية، تكنولوجية لمكافحة الفساد

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***Abstract***

*This study examines the principle of transparency in Algerian public procurement, focusing on Law No. 23-12 of 2023, Presidential Decree No. 15-247 of 2015, and administrative judicial oversight. Transparency is analyzed as a mechanism to combat corruption, ensure accountability, promote ethical conduct, and protect public funds.*

*Findings reveal that judicial remedies and digitalization strengthen transparency, yet persistent corruption necessitates enhanced oversight, preventive measures, and merit-based management. The study concludes that integrating legal, administrative, and technological tools is essential to uphold transparency, safeguard public resources, and support sustainable development.*

***Keywords:***

*Public Procurement, Transparency, Administrative Law, Accountability, Anti-Corruption, Judicial Oversight, Ethical Governance, Digitalization, Algeria*

**الملخص:**

تهدف هذه الدراسة إلى تحليل مبدأ الشفافية في الصفقات العمومية في الجزائر، مع التركيز على القانون رقم 23-12 لسنة 2023، والمرسوم الرئاسي رقم 15-247 لسنة 2015، ودور الرقابة القضائية الإدارية في ضمان تطبيقه، إن دراسة موضوع الصفقات العمومية له أهمية كبرى تتجلى في ارتباطها بمخططات التنمية الوطنية والمحلية، وتلبية حاجيات المصالح المتعاقدة تحقيقا للصالح العام، وأيضا تتجلى بصورة واضحة بالنظر لصلتها الوثيقة بالخزينة العمومية،

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فالصفقات العمومية تكلف خزينة الدولة اعتمادات مالية ضخمة بحكم تعدد وتنوع الهيئات الإدارية في الدولة، كماُ ينظر إلى الشفافية كآلية أساسية لمكافحة الفساد، وضمان المساءلة، وتعزيز السلوك الأخلاقي، وحماية الأموال العامة. جاءت نتائج البحث مشيرة إلى أن الشفافية تُعزز من خلال التدابير القضائية والإجراءات المستعجلة ورفع دعاوى الإلغاء، بالإضافة إلى الرقمنة وتبسيط الإجراءات، إلا أن استمرار بعض مظاهر الفساد يستدعي تعزيز الرقابة، وتطبيق آليات وقائية، وضمان التوظيف والترقية على أسس الجدارة والكفاءة. تُخلص الدراسة إلى أن دمج الأدوات القانونية والإدارية والتقنية يعد ضروريًا لضمان الشفافية، وحماية الموارد العامة، ودعم التنمية المستدامة.

**الكلمات المفتاحية:**

الصفقات العمومية، الشفافية، القانون الإداري، المساءلة، مكافحة الفساد، الرقابة القضائية، الحكم الأخلاقي، الرقمنة، الجزائر

## *Introduction*

*Public procurement contracts are formal written agreements governed by sets of specifications that define the conditions under which such contracts are executed. These specifications generally include general administrative specifications, common specifications, and special specifications. The reform of Algeria's public procurement framework, introduced by* ***(Law No.23-12, 2023)*** *and preceded by,* ***(Decree15-247, 2015)*** *represents a renewed opportunity—following a long trajectory of regulatory reforms—to enrich the debate regarding the conditions and mechanisms governing this domain. Particular attention has been paid to the principle of transparency in public procurement, which at the international level is closely associated with the directives and recommendations of international financial institutions, serving as a fundamental mechanism within a prospective binding framework aimed at combating corruption and promoting good governance.*

*At the national level, transparency has been recognized as a constitutional principle. It is considered one of the fundamental public rights of citizens in confronting administrative corruption and represents a key pillar of any democratic system. Transparency embodies popular oversight over governmental action, and its absence may result in diminished trust between the administration and citizens, potentially generating tensions in their relationship.*

To strengthen and institutionalize transparency in public procurement, the Algerian legislator has introduced judicial mechanisms aimed at consolidating both the principle of transparency and the rule of law. Public procurement contracts create rights and obligations for the parties involved, which often gives rise to disputes

when the interests of the contracting authority conflict with those of the economic operator. This underscores the necessity of a comprehensive legal framework to ensure the effective resolution of such disputes **(Ahmed, 2019, p. 03).**

The study of public procurement is particularly significant due to its close connection with national and local development plans and its role in fulfilling the needs of contracting authorities in pursuit of the public interest. Its importance is further highlighted by its direct link to the public treasury. Public procurement contracts involve substantial financial allocations from the state budget, attributable both to the multiplicity and diversity of administrative bodies and to the wide range of subjects covered by such contracts **(Boudiaf, 2017, p. 08).**

Accordingly, the Algerian legislator, in Article 5 of Law No. 23-12, which establishes the general rules governing public procurement, has articulated a set of fundamental principles that must guide procurement procedures. These include freedom of access to public procurement, equality of treatment among candidates, and transparency of procedures. Among these, transparency is regarded as a central principle, as it ensures the efficiency of procurement processes, promotes the proper use of public funds, and reinforces the realization of the other aforementioned principles.

The significance of transparency is further underscored by the State's focus on strengthening oversight over the management of public funds and ensuring sound governance of public expenditure. In this context, the principle of transparency in public procurement was explicitly enshrined through **(Law, 2006)** on the Prevention and Fight against Corruption. Article 9 of this law provides that: *"The procedures applicable to public procurement must be based on the principles of transparency, fair competition, and objective criteria."*

In line with the recommendations of the 2022 Report of the National Economic, Social and Environmental Council, which emphasized that public procurement constitutes a crucial lever for economic and social development, the present study seeks to address the following research question:

**To what extent have the Algerian legislator and the administrative judiciary, through the legal framework governing public procurement, succeeded in ensuring the effective implementation of the principle of transparency?**

## 1. The Principle of Transparency in Public Procurement

The Algerian legislator has accorded particular importance to the principle of transparency in public procurement through (Law No.23-12, 2023) specifically in Article 5, and previously through Presidential Decree No. 15-247, which regulates

public procurement and the delegation of public service tasks. These legal instruments enshrine freedom of access and equality among candidates in public procurement processes, while the execution of procurement contracts promotes a culture of accountability, thereby embodying transparency in the award of public contracts. Furthermore, they aim to facilitate and streamline the administrative procedures governing public procurement **(Samira, 2015, p. 127).**

### 1.1 Equality in Access to Public Procurement

The Algerian legislator has sought to achieve a range of objectives in public procurement by emphasizing the principle of transparency, particularly through freedom of access and equality among candidates in public procurement procedures. The principle of equality derives its legitimacy and foundation from international conventions and the 2020 amendment to the Algerian Constitution **(PresidentiaDecreNo20-422, 2020).**

In the context of public procurement, this principle ensures equal opportunities and fairness among all candidates, whether regarding the submission and acceptance of bids, or the conditions governing contract award, execution, supervision, and approval. At the same time, it allows for a limited set of exceptions that may restrict freedom and equality of access, such as provisions for national preference margins and specific rules concerning small and medium-sized enterprises (SMEs).

Furthermore, any candidate or party aggrieved by the competition may appeal to the State's representative at the provincial level if the contract has been or will be awarded by a local government or public institution. Additionally, they may notify the administrative court in accordance with Article 946 of the Civil and Administrative Procedure Code **(Law No.08-09, 2008)** as amended and supplemented. These remedies are intended to prevent excessive use of exceptions and to uphold the primacy of free competition.

### 1.2 Ethical Conduct in the Execution of Public Procurement Contracts

The topic of ethics in public administration has attracted significant attention from researchers, practitioners, and stakeholders in the field of administrative law and management. Ethics constitutes a major entry point for administrative reform and serves as a key foundation for all reform initiatives, given that one of the main reasons for administrative inefficiency and the failure to meet public needs is moral decay or its absence **(Hayat, 2014, p. 60)** The Public Procurement Law has established a set of legal provisions that serve as a solid reference framework for ensuring ethical conduct in the administration's interventions, particularly regarding freedom of access to public procurement, whether in relation to the ethical conduct of competitors or administrative officials.

### a. Ethical Conduct of Competitors

The ethical conduct of competitors in public procurement, especially regarding transparency, extends beyond a mere moral obligation and enters the legal domain, since legal norms are inherently binding. Consequently, a declaration of honor, a statement of candidacy, and a declaration of integrity included in the administrative file are mandatory. Through these declarations, competitors affirm the accuracy of the information provided and confirm that they have not engaged in fraud, bribery, or similar misconduct. Any violation of these obligations renders the competitor ineligible to participate in the procurement process and may trigger judicial proceedings **(Ouzani, 2001, p. 30)** in accordance with Article 67 of Presidential Decree No. 15-247.

According to the candidacy declaration form issued by the Ministry of **(Finance, 19 décembre 2016)**, the applicant or candidate must certify that they are neither excluded nor prohibited from participating in public procurement tenders. Furthermore, Article 66 of Law No. 23-12 stipulates that if a declaration contains false information, or if there is evidence of bias, corruption, or forged documents, or if a competitor or contract holder is found to have committed acts of fraud, bribery, repeated violations of contract conditions, or serious breaches of contractual obligations, sanctions may be imposed, including temporary or permanent exclusion of the concerned competitor from participating in the procurement process, without prejudice to other legislative provisions relating to offenses specific to public procurement.

### b. Ethical Conduct of Administrative Officials

Among the principles enshrined in the 2020 constitutional amendment is the ethical governance of public institutions and services, as recommended by numerous national and international organizations. Article 48 of **(Law No 06-03, 2006)** on the Public Service stipulates that every civil servant is obliged to maintain professional confidentiality regarding all matters and information they become aware of in the course of performing their duties.

Regulations governing public procurement further emphasize the ethical obligations of administrative officials, including the duties of discretion and confidentiality, in addition to the general legislative provisions on professional secrecy. Members of public procurement committees, particularly the committees responsible for opening bids and evaluating tenders, are required to maintain confidentiality concerning all information that comes to their knowledge during the application of procurement procedures. These obligations extend to all persons

employed, consulted, or engaged as experts or technicians contributing to the work of these committees.

Furthermore, Article 168 addresses ethics concerning administrative officials and explicitly prohibits fraud, bribery, and conflicts of interest, stipulating that: All participants in procurement procedures must maintain independence in their dealings with competitors, must not accept any privilege or reward from them, and must refrain from establishing any relationship that could compromise their objectivity, integrity, or independence.

### 1.3 Establishing Accountability as a Guarantee for Transparency in Public Procurement

It is stated in the 2020 constitutional amendment, in Chapter Three, paragraphs one and three, that: «The State is based on the principles of democratic representation, separation of powers, and the guarantee of rights and freedoms and social justice. The State promotes participatory democracy... particularly through civil society."

Accountability seeks to achieve efficiency, effectiveness, and quality in the execution of requirements, which consequently leads to transparency in the award of public procurement contracts. It constitutes a fundamental pillar for ensuring transparency in public procurement, as asset declaration falls within the framework of accountability and responsibility, and confusion between the two concepts is possible. It also obliges public officials to justify their decisions during the award and execution phases, thereby reinforcing integrity and combating corruption, in accordance with public procurement legislation and regulations.

Transparency and accountability work together to disclose the necessary information for administrative decision-making, thereby enhancing trust and reducing favoritism. Accountability also ensures the publication of procurement procedures and compliance with transparency from the initial announcement stage until final award, thus preventing legal ambiguity and ensuring fair competition.

Accountability for public funds aims to rationalize public expenditure and ensure the proper use of public resources. It also enables appeals and review procedures, holding the contracting authority accountable for its actions, thereby ensuring neutrality and credibility (Law No. 23-12, 2023).

The requirement to demonstrate qualifications and competencies, as it relates to accountability, is provided for in Articles 67 and 68 of Presidential Decree No. 15-247 and Article 43 of Law No. 23-12, which lays down the general rules governing public procurement. These provisions require every economic operator, bidder, or candidate to prove their qualifications and competencies by submitting an

administrative file containing a set of documents, including a declaration of candidature, identification details such as personal and family name for natural persons, or corporate name, legal status, registered office, business address, legal form, share capital, and the capacity in which the representative acts, as well as the powers granted to them. The declaration also includes the tax identification number, social security registration number, and postal or bank account details.

The declaration further includes the following information:

**a**.A commitment stating that the bidder is not subject to judicial liquidation or receivership proceedings, and that their criminal record issued less than three (3) months earlier bears the mention "none"; or, if they are under judicial administration, proof of authorization granted by the competent judicial authority to continue their activity must be provided along with the offer.

**b**.An integrity declaration, in which the bidder undertakes not to engage, either personally or through a third party, in fraudulent practices or bribery of any persons involved in any capacity in the procedures for awarding and executing public contracts.

In general, accountability may be grounded in political, financial, or administrative dimensions.

### 1.4 Simplification of administrative procedures regulating public procurement

The simplification of administrative procedures, in general, represents a persistent concern in administrative practice in terms of reforming and improving administrative performance. In particular, continuous efforts are made to simplify and clarify the administrative procedures governing public procurement. In this context, this approach includes the precise identification of administrative documents and procedures, as well as the reliance on modern technologies in the field of public procurement in order to strengthen the principle of transparency.

#### 1.4.1 Precise Identification of Required Documents and Administrative Procedures for Competitors

Law No. 23-12 on public procurement emphasizes the enhancement of transparency in contract award procedures. Specifically, Article 46 mandates the publication of calls for tenders, specifying the subject of the procurement, the place of execution, and, where applicable, the electronic address of the platform used for publication **(Abdelghani, 2012, p. 12),** ensuring electronic accessibility via the Public Procurement Portal.

Furthermore, the purchasing authority or contracting entity must its anticipated procurement needs at the beginning of each fiscal year, detailing the contracts it

intends to award for that year. This measure ensures predictability, transparency, and equal access for all potential candidates, facilitating their preparation and participation in public procurement procedures.

### 1.4.2 Simplification of Procedures in General and Administrative Complaints Procedures in Particular

These mechanisms concern the procedures for handling complaints submitted by competitors to the contracting authority or competent minister regarding irregularities or actions contrary to procurement regulations (First), as well as ensuring adherence to ethical standards to maintain free and fair competition (Second).

#### a. Procedures Governing Competitors' Complaints

The establishment of specific procedures for handling competitors' complaints constitutes an important safeguard in public procurement, reinforcing internal administrative oversight over competitive procedures. This mechanism allows the contracting authority or competent minister to suspend procurement procedures immediately to correct any irregularities affecting the award process.

Administrative appeals in public procurement represent a prior and optional administrative remedy. They allow economic operators to challenge administrative decisions, such as provisional awards or cancellations of procurement procedures, within a **ten (10) day** period before the competent procurement committee, beginning from the first publication of the provisional award notice, whether in the Official Bulletin of Public Procurement, the press, or the Public Procurement Portal.

The competent committee must issue its decision within **fifteen (15) days** from the expiration of the ten-day filing period, and the decision is communicated to both the contracting authority and the concerned bidder.

This administrative complaint mechanism provides opportunities for amicable settlement, provided that complaints are submitted in writing to the contracting authority or competent minister within the time limits prescribed by public procurement regulations.

Additionally, candidates may submit a registered letter with acknowledgment of receipt to the authority supervising the project owner to protest if they have not received tender documents or observe that one of the prescribed procedures was not respected, e.g., tender documents containing discriminatory clauses or conditions disproportionate to the subject matter of the contract **(Boudiaf, Explanation of the organization of public procurement, 2017).**

#### b. Appeals to the Procurement Committee

If disputes remain unresolved through administrative complaints, parties may appeal to the Procurement Committee (or pursue an amicable review). This is a legal

mechanism enabling economic operators to challenge provisional awards or declarations of non-viability, within prescribed deadlines, to secure justice and ensure that bids are re-evaluated according to principles of transparency and equality.

By doing so, the legislator guarantees the rights of contractors and obliges the administration to act within the framework of legality, ensuring equality among competitors and shielding the administration from allegations of favoritism or bias.

The competent committee examines the appeal, and the appellant must demonstrate the grounds on which the law, regulations, or fairness principles were violated, including any evidence of favoritism or discrimination. The committee must issue its decision **fifteen (15) days** from the end of the ten-day submission period, in accordance with Article 82 of Presidential Decree No. 15-247 The decision is communicated to both the appellant and the contracting authority.

Appeals to the Public Procurement Committees provide several advantages, including:

1.Reduced timeframe for resolving disputes (30 days from the date of filing).

2.Committee composition, involving representatives from most relevant ministries, enhances the likelihood of effective dispute resolution.

According to the Algerian Council of State, a 2004 decision recognized that an appeal before the competent committee is an essential procedural step, upon which the admissibility of a case depends **(Decision of the Council of State, 2004).**

Moreover, Article 82 obliges the contracting authority to implement measures enabling candidates to exercise their appeal rights effectively, thereby supporting the principle of transparency. The decree differentiates between procedures applicable during the provisional award announcement and other cases:

- Provisional Awards Announcement: must include
  - The results of technical and financial evaluations of the awarded bid, including the tax identification numbers of the winning bidder and contracting authority, if applicable.
  - Contract price, execution deadlines, and all factors justifying the selection, including the scoring system.
  - Precise selection criteria, designation of the competent appeals committee, and legal timeframe for submitting appeals.

The contracting authority must also publish the provisional award announcement in the Official Bulletin of Public Procurement, on the Public Procurement Portal, and in the same newspapers as the original tender, ensuring accessibility for all participants.

The announcement must further invite contractors wishing to review the detailed evaluation of their bids to contact the contracting authority within **three (3) days** of publication. The authority must notify these contractors in writing of the evaluation results.

The announcement must also indicate the deadline for submitting appeals, set at **ten (10) days**.

Non-viability, Cancellation, or Annulment: The contracting authority must notify contractors personally and in writing. Article 82, paragraph five, requires that decisions regarding non-viability, cancellation, or annulment be communicated via registered mail with acknowledgment of receipt, and include an invitation for contractors to review the justifications within three (3) days. The administration Is obliged to reponed in printing.

### 1.4.3 Adoption of Technology

To support the principle of transparency in public procurement, the Algerian legislator has enabled competitors to submit and withdraw bids electronically **(Law No.23-12, 2023)** E-government, in this context, refers to the use of information and communication technologies, particularly the Internet and specialized software, by public administrations, institutions, and local authorities, with the aim of enhancing internal performance and delivering high-quality services to citizens and enterprises.

Accordingly, competitors are permitted to submit and retrieve their bid envelopes electronically through the Public Procurement Portal, in accordance with a timeline established by a decree of the Minister of Finance. This technological integration not only facilitates access and reduces procedural delays but also strengthens transparency, accountability, and the traceability of procurement processes.

## 2. The Operationalization of the Principle of Transparency in Public Procurement through Administrative Judicial Review

Administrative courts play a pivotal role in curbing corruption in the field of public procurement by exercising judicial oversight over the legality of procedures adopted by contracting authorities. Through the examination of disputes brought before them, administrative judges assess the compliance of procurement procedures with the principles of transparency, equality, and competition.

Accordingly, this section examines the role played by summary administrative proceedings (first subsection) and annulment litigation (second subsection) in strengthening the principle of transparency and preventing corrupt practices in public procurement.

### 2.1 Summary Proceedings and Their Role in Upholding the Principle of Transparency

The Algerian legislator has regulated the system of administrative summary proceedings in matters relating to public procurement through Law No. 08-09 containing the Code of Civil and Administrative Procedures, as amended and supplemented by Law No. 22-13, particularly in Articles 946 and 947. These provisions aim to strengthen legal mechanisms designed to protect public funds within the framework of public procurement procedures.

The legislator's reliance on summary proceedings is grounded in the understanding that such mechanisms operate as preventive judicial remedies, capable of preventing acts of corruption that may arise during the contract award phase and, in certain circumstances, even during the implementation of public procurement contracts **(Law No 22-13, 2022).**

Pre-contractual summary proceedings possess several distinctive characteristics that differentiate them from ordinary administrative litigation, most notably:

- They constitute judicial remedies designed to prevent violations of the principles of transparency and fair competition, and are initiated prior to the formal conclusion of the public contract.
- They grant the administrative judge extensive procedural powers, including the authority to issue injunctions, suspend procurement procedures, or invalidate certain contractual clauses, while excluding the possibility of awarding damages.
- They are characterized by procedural urgency, as jurisdiction is vested in a single judge who is required to render a decision under expedited procedures at first and final instance **(Ahmed G. , 2020, p. 250)** Several factors have prompted the Algerian legislator to formally codify summary judicial review in public procurement matters, including:
- The growing strategic importance of public procurement in Algeria, both domestically and internationally, particularly in light of the State's investment-promotion policies and the substantial financial resources allocated to public projects.
- The persistence of serious and recurring violations of transparency and competition rules governing procurement procedures.
- The legislator's determination to ensure the highest possible degree of transparency in the conclusion of administrative contracts, especially after identifying a legislative gap concerning the availability of preventive and corrective remedies prior to contract formation.

- The evident influence of French administrative law, which has developed advanced judicial mechanisms to safeguard the principles of equality, transparency**,** and competition during the procurement award process **(Boumqra, 2013, p. 07) .**

Conditions for the Admissibility of Summary Proceedings

In order to initiate summary administrative proceedings, several general legal conditions must be satisfied.

First, the condition of urgency must be established. Urgency refers to the existence of harm that cannot tolerate delay in order to prevent it. In other words, it denotes an imminent and serious risk that cannot be effectively averted through ordinary litigation procedures, even when procedural deadlines are shortened **(Bouali, 2015, p. 171) .**

Second, there must be actual or imminent harm affecting the claimant's rights. The damage must be sufficiently certain or foreseeable, and it must be of such a nature that it cannot be adequately remedied at a later stage through compensation. Moreover, the request for interim relief must remain closely connected to the substantive right invoked in the principal action and cannot constitute an independent claim.

In addition to these general conditions, several specific conditions must also be fulfilled, including:

- The action may be brought by any party having a legitimate interest in the conclusion of the public contract and who may suffer harm as a result of violations of publicity and competition obligations governing procurement procedures. In order to safeguard transparency in public procurement, any public authority legally empowered to bring summary proceedings is deemed to possess standing. In this regard, the law also grants the Wali (Governor) the authority to refer matters to the administrative court concerning contracts intended to be concluded by territorial collectivities or local public institutions.
- The existence of a breach by the contracting authority of its obligations relating to publicity and competition. Such breaches may arise in several situations, including violations of procurement notice requirements, the use of inappropriate procurement procedures—such as negotiation instead of open competitive bidding—failure to comply with technical specifications and regulatory standards, or the introduction of preferential conditions favouring a particular bidder at the expense of other competitors.

Furthermore, Article 946(2) of Law No. 08-09 provides that, prior to the conclusion of a contract, the administrative court may be seized by central authorities

or by the Wali acting as the representative of the State at the provincial level when the contract is concluded or intended to be concluded by a territorial authority or a local public institution. In such cases, the administrative court may issue an order suspending the signing of the contract until the completion of the judicial proceedings.

Powers of the Summary Administrative Judge in Public Procurement DisputesIn disputes relating to public procurement, the summary administrative judge exercises a range of judicial powers aimed at ensuring that contracting authorities comply with the obligations of publicity, transparency, and competition governing procurement procedures. In exercising these powers, the judge relies on several legislative instruments, including:

- Law No. 23-12 concerning the general rules governing public procurement;
- Presidential Decree No. 15-247 regulating public procurement and public service delegations;
- Law No. 22-18 relating to investment **(Law No 22-18, 2022).**
- Law No. 06-01 on the prevention and combating of corruption **(Law No. 06-01, 2006).**

Among the most significant powers vested in the summary administrative judge in procurement-related disputes are the following:

**a. The Power to Issue Injunctions to the Administration**

The administrative judge has the authority to issue binding orders requiring the administration to comply with its legal obligations relating to transparency and competition in procurement procedures. For instance, the judge may order the contracting authority to publish a procurement notice where it has failed to do so, or to republish the notice where the initial publication was unlawful or incomplete. The judge may also require the administration to adopt specific procedural measures to ensure that the procurement process complies with the principle of open and fair competition as established by law.

**b. The Power to Impose Penalty Payments (Astreinte)**

Penalty payments constitute an important coercive mechanism designed to compel the administration to comply with judicial decisions. The legal basis for this measure is found in Article 802 of the Code of Civil and Administrative Procedures.

Such financial penalties serve as a form of judicial pressure intended to ensure the effective enforcement of court orders and to prevent administrative inertia or resistance. By imposing an astreinte, the judge obliges the administration to comply with its legal obligations under the threat of accumulating financial sanctions. The

Algerian legislator expressly recognized this mechanism in Law No. 08-09, granting administrative judges' broad discretion to impose such financial penalties.

The Power to Suspend the Conclusion of the Contract، the administrative judge also possesses the authority to suspend the conclusion of a public procurement contract, a power that constitutes one of the most significant instruments of preventive judicial control. Although such measures may temporarily delay the implementation of procurement projects, they play a crucial role in ensuring the legality and transparency of procurement procedures.

Nevertheless, this power is not absolute. The judge may only adopt such measures where serious and well-founded grounds justify judicial intervention. In particular, the postponement of the signing of the contract until the completion of judicial proceedings may not exceed twenty (20) days, as provided for under Article 946 of Law No. 08-09, as amended and supplemented by Law No. 22-13.

### 2.2 Annulment Litigation and Its Role in Upholding the Principle of Transparency

Annulment litigation constitutes a fundamental mechanism through which administrative justice contributes to the consolidation of the principle of transparency, particularly within the sphere of public administration. Through the judicial review exercised by administrative courts, unlawful administrative practices may be uncovered and administrative decisions that violate the principles of legality and transparency may be annulled, thereby contributing to the establishment of sound and effective governance.

An action for annulment is brought against administrative decisions with the objective of having them declared void and deprived of legal effect. In this context, the powers of the administrative judge are limited rather than discretionary. The administrative judge examining an annulment claim is empowered only to invalidate the contested decision where it is tainted by illegality. However, the judge's authority does not extend to modifying the decision or replacing it with another administrative act. This understanding derives from the doctrinal definitions of the action for annulment, which many scholars define as a judicial action brought before administrative courts against an unlawful administrative decision with the aim of obtaining its annulment in accordance with legally prescribed procedures **(Boudiaf A. , 2018, p. 48).**

The action for annulment is directed specifically against administrative decisions, in contrast to administrative contracts, which generally fall within the scope of full remedy litigation. Consequently, annulment actions are, in principle, inadmissible against decisions directly related to administrative contracts.

Nevertheless, such actions may be brought against administrative decisions that precede the conclusion of the contract, particularly those decisions adopted during the preparatory stages of the contracting process or those capable of obstructing the preparation of the public procurement procedure.

This approach is justified by the fact that the contractual process in public procurement constitutes a complex legal operation composed of multiple legal acts, some of which possess the characteristics of administrative decisions. Accordingly, such acts may be challenged independently where they are affected by illegality, in accordance with the theory of separable administrative decisions, whereby these decisions may be contested through an action for annulment independently of the contract itself **(Al-Tamawi, 1974, p. 03).**

It should also be noted that decisions issued during the execution phase of a public procurement contract cannot generally be challenged by the contracting party through an action for annulment. Instead, the aggrieved party may seek compensation where such decisions have caused damage. Consequently, the contractor does not ordinarily possess the right to bring an annulment action against decisions relating to the execution of the contract. An exception arises where the contracting authority adopts a decision in its capacity as a regulatory authority rather than as a contracting party, in which case the decision may qualify as a separable administrative decision subject to annulment proceedings **(Awabdi, 2003, p. 445).**

Separable administrative decisions may be defined as administrative acts that form part of a broader legal operation falling within the jurisdiction of administrative or ordinary courts but which may nevertheless be detached from that operation and challenged independently before administrative courts through an action for annulment.

The identification of such decisions remains somewhat ambiguous due to the absence of explicit statutory enumeration. However, reference may be made to Article 9 of Law No. 06-01 on the Prevention and Combating of Corruption, which recognizes the right to exercise all available remedies in cases involving violations of the rules governing the award of public procurement contracts. This provision indicates that the legislator intended to broaden the scope of judicial review concerning irregularities affecting procurement procedures.

In general, the various measures adopted during the procurement process may therefore be considered administrative decisions capable of being separated from the contractual operation, and they may be classified into two principal categories.

The first category concerns preparatory separable decisions, which arise during the preparatory stage of the public procurement procedure. These include decisions

relating to the allocation of financial appropriations, the registration of procurement operations, authorizations for expenditure, and other administrative acts that precede the conclusion of the procurement contract.

The second category concerns separable decisions issued during the contract award phase. These decisions arise at different stages of the procurement procedure and may include the decision relating to the choice of the procurement procedure, particularly where the administration opts—or is instructed by supervisory authorities—to resort to negotiated procedures rather than competitive tendering. Such a decision constitutes a separable administrative act and may therefore be challenged through an action for annulment.

Similarly, the decision relating to the call for tenders may be subject to annulment where it is affected by illegality, particularly when it fails to include mandatory information required under procurement regulations **(Khodari, 2015, p. 266).** Another example concerns the decision excluding an economic operator from participation in procurement procedures. Although such measures aim to ensure compliance with competitive requirements, they may be subject to abuse or error on the part of the administration and may therefore be challenged before administrative courts.

Likewise, the provisional award decision constitutes one of the most significant separable administrative decisions in public procurement procedures, as it directly affects both the successful bidder and competing candidates. Consequently, it represents one of the most important administrative acts subject to annulment review.

Other examples include the decision to cancel the procurement procedure on grounds of public interest, regardless of the stage reached by the procurement process, as well as the decision declaring the procedure unsuccessful, where the call for competition fails to produce satisfactory results.

Through the mechanism of annulment litigation, any economic operator adversely affected by such separable administrative decisions may seek judicial review before the competent administrative court. Since these actions remain ordinary administrative disputes, they are subject to the same procedural requirements governing other annulment actions, particularly with regard to legal standing, capacity to litigate, and the existence of a legitimate interest. In addition, the action must be filed within the legally prescribed time limits and before the court possessing territorial and subject-matter jurisdiction.

From a substantive perspective, annulment actions must be based on one of the recognized grounds of illegality affecting the administrative decision, such as lack of competence, procedural irregularities, misuse of power, or violation of the law. Once

the competent administrative judge verifies the fulfillment of both procedural and substantive conditions, the court proceeds to examine the legality of the contested decision. If the decision is found to be unlawful or contrary to the principles governing public procurement, the court may order its annulment and eliminate its legal effects.

Through this judicial mechanism, administrative courts contribute significantly to ensuring transparency, safeguarding legality, and combating corruption in public procurement procedures, thereby reinforcing the integrity and accountability of public administration.

## Conclusion

Based on the foregoing, it can be asserted that the principle of transparency constitutes one of the most effective mechanisms for ensuring legality in the actions of the contracting authority, particularly regarding administrative contracts in general and public procurement contracts in particular. This is due to the risks of corruption and irregularities surrounding public procurement processes, which may negatively affect national and local development plans and, consequently, the country's economic growth, by obstructing the proper functioning of public services and causing the misappropriation of public funds.

Accordingly, the legislator has sought to implement this principle as a genuine safeguard for economic operators dealing with public authorities on the one hand, while constraining the contracting authority from engaging in manipulations or deviations on the other. This approach contributes to reducing corruption in public procurement and ensures the optimal utilization of public funds allocated for these projects.

Despite these efforts, the legislator continues to pursue reforms of public procurement regulations, seeking means to protect these processes from the risk of corruption, ensure the smooth functioning of public services, and safeguard public funds in the pursuit of sustainable development.

From this study, several key observations can be drawn:

- Despite the Algerian legislator's efforts to instill transparency in public procurement procedures, corruption persists and continues to expand in certain areas. Notably, the recently established Supreme Authority for Transparency, Prevention, and Combating of Corruption has received numerous reports of corruption in public procurement.
- There is a need to review urgent judicial interventions in public procurement that do not align with the tendering process and to strengthen oversight in this regard, in order to protect public funds.

- Emphasis should be placed on the human element in public procurement through the establishment of preventive and deterrent measures to ensure the integrity of officials involved in preparing, awarding, executing, and monitoring contracts. This requires attention to recruitment and promotion mechanisms based on competence and expertise rather than nepotism or regional favoritism.
- The structure of salaries should be reviewed to align with the cost of living, thereby improving employees' conditions and reducing the incentive for illicit gain through favoritism or bribery in the contract award process.

Accordingly, several recommendations may be proposed to strengthen the implementation of the principle of transparency and mitigate corruption in public procurement, which continues to impede the proper functioning of economic development. Thèses recommandations include:

- Enhancing digitalization in public procurement to minimize human intervention by relying on standardized criteria and procedures for submitting and evaluating bids, as well as for information exchange.
- Strict oversight of public officials to mitigate risks of conflicts of interest.
- Strengthening control over nepotism in the award of public procurement contracts.
- Ensuring maximum transparency throughout all stages of the procurement process by publishing complete and easily accessible data for all stakeholders.
- Promoting a culture of transparency and anti-corruption within society.
- Harmonizing provisions between the public procurement law and the law on the prevention and combating of corruption, to reduce opportunities for malpractice.
- Clarifying procedures for the sessions of the bid-opening and evaluation committees, including the process for summoning members and determining the quorum required for decision-making.

Ultimately, transparency in public procurement extends beyond mere numbers and statistics to the credibility and ethical conduct of the human actors involved in the process. The success or failure of a procurement contract largely depends on human behavior and the legal awareness of the actors regarding the potential risks and positive outcomes for development.

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