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The Act of Management Between Unintentional Errors and Corruption In the Crime of Public Procurement Contracts

فعل التسيير بين الأخطاء العفوية والفساد في جريمة الصفقات العمومية

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شريط كوثر

مخبر الدراسات القانونية والسياسية، قسم الحقوق، كلية الحقوق والعلوم السياسية،

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Abstract:

The Algerian legislator has attempted to keep pace with contemporary criminal policy regarding the criminalization of management acts by balancing the protection of the economy from deviations with the need to avoid stifling the spirit of initiative among managers. In this context, Law No. 06/01 on the prevention and fight against corruption was enacted, serving as the main reference for the substantive rules underpinning liability in public procurement in terms of criminalization and punishment. Subsequently, the Code of Criminal Procedure was amended by Ordinance No. 15/02, which introduced the requirement of a formal complaint as a condition for initiating public action against managers of public economic institutions, as stipulated in Article 6 bis. Shortly thereafter, this article was repealed by Law No. 19/10, which amended and supplemented the Code of Criminal Procedure. The President of the Republic then issued Presidential Directive No. 05-2020 concerning anonymous denunciation letters, followed by Presidential Directive No. 02-2021 concerning the protection of local officials.

Keywords: Management Act; Unintentional Fault; Corruption; Public Procurement Offenses.

الملخص:

حاول المشرع الجزائري مواكبة السياسة الجنائية المعاصرة بخصوص تجريم فعل التسيير من خلال الموازنة بين حماية الاقتصاد من الانحرافات و بين تفادي كبح روح المبادرة لدى الميسرين ، و في هذا السياق صدر القانون 01/06 المتعلق بالوقاية من الفساد و مكافحته الذي يعتبر المرجع الرئيسي للقواعد الموضوعية التي تستند إليها قواعد المسؤولية في الصفقات العمومية تجريما و عقابا ، ليقوم بعدها بتعديل قانون الإجراءات الجزائية بموجب الأمر 02/15 ، الذي أدرج شرط الشكوى كقيد على تحريك الدعوى العمومية ضد مسيري المؤسسات العمومية الاقتصادية بموجب المادة 6 مكرر منه ، ليلغي بعد ذلك بمدة وجيزة هذه المادة بموجب القانون 10/19 المعدل و المتمم لقانون الإجراءات الجزائية ، ثم اصدر السيد رئيس الجمهورية التعليمية الرئاسية 2020-05 المتعلقة برسائل التبليغ المجهولة ، و ألحقها بالتعليمية الرئاسية رقم 2021-02 المتعلقة بحماية المسؤولين المحليين .

الكلمات المفتاحية : فعل التسيير، الخطأ العفوي، الفساد، جرائم الصفقات العمومية.

1. INTRODUCTION

Public procurement contracts are considered one of the most important legal transactions concluded by the administration within the framework of carrying out its functions in various fields in pursuit of the public interest. They are the primary legal tool for spending public funds placed at its disposal to achieve the objectives outlined in the state's development policy. Consequently, and due to their relation to public spending, some have sought to exploit them to obtain deals at lower costs at the expense of national interests, in exchange for financial benefits

that are ultimately added to the value of the contract. Thus, this field has become fertile ground where corruption grows and multiplies.

Therefore, the Algerian legislator has sought to provide dual protection for this type of contract: on one hand, by surrounding it with a set of legal provisions that regulate the various procedures for its conclusion and execution, out of concern for ensuring the principles of transparency and fair competition based on objective criteria. These rules serve as a standard for identifying any violation, overreach, or mismanagement,

as stipulated in Presidential Decree No. 15/247 concerning the regulation of public procurement contracts¹. This established a set of conditions that must be observed when preparing public procurement contracts, determining their prices, and setting the criteria for selecting the contracting parties, as well as providing guarantees to ensure the proper execution of the contract, in addition to establishing mechanisms and rules to monitor the extent to which these contracts comply with the law².

In addition, these rules were reinforced, on the other hand, by criminal provisions aimed at combating and deterring all deviant behaviors that may violate the rules governing public procurement contracts and harm the management of public funds. This was an attempt to align with contemporary criminal policy concerning the criminalization of management acts by balancing the protection of the economy from misconduct with avoiding the stifling of managerial initiative. In this context, Law No. 06/01 on the Prevention and Fight against Corruption was enacted³. Which is considered the main reference for the substantive rules upon which the principles of liability in public procurement contracts are based, both in terms of criminalization and punishment. Subsequently, the Code of Criminal Procedure was amended by Ordinance No. 15/02, which introduced the requirement of a formal complaint as a condition for initiating public proceedings against managers of public economic institutions, as stipulated in Article 6 bis.

However, this article was soon repealed by Law No. 19/10, which amended and supplemented the Code of Criminal Procedure⁴. The President of the Republic then issued Presidential Instruction No. 05-2020 concerning anonymous denunciation letters, which this instruction considered to be a cause of the destruction of the future of many executives and skilled professionals in past years. This was followed by Presidential Instruction No. 02-2021 concerning the protection of local officials⁵. Under this

instruction, the Minister of Justice and the heads of the security services were tasked—each within their respective areas—not to initiate any investigations or judicial proceedings against local officials without first consulting the Minister of the Interior and Local Authorities. This instruction reflects a political will aimed at protecting the manager from criminal prosecution when the matter concerns unintentional management errors that fall outside the scope of crime and corruption, and are merely the result of poor judgment.

The matter that prompts us to raise the following problematic: When do management acts constitute a crime in the field of public procurement, and when are they considered merely unintentional, spontaneous errors that fall outside the scope of criminalization?

We will attempt to answer this problematic by following analytical approaches, by analyzing the legal texts governing management crimes in the field of public procurement—whether those contained in the Law on the Prevention and Fight against Corruption or those included in the Penal Code and applicable to public procurement.

We will also examine the effectiveness of these texts in criminalizing management acts to protect public funds and combat corruption on one hand, and to protect the manager from criminal risk in management and preserve his spirit of initiative on the other.

We have divided this study into two sections: the first section is dedicated to intentional mismanagement crimes in the field of public procurement, while the second section addresses unintentional mismanagement crimes in the field of public procurement.

1. Intentional Mismanagement Crimes in the Field of Public Procurement:

Corruption crimes in the field of public procurement are those defined and punishable under Articles 26 and 27 of Law 06-01 on the prevention and fight against corruption. They consist of three forms, all of

which are intentional crimes: the crime of favoritism, the crime of exploiting the influence of public officials to obtain undue advantages, and the crime of bribery in public procurement.

It should be noted, however, that while the crimes of favoritism and bribery are considered management crimes because they are committed by the manager who holds the status of a public official according to the Anti-Corruption Law, the crime of exploiting the influence of economic agents is not classified among management crimes in the field of public procurement—even though it is considered a corruption crime in this field—because the perpetrator does not hold the status of a manager or public official.

Instead, the perpetrator may be a merchant, industrialist, craftsman, private contractor, or generally any natural or legal person who, even occasionally, enters into a contract or deal with the public purchasers mentioned in paragraph 2 of Article 26.

Therefore, we will exclude this crime from the scope of our present study and will limit ourselves to examining the crimes of favoritism and bribery respectively as follows:

1.1 The Offense of Favoritism:

It is also called the crime of granting undue advantages to others. We will present below its constituent elements, then address the penalty prescribed for it by the legislator:

1.1.1 Elements of the Offense of Favoritism:

The crime of favoritism is established upon the presence of the three elements of a crime: the legal, material, and moral elements, in addition to the presumed element represented by the status of the perpetrator as a public official.

A. The legal element of the crime of favoritism:

The legislator criminalized favoritism under the provisions of Article 128 of the Penal Code⁶, which criminalized the conclusion of contracts in an illegal manner. This article was later repealed upon the enactment of Law 06/01 on the prevention and fight against corruption and was replaced

by Article 26 of the latter. The wording of the first paragraph of Article 26, when it was first enacted, was as follows: ...any public official who concludes a contract, agreement, deal, or annex in violation of the legislative and regulatory provisions in force shall be punished... Then, the Algerian legislator realized the mistake made in drafting this article by criminalizing the act of the public official merely for concluding the deal⁷, whereas the actual violation does not lie in concluding the deal itself, but rather in granting undue advantages to others when concluding or endorsing the deal in violation of the applicable legal provisions.

Therefore, the legislator reworded this article through the amendment made to the Anti-Corruption Law under Law 11/15⁸ as follows: ...shall be punished any public official who deliberately grants others undue advantages when concluding or endorsing a contract, agreement, or deal... in violation of the legislative and regulatory provisions related to freedom of bidding, equality between candidates, and transparency of procedures.

It is noted that the original text of Article 26, before its amendment⁹ in 2011, broadened the scope of criminalization by considering any violation of any legislative or regulatory provisions in force, regardless of their nature, during the conclusion or endorsement of a contract, agreement, deal, or annex, as a material element of the crime.

However, the aforementioned recent amendment narrowed the scope of criminalization by stipulating violations only of the legislative and regulatory provisions related to freedom of bidding, equality between candidates, and transparency of procedures¹⁰. This is considered a form of decriminalization of other management errors that fall under the violation of any other legislative or regulatory provisions that do not affect freedom of bidding, equality between candidates, and procedural transparency.

Moreover, the amendment classified it among intentional crimes, where the presence of criminal intent is required by

adding the term deliberately to the criminalization provision. The original formulation of this article, which was general in terms of criminalization before its amendment, constituted an obstacle for managers who found themselves forced to be extremely cautious in supervising public procurement operations, since their liability at the time was established merely upon the violation of legislative and regulatory provisions related to public procurement, regardless of whether the violation was intentional or not, and thus whether intent was present or absent—i.e., as soon as the material element of the crime was established.

Therefore, requiring intent for the crime to be constituted is considered a form of decriminalization of any violations of legislative and regulatory provisions that may affect freedom of bidding, equality among candidates, and transparency of procedures, if such violations result only from poor judgment and do not involve bad faith.

B. The presumed element (status of the perpetrator):

Article 26-1 of Law No. 06-01 on the Prevention and Fight Against Corruption restricts the status of the perpetrator to that of a public official as defined in paragraph (b) of Article 2 thereof. Accordingly, the term public official includes:

- Any person holding a legislative, executive, administrative, or judicial position in one of the elected local popular assemblies, whether appointed or elected, permanent or temporary, paid or unpaid, regardless of their rank or seniority.
- Any other person who, even temporarily, performs a function or agency for remuneration or without remuneration, and by virtue of this capacity, contributes to serving a public body, public institution, or any other institution in which the state owns all or part of the capital, or any other institution providing a public service.
- Any other person defined as a public official or equivalent under the applicable

legislation and regulations.

In addition to the status of a public official, the crime of favoritism also requires that this official be competent in the functional task. This is inferred from the wording of Article 26-1 of the Anti-Corruption Law, as the public official must be competent in the process of concluding or endorsing a contract, agreement, deal, or annex for the crime to be established. If such competence is absent, the crime does not exist due to the lack of the element of functional jurisdiction. This is because granting undue advantages—the aim of the crime—can only be realized if the public official possesses the authority, power, or jurisdiction related to the aforementioned operations¹¹.

C. The Material Element of the Offense of Favoritism:

The material element of the offense of favoritism consists of the public official committing a specific criminal act that results in granting undue advantages. These can be clarified as follows:

C.1 The Criminal Conduct:

It consists in the perpetrator concluding a public procurement contract, agreement, or annex, or endorsing or even reviewing it, in violation of the legislative and regulatory provisions related to freedom of bidding, equality between candidates, and transparency of procedures in force in this area—particularly as stipulated in the Law on the Regulation of Public Procurement, Law No. 06/01 on the Prevention and Fight Against Corruption, and other legislation governing administrative contracts and public procurement.

The meaning of public procurement in this offense is determined by its definition in the Anti-Corruption Law, not by its definition in the Public Procurement Law¹². It refers to any contract concluded by the public official as defined in Article 2 of the Anti-Corruption Law, for the purpose of carrying out works, acquiring materials or services, or conducting studies on behalf of the contracting authority¹³. The concept of procurement extends to include the contract, the

agreement, and the annex.

The violation must occur in terms of the procedures and conditions that must be observed, as well as the general principles governing their organization—particularly in relying on rules of transparency, competition, and objective standards, as well as respecting the principle of the publicity of information related to procurement procedures, the prior preparation of participation and selection conditions, and adherence to objective and precise criteria in making decisions related to public procurement. This is in application of Article 09 of Law No. 06/01.

This applies whether it concerns contracts for the execution of public works and supply, contracts for conducting studies, or other contracts and annexes concluded to increase services or amend contractual clauses in an original contract¹⁴.

C.2 The Purpose or Goal of the Criminal Conduct:

It is not sufficient, for the offense of favoritism to be constituted, that the public official concludes a public procurement contract, agreement, or deal, or endorses it in violation of the legislative and regulatory provisions in force. The presence of this element alone constitutes merely an administrative fault for which the perpetrator is held disciplinarily accountable. Rather, the perpetrator of the criminal act must have a specific purpose and intention behind it—namely, to grant undue advantages to others, as a form of favoritism or unjustified preference for one competitor over another, not with the aim of securing the best offer, but to achieve personal objectives or certain social relationships¹⁵.

D. The moral element of the offense of favoritism:

The offense of favoritism is an intentional crime that requires, in addition to the general criminal intent, the presence of a specific intent on the part of the perpetrator, namely that his will and intention are directed toward granting advantages to others despite them being unjustified¹⁶.

1.1.2 The prescribed penalty for the offense of favoritism:

Article 26-1 punishes the offense of favoritism with imprisonment from two to ten years and a fine ranging from 200,000 DZD to 1,000,000 DZD. All provisions applicable to the bribery of public officials also apply to this offense, including those related to aggravating circumstances, exemption from punishment, supplementary penalties, confiscation and restitution, participation and attempt, liability of the legal entity, and the annulment of contracts and deals¹⁷.

1.2 The Offense of Bribery in the Field of Public Procurement Contracts:

It is also referred to as the crime of receiving commissions from public procurement. For its establishment, it requires a presumed element represented by the status of the public official, as defined in paragraph (b) of Article 2 of the Anti-Corruption Law, in addition to its three elements: legal, material, and moral.

Therefore, with regard to the presumed element, we refer to what was previously stated concerning the status of the public official in the offense of favoritism, and we will proceed below to study it in terms of its elements and the prescribed penalty.

1.2.1 Elements of the Offense of Bribery in the Field of Public Procurement Contracts:

A. The Legal Element:

It is regulated by the legislator under Article 27 of Law No. 06/01 on the Prevention and Fight Against Corruption, which states: Shall be punished ... any public official who receives or attempts to receive, for himself or for others, directly or indirectly, a fee or benefit, of any kind, in connection with the preparation or conduct of negotiations for the purpose of concluding or executing a contract, deal, or annex on behalf of the State, local authorities, public administrative institutions, public industrial and commercial institutions, or public economic institutions.

B. The Material Element:

B.1 criminal conduct:

The crime of bribery in the field of public procurement is a crime of danger, not

of damage. It is sufficient for the public official to receive or attempt to receive, for himself or for others, directly or indirectly, a fee or benefit of any kind.

A.2 Context:

The crime of bribery in public procurement differs from other bribery offenses in terms of the occasion or surrounding circumstances of its commission. The legislator requires that the public official receives the commission on the occasion of preparing or conducting negotiations for the conclusion or execution of a contract, deal, or annex on behalf of the State or one of its affiliated bodies¹⁸.

It is worth noting here that the legislator punishes the offense of bribery in public procurement whether it is a completed crime or an attempted one.

C. The Moral (Mental) Element

The offense of bribery in the field of public procurement is established by the presence of general criminal intent without the need for specific intent. It is sufficient that the knowledge and will of the public official are directed toward receiving the fee or benefit with the awareness that it is unjustified and unlawful, even if his will is not directed toward fulfilling what he had promised the briber.

1.2.2 The Prescribed Penalty for the Offense of Bribery in the Field of Public Procurement Contracts:

The legislator punishes it with an aggravated penalty consisting of imprisonment from 10 to 20 years and a fine ranging from 1,000,000 DZD to 2,000,000 DZD. All provisions applicable to the bribery of a public official also apply to it, including those related to aggravating circumstances, exemption from punishment, supplementary penalties, confiscation and restitution, participation and attempt, liability of the legal entity, and the annulment of contracts and deals.

2.Unintentional Management Offenses in the Field of Public Procurement Contracts:

The public procurement offenses stipulated in Law No. 06-01 on the

Prevention and Fight Against Corruption are all characterized as intentional crimes, whereby the perpetrator is punished for a managerial act that rises to the level of corruption when accompanied by certain conditions. However, by referring to the provisions of the Penal Code, we find among its provisions an unintentional management offense that punishes the manager for mere mismanagement in the form of gross negligence. This offense is also applicable in the field of public procurement. We will proceed to examine it below in terms of its elements and the penalty prescribed for it.

2.1 Elements of the Offense of Gross Negligence:

It is based on a presumed element represented by the status of the perpetrator as a public official, to which we refer back to the details previously explained in the context of our study of the offense of favoritism, in addition to its three elements: legal, material, and moral, which we will set out below.

2.1.1 The Legal Element:

The legislator stipulated it in Article 119 bis of the Penal Code, which states: Shall be punished... any public official, within the meaning of Article 2 of Law No. 06/01 dated February 20, 2006, on the Prevention and Fight Against Corruption, who, through clear negligence, causes the theft, embezzlement, damage, or loss of public or private funds or items of equivalent value, or documents, securities, contracts, or movable property placed under his responsibility either by virtue of his position or because of it.

It is noted that the legislator expanded the scope of the offense of gross negligence to include not only public funds but also private funds. The criminalization of mismanagement in Algerian legislation has gone through three stages. Initially, the Algerian legislator considered gross negligence in management as grounds for the offense of mismanagement. He later revised this view, recognizing intentional negligence in management as the standard for criminalization. Eventually, he limited the criminalization of managerial acts to cases of clear negligence.

The offense of mismanagement was added to the Penal Code by Article 421, as amended by Ordinance No. 75-47 dated June 17, 1975, which criminalized anyone who, through gross and apparent negligence during management, caused direct and significant harm to state property or to one of the entities referred to in Article 119 of the same law. The legislator later amended the Penal Code through Ordinance No. 88-26 dated August 12, 1988, which repealed the offense of mismanagement by abolishing Article 421, though some of its provisions were indirectly retained in Article 422, which criminalized any person who intentionally allowed property to be lost or damaged.

This article was later repealed by Law No. 01-09, which amended and supplemented the Penal Code, and its content was transferred to the current Article 119 bis. Under this article, the legislator criminalized clear negligence in management, abandoning the element of intent and making it an unintentional offense. Additionally, the legislator broadened the scope of the property subject to the offense to include not only public property but also private property, making this provision more severe than the previous one in terms of the conditions for criminalization.

2.1.2 The Material Element:

The offense of gross negligence is considered a crime of omission, as its material element is based on a negative criminal act committed by the public official by failing to carry out a certain behavior required by law—namely, the duty to protect public and private funds and to prevent harm from occurring to them¹⁹.

The legislator has required that the negligence be clear, meaning evident and obvious—i.e., that it can be established without difficulty, effort, or even the need for expert opinion. However, the legislator did not specify its forms, circumstances, or instances (such as lack of diligence, failure to perform duties, or poor and improper job performance), leaving the judge with wide discretion to assess and qualify the act.

This crime must also involve public or

private funds, and these funds must be in the possession of the perpetrator or under their control, and must have been entrusted to them by virtue of their position or because of it. This negligence must result in material damage, such as the theft or appropriation of the funds, their loss, the inability to determine the reasons for their disappearance, or their damage or destruction²⁰.

2.1.3 The Moral (Mental) Element:

It takes the form of unintentional fault, so it does not require the presence of criminal intent or the intention to harm the funds. Therefore, it is sufficient to establish that the perpetrator could have foreseen the harmful outcome to the funds and avoided it if they had been more careful and attentive.

2.2 Penalty for the Offense of Gross Negligence:

The Algerian legislator considered the crime of gross negligence a misdemeanor, assigning it a penalty of imprisonment from 6 months to 3 years and a fine ranging from 50,000 DZD to 200,000 DZD, regardless of the amount of money that was stolen, embezzled, lost, or damaged. This differs from the previous law, where the penalty was determined based on the severity of the loss or damage to public or private funds before the amendment of Article 422 under Law 09-01. This is a penalty proportionate to the unintentional act committed by the public employee, which is intended to make them more diligent in performing their duties, exercising greater caution and care to protect public and private funds.

Conclusion:

Through this study, we conclude that although the criminalization of the act of management is a necessary deterrent and punitive measure to ensure that criminal managers do not escape criminal accountability, the decriminalization of unintentional managerial errors provides protection for these individuals. Treating them as criminals would paralyze the management process, negatively impacting the proper functioning of the national economy. Therefore, the legislator attempted to strike a balance between these two

considerations regarding the criminalization of management acts in the field of public procurement by:

- The legislator sought to protect public funds entrusted to the public official by criminalizing favoritism and bribery in the field of public procurement through Articles 26/1 and 27 of the Law on the Prevention and Fight against Corruption. However, it also made the criminal liability of the manager in these cases conditional on bad faith. Thus, it required intent in committing the criminal act. From this, it is inferred by contrary interpretation that if a manager violates the procedures stipulated in the Public Procurement Law without intent, their criminal liability does not arise. This is one of the most important methods of protecting managers from criminal risk in management-related offenses because if intent is absent, there is no ground for holding the manager criminally accountable, even if they committed the prohibited act, as long as their mistake was not accompanied by bad faith but resulted from poor judgment, haste, or lack of caution in decision-making.

The legislator also enshrined the principle of decriminalizing the act of management in all crimes related to public procurement provided for in the Law on the Prevention and Fight Against Corruption. This was done by categorizing favoritism as an intentional crime when amending Article 26/1 through Law 11/15, and by narrowing the scope of criminalization so that it only concerns violations of legislative and regulatory provisions related to freedom of candidacy, equality between candidates, and transparency of procedures. Previously, it extended to any violation of any legislative or regulatory provision in force, regardless of its nature, when concluding, approving, or amending a contract or agreement. This change gives managers more freedom and allows them to take initiatives in favor of the legal entity they manage.

The legislator intended, through the

criminalization of gross negligence in Article 119 of the Penal Code—which can also be committed in the context of public procurement—to establish criminal liability for unintentional errors committed by the manager when these reach the level of gross negligence and result in material damage. This aims to protect private funds in addition to public funds. It is noted that, following the amendment by Law 01-09, the legislator abandoned the element of intent previously required by Article 422 of the Penal Code before its repeal and the transfer of its content to Article 119 bis. The scope of the protected funds was expanded to include private funds in addition to public funds. This makes the new text more stringent than the repealed one regarding the conditions required for the crime to be constituted, even if it is less severe in terms of the penalties prescribed. This reflects the legislator's intention to protect the interests of the legal entity and both public and private funds at the expense of protecting the manager.

However, Article 119 bis is criticized for not defining what is meant by gross negligence or its manifestations to clearly establish when it constitutes a punishable crime, such as lack of diligence, failure to perform duties, poor or inappropriate performance contrary to professional standards. This leaves a wide margin for the judge to exercise discretionary power in characterizing the act, which contradicts the principle of narrow interpretation of criminal law. Therefore, it is necessary to specify the forms of negligence that, when present, turn the act of management into a criminal offense. If these are absent, it remains merely a managerial error involving poor judgment and results in civil or disciplinary liability, not criminal liability.

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- ³ Law No. 06/01 dated February 20, 2006, on the Prevention and Fight Against Corruption (Official Gazette No. 14 issued on March 8, 2006), as amended and supplemented by Ordinance No. 11/15 dated August 2, 2011 (Official Gazette No. 44 issued on August 10, 2011).
- ⁴ Law No. 19/10 dated December 11, 2019, amending and supplementing Ordinance No. 66/155 on the Code of Criminal Procedure (Official Gazette No. 78 issued on December 18, 2019).
- ⁵ Maamoun Moazzen and Amina Ben Youssef, Decriminalization of Management Acts and Its Impact on the Legal and Economic System in the Public Sector: An Analytical Study of Presidential Instruction No. 02-2021, Volume 3, Issue 2, Journal of Law and Development, University of Béchar, Algeria, 2021, p. 67.
- ⁶ Ordinance No. 66-156 dated June 8, 1966, containing the Penal Code, amended and supplemented, Official Journal of the People's Democratic Republic of Algeria, No. 49, issued on 08/06/1966.
- ⁷ Majdoub Nawal and Baaziz Ahmed, Crimes Affecting Public Procurement in Light of the Algerian Legal System, Volume 01, Issue 02, African Journal of Legal and Political Studies, Ahmed Draia University, Adrar, Algeria, December 2017, p. 9.
- ⁸ Law No. 11-15 dated August 2, 2011, amending and supplementing Law No. 06-01 on the Prevention and Fight Against Corruption, Official Journal of the People's Democratic Republic of Algeria, No. 44, issued on August 10, 2011.
- ⁹ The text of Article 26/1 before the amendment was as follows:
"Any public official who concludes, endorses, or reviews a contract, agreement, deal, or annex in

violation of the legislative and regulatory provisions in force, with the aim of granting undue advantages, shall be punished."

- ¹⁰ Abderrahmane Ben Djellali, Provisions of the Crime of Favoritism in Public Procurement under the Anti-Corruption Law, Volume 6, Issue 01, Journal of Law and Political Science, Ahmed Salah University Center, Naâma, Algeria, 2020, p. 8.

¹¹ Abderrahmane Ben Djellali, Op. cit., p. 3.

- ¹² Public procurement, according to Presidential Decree No. 15-247 on the regulation of public procurement and public service delegations, refers to contracts concluded by the public institutions and bodies defined in Article 6 thereof. These contracts concern the acquisition of services, the execution of study services, the execution of works, or the acquisition of supplies, within the financial thresholds specified in Article 13-1 of the same decree—i.e., exceeding 6,000,000.00 DZD for study services and service acquisitions, and exceeding 12,000,000.00 DZD for works and supplies.

However, the concept of procurement under the Anti-Corruption Law is broader, as it includes all contracts concluded by a public official as defined in Article 2(b), even if their value does not reach the threshold set by the Public Procurement Law.

- ¹³ Ahsène Bouskiala, Al-Wajeez fi Al-Qanoun Al-Jaza'i Al-Khaas (The Concise Guide to Special Criminal Law), Part Two, 9th Edition, Houma Printing, Publishing and Distribution House, Algiers, 2008, p. 112.

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¹⁵ Waleed Saeed Al-Madhoun, Op. cit., p. 168.

- ¹⁶ Majdoub Nawal and Baaziz Ahmed, Op. cit., p. 11.

¹⁷ Ahsène Bouskiala, Al-Wajeez fi Al-Qanoun Al-Jaza'i Al-Khaas (The Concise Guide to Special Criminal Law), Op. cit., p. 122.

¹⁸ Abdelkarim Khalifi, Op. cit., p. 30.

- ¹⁹ Waleed Zuhair Saeed Al-Madhoun, Criminal Liability of Managers of Economic Institutions, Doctoral Dissertation, Mohamed Lamine Debaghine University – Sétif 2, Algeria, 2020–2021, p. 131.

²⁰ Ibid., p. 132.