

The Role of Oversight and Anti-Corruption In Reforming the Public Sector in Algeria And Establishing Governance



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Abstract:

Since the nineties, the public sector in Algeria has witnessed a continuous decline as a result of the spread of corruption. Acknowledgment by the Algerian authorities of this critical situation, and their desire to perpetuate the requirements of governance given its ability to reverse the situation, by relying on two pillars, namely, to activate the role of each of the oversight and the fight against corruption, for this reason, it approved a large arsenal of legal texts, the latest of which was the constitutional amendment of 2020, supported by the establishment of a diverse institutional system that implements these legal texts on the ground, with the aim of discovering the imbalances taking place, as well as combating corruption and punishing the corrupt, which allows creating a solid ground for devoting the requirements of governance and advancing the reality of the public sector in Algeria.

Keywords:

Public Sector; Oversight; Anti-Corruption; Governance; Legal Framework.

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Introduction:

The public sector in any country, regardless of its political system, economic orientation, and social structure, is considered one of the most important tools for achieving the state's general policy. The success of the public sector in achieving its goals necessarily means the success of the state as a whole, and its failure as well means the failure of the state, and this failure has very serious repercussions, so the Algerian state has known since its independence many attempts to reform and develop its public sector to allow the possibility of achieving the expected goals of it, and in order to clearly examine the reality of the public sector in Algeria, and propose ways of reform, by establishing the requirements of public governance in Algeria as a system that is supposed to achieve positive results, by activating the role of both " the oversight agencies" as well as " the anti-corruption agencies".

Whereas in order to ensure a kind of methodological balance, and in search of the compatibility of this article with the requirements of the scientific methodology, we have first clarified the legal and institutional frameworks for the governance of the public sector in Algeria (the first and second topic), we moved to reflect the reality of the public sector in Algeria and to indicate the proposed means of reform (the third topic).

1. THE LEGAL FRAMEWORK FOR THE PUBLIC SECTOR GOVERNANCE IN ALGERIA:

Through this topic, some of the national legal texts currently in effect will be reviewed, as it will be limited to the content of the constitutional amendment of 2020, in addition to reviewing the Anti-Corruption and Prevention Law, as it is noted that it provides the appropriate legal framework for consolidating governance in the Algerian public sector.

a. Governance through the constitutional amendment of 2020:

The circumstances experienced by the Algerian government and people, and the demands of various political and intellectual currents for change, the fight against corruption and the establishment of the foundations for a new republic, had a clear impact on the content of the constitutional amendment of 2020, especially in terms of drafting, as it touched on the requirements of governance without referring specifically to the term.

Constitutions as a cornerstone for fundamental change.

The second President of the State of Mauritius **Cassam Uteem** notes: "The intrinsic importance of today's constitutions extends far beyond those basic functions. Constitutions fall into the public agenda when the time comes for change to a better political system". (Böckenförde, 2011)

Carrying out any constitutional amendment or issuing an entirely new constitutional text necessarily means the emergence of a political will first and

popular second to achieve changes of a fundamental nature, either in the nature of the system of government, or the organization of the three powers of the state, or the constitutionalizing of rights or duties that were not included in previous constitutions.

Overall, any fundamental change affecting the State's fundamental issues and fields, whether positive or negative, cannot be achieved without resorting to partial or total constitutional amendment.

The 2020 constitutional amendment in Algeria, a reformist constitution:

The preamble states: "Algeria expresses its commitment to work to prevent and combat corruption in accordance with the international conventions it has ratified".

It also affirmed that one of the objectives of the institutions chosen by the people is to ensure transparency in the conduct of public affairs, and the state, through this constitution, encouraged the idea of participatory democracy at the level of local communities, through the involvement of civil society actors.

On the other hand, according to article 24, it is prohibited to use public office that is not intended to achieve public interest, and that functions and assignments should not be a source of wealth nor a means of serving private interests. It stipulates that any situation of conflict of interest must be avoided, and the next article stipulates that the law punishes the abuse of influence and abuse of power.

The article 77 also stressed a number of measures, the most important of which is that the administration is at the service of the citizen, and in this context, it required dealing with it impartially within the framework of respect for legitimacy, and obligated it to perform the service without procrastination and impartiality and obligated it to respond with justification, within a reasonable time, to requests that require the issuance of an administrative decision.

It also affirmed the principle of equal access to public utility services without discrimination, and the constitutionalizing of the principles of continuity, continuous adaptation, equitable coverage, and the guarantee of a minimum level of service.

Despite all this, the annual Human Rights Report of Algeria, published by the United States Department of State in 2020, quoted opponents of the new Constitution: "The draft will further enshrine presidential power and has not included adequate and sufficient reforms in the area of governance and human rights." (Bureau of Democracy, 2020)

b. Governance from the perspective of the anti-corruption and prevention law:

This law consists of seventy-three (73) articles, and it is clear from reviewing its provisions that it has included a number of preventive measures in the public sector, including those related to public employment, property declaration procedures, rules of transparency in dealing with the public, accounting standards, and it also mentioned some crimes and the legal penalties related to it, such as bribery, abuse of influence, embezzlement of property and treason, it also specified the methods of investigation and the mechanisms of confiscation, freezing and seizure, especially the rules for international cooperation in this field.

The embodiment of the governance system in the public sector aims primarily at eliminating corruption practices and its manifestations. Therefore, the issuance of a law by the Algerian legislator to combat and prevent this phenomenon is considered as a result an implicit legalization of the system of governance. Under the law on combating and preventing corruption, the legal framework for this process has been established, and its main objectives have been outlined, which are summarized as follows: (Law No. 06-01, 02/20/2006)

- Support measures to prevent and combat corruption,
- Promote integrity, responsibility and transparency in the management of the public and private sectors,
- Facilitate and support international cooperation and technical assistance to prevent and combat corruption, including asset recovery.

In general, the objectives of this legal text and the mechanisms included in its articles intersect, and even coincide, with the requirements of embodying the governance system in the public sector.

Since the issuance of the Anti-Corruption and Prevention Law in 2006, Algeria has not witnessed an improvement in indicators related to corruption or governance, despite the principles and frameworks it contains. This necessarily means that there is a discrepancy between the content of the legal text and its practical implementation. It is noticeable that this legal text is activated at times in order to combat corruption and corruptors, and then its provisions are ignored at other times, in selective practices that do not comply with what is required by the principles of governance.

Therefore, the problem is not related to the legal text itself, because it includes general directions for combating and preventing corruption, and the main principles that guarantee achieving the desired goals when it is issued. Rather, the problem is related to the independence of the judicial authority itself, which must apply this law without being linked to the will of the political authority

2. THE INSTITUTIONAL FRAMEWORK FOR THE PUBLIC SECTOR GOVERNANCE IN ALGERIA:

The Algerian state has put in place several institutional structures, through which it aims to consolidate the requirements of governance in the public sector, as the trend has increased towards devoting independent oversight authorities and anti-corruption agencies.

In this topic, we will review the most important of these institutional structures directly related to the activation of governance.

a. Constitutionally established oversight institutions:

The Algerian legislator has established an institutional framework within his constitutional amendment of 2020, by constitutionalizing several oversight institutions, such as the Constitutional Court and the Court of Auditors, within the framework of a comprehensive clarification of the institutional oversight framework of governance, which was adopted in Algeria. This will be discussed in the content of this requirement.

The Constitutional Court:

The Constitutional Court, among other things, was created by the constitutional amendment of 2020, to replace the Constitutional Council, under Chapter I of Title IV on oversight institutions, as it is entrusted with the tasks of controlling the functioning of institutions and the activity of public authorities, and in this capacity, it is one of the fundamental elements in establishing the institutional framework for public sector governance.

In the same context, the process of creating this oversight institution, which retained some of the competencies of the Constitutional Council, probably makes it: "not much different from the Constitutional Council." (Gharbi, 2021)

This institution, which the constitution has guaranteed the status of independence and granted its members the privilege of immunity on the occasion of the performance of their duties, consists of twelve (12) members, including four (04) appointed members by the President of the Republic, and eight (08) elected members (one of them is elected from among the members of the Supreme Court, another is elected from among the members of the Constitutional Council, and the remaining six are elected from among the constitutional law professors), whereas the President of the Constitutional Court is appointed by the President of the Republic for a single term of six (06) years. Therefore, the duality of appointed / elected members in the formation of the Constitutional Court would achieve an actual balance in performing the tasks entrusted to it, and it is also an applied dedication to the independence of this institution.

With the issuance of the presidential decree related to setting out the conditions and modalities for electing professors of constitutional law as members of the Constitutional Court (Presidential Decree 21-304, 04/08/2021), preparations for the electoral process began, where the electoral process were initiated, the

President of this institution was subsequently appointed, forming its members and taking the oath of office, in a record time (Presidential Decree No. 21-453 , 11/16/2021), in order to accelerate the establishment of constitutional institutions, as pledged by the President of the Republic, in order to proceed with the institutional building of the new Algeria.

The Court of auditors:

The article 199 of the constitutional amendment of 2020 referred to the Court's contribution to the promotion of good governance and transparency in the management of public funds and the deposit of accounts, which makes it one of the important institutional structures within the framework of consecrating public sector governance in Algeria.

The court's constitutionalizing:

The Court of Auditors was established according to the article 190 of the 1976 constitution, as: "entrusted with the subsequent oversight of all public expenditures of the state, the party, local and regional authorities, and socialist institutions of all kinds." The same founding expression was repeated with some amendments in the article 160 of the 1989 constitution, where it stipulated: "A Court of Auditors shall be established, charged with the post facto oversight of state funds, regional authorities, and public utilities...".

As for the constitutional amendment of 2016, it outlined in the article 192 a number of important changes in this regard, the most important of which are:

- Constitutionalizing of the independence of the Court of Auditors, which is an important legal guarantee.
- Expanding the scope of post-monitoring to include state-owned commercial capitals,
- Introducing the Court of Auditors as an effective element in achieving governance, by constitutionalizing its contribution to the development of good governance and transparency in the management of public funds.
- Establishing the principle of participatory decision-making and its effectiveness, by expanding the circle of reporting to the President of the Republic, the Speaker of the National Assembly, the Speaker of the National People's Assembly and the Prime Minister, after it was submitted exclusively to the President of the Republic.

While the constitutional amendment of 2020 included a definition of the Court of Auditors as (Presidential Decree No. 20-442, 12/30/2020): "a supreme institution for the oversight of public property and funds," unlike the previous constitutional texts that did not address the definition of the Court. Whereas, describing the Council as the supreme institution of oversight reflects its

importance in the field of oversight, and adding the term property expands the scope of oversight after it was previously limited to public funds.

From the above, the Algerian legislator has agreed on the principle of constitutionalizing this oversight institution, given its importance in terms of the tasks entrusted to it and the powers granted to it, and confirming the independence of this institution from a legal point of view, by not subordinating it to any of the three authorities.

The laws regulating the court:

The first law of the Court of Auditors was issued in 1980 (Law No. 80-05 , 03/01/1980), four years after its constitutional establishment, along with a number of other laws dealing with the oversight field. (Law No. 80-04, 03/01/1980)

This law defined the powers vested in the Court of Auditors, its organization and operation, and the sanctions resulting from its investigations. Although the Court has been granted independence of operation, it was placed under the supreme authority of the President of the Republic, and it was considered an institution with judicial and administrative powers.

Subsequently, the aforementioned law was repealed (Law No. 90-32, 04/12/1990) and amended (Ordinance 95-20, 07/17/1995), as it extended the Council's scope of intervention to include all public institutions to which public accounting rules apply, and institutions whose capitals are of a public nature, with administrative and judicial powers, and the legislator also made it possible to appeal against the council's decisions according to the procedures stipulated by law.

In addition to the above, the Code of Ethics of the Court of Auditors (Auditor, 2015) outlines the basic principles that guide the conduct of the court's judges in carrying out their oversight work, which is based on integrity, independence, objectivity, impartiality, and a commitment to neutrality, as the Court is independent and not subject to any political influence, the care to avoid conflict of interest, enjoy competence, a spirit of responsibility and professionalism in performing tasks, adhere to respectful behavior towards colleagues and litigants, and the need to maintain professional confidentiality, which is imposed by the nature of the Court in terms of the oversight duties entrusted to it.

b. The anti-corruption institutions:

As part of the Algerian legislator's efforts to develop institutional structures aimed to consolidate the requirements of governance in the public sector, and alongside the oversight institutions enshrined in its constitutional amendment for the year 2020, it has given great importance to anti-corruption institutions, including The Supreme Authority For Transparency, Prevention And Combating Corruption and The Central Anti-Corruption Office, for their prominent

role in activating governance in the public sector in Algeria. This will be discussed in the content of this requirement.

Central Anti-Corruption Office:

The Central Anti-Corruption Office was established under the Article 24 bis of Law no 06-01, related to prevention and fight against corruption, amended and supplemented. This Office is considered a central operational department for the judicial police, with the necessary independence to perform its functions, in accordance with the principles of competence, fairness and performance. These principles have been included as a slogan on the official website of this Office, and it has been structurally included under the umbrella of the Ministry of Justice.

The Central Anti- Corruption Office (C.A.C.O) is composed of:

- Judicial police officers from ministry of defense and ministry of interior,
- Public officials with proven anti-corruption skills.
- Administrative and technical staff.
- The Office can seek the assistance of every expert, advisory office, and / or institution with proven competencies in the field of anti-corruption.

This office is mainly concerned with the tasks of researching, investigating and examining crimes within the framework of the fight against corruption. Its regional jurisdiction extends across the entire national territory, the office is in charge of the following missions:

- Collecting, centralizing and exploiting any information that may allow to detect and fight corruption.
- Reach evidence and proceed to investigation on suspected cases of corruption and related crimes under the prosecution's supervision.
- Develop cooperation and support with anti-corruption bodies and exchange information on the occasion of ongoing investigations;
- Propose any measure that would preserve the proper conduct of investigations by the competent authorities.

The Supreme Authority for Transparency, Prevention and Combating Corruption:

The Supreme Authority for Transparency, Prevention and Combating Corruption was established as a substitute for the National Authority for the Prevention and Combating of Corruption, which was established by the article 204-205 of the constitutional amendment of 2020.

The naming of this authority, compared to the "National Institution for Combating and Preventing Corruption", reveals some trends. Naming it the "supreme authority" demonstrates the legislator's will to highlight its importance in

the ladder of oversight structures, just as the addition of the term "transparency" within the designation shows an expansion of the scope of competencies granted compared to the previous institution.

As it undertakes several tasks, including: the moralization of public life and the promotion of the principles of transparency through the follow-up, implementation and dissemination of a culture of transparency, prevention and combating corruption, the consolidation of the good governance requirements, as well as the contribution to strengthening the capabilities of civil society and other actors in the field of combating corruption.

Considering the range of tasks of this supreme authority, it becomes clear that it is an oversight institution that aims to establish the basic requirements of governance, not only by preventing and combating corruption, but also by strengthening its most important foundations such as transparency and participatory.

Since the legal texts of this supreme authority are still being prepared, this does not make it possible to make any legal reading about it, particularly with regard to its constituent formation and the powers granted to it to perform its functions.

3. ALGERIA'S PUBLIC SECTOR REALITIES AND REFORM MECHANISMS:

It is agreed that finding solutions to any problem, whatever its type, requires recognition of its existence at all, then researching its causes and excluding its results, and this enables the analysis of its parts and the selection of optimal solutions after that, and appropriate for the specified context according to the specifics of the problem.

According to this methodology, the reality of the public sector in Algeria and possible ways of reform was dealt with, by analyzing both the confessions of the official authorities and the annual reports of the Court of auditors and the attempt to theorizing for the oversight and combating corruption as proposed solutions.

a. Observed imbalances in the Algerian public sector:

During the period 1995-2020, the public sector witnessed many contradictions and differences, especially between the content of legal legislation and the reality of realistic data, and this is evident through both the content of official speeches, as well as the reports of the Accounting Council issued for that period.

The content of the official speeches

After reviewing a number of Government's official speeches concerning the public sector, they were found to be based on two essential points:

- Official recognition of the deep-rooted administrative and financial corruption.

- Repeated commitment to make appropriate legal and structural reforms.

The current President of the Republic described the previous situation as: "... a past page characterized by immoral and criminal practices, looting and corruption that desecrated everything, practices that caused severe damage to the national economy and distorted the political act and led to the deterioration of the relationship between the citizen and the state" (President, 2021-2022), so the phenomenon of corruption is an actual reality in the country, with the acknowledged by the official authorities.

The government stressed the need to abandon the classical bureaucratic and rentier approaches, and to show the spirit of initiative and transparency in the conduct of local affairs, as local development is not an affair related to the central state, but rather a local dynamic that must be activated, and this is done through a review of the wilaya and municipal laws to deepen decentralization and liberalize local initiatives, while recalling the need to rationalize expenditures, and to go towards modern management free from bureaucratic practices and complexities, a transparent democratic experience and a continuous vigilance management related to the concerns of citizens. (Communities, 07/22/2017,)

Contents of the annual reports of the Algerian Court of Auditors (1995-2020):

In order to optimize the review of the public sector situation in Algeria, the content of the reports of the Court of Auditors was relied upon as it is the supreme oversight institution in the country.

For example, 856 oversight operations were conducted during the year 2019, and 610 operations were carried out in 2021, covering both the economic sector and the administrative sector, as a result of which violations of the rules of discipline in the field of budget and financial management were revealed. (auditors)

There has been a surplus employment in some public institutions, as well as a criticism of the lack of coordination between intervening departments. frequent amendments to the Public Transactions Clauses, failure to respect the Implementation and Receipt Deadlines; Changes related to transaction subject, shortcomings during project study and follow-up, random identification of needs deficiencies in the management of property, as well as an unjustified slowdown in the execution of judgements in favor of local authorities and sometimes the failure to lift the reservations observed at the level of institutions, Large expenditures were reviewed that did not reflect the reality of municipalities' development. As a result of these fundamental imbalances, the Council made a number of recommendations and submitted its report to the President of the Republic, as stipulated in the legal provisions. (Auditors, 2021.)

These reports completed in different years - for example the 2021 report as the most recent one - reveal huge financial imbalances, and sometimes an unjustified waste of public money, and the matter here is related to significant financial balances. What leads to the question about the reasons, whether it is incompetence in management or deliberate intention, that makes it criminalized behaviors from the legal perspective.

Despite this, the Court of Auditors indicated in its report issued in December 2018, related to reviewing the government's readiness to implement the sustainable development goals, that: "Sustainable development is rooted in the various national strategies and programs ... However, it requires more effort to embody the sustainable development goals." (Auditors, Review Report on Government Readiness to Implement the Sustainable Development Goals, 2018) This has confirmed the presence of some deficiencies that must be redeemed urgently, and which are included in the report in detail.

In summary, it can be said that the Court of Auditors in Algeria plays a practical role in uncovering the practical imbalances at the level of public administrations and institutions, and carrying out oversight tasks, and this is indicated by the various published reports of the Court.

However, the absence of treatment mechanisms, and the lack of action by the concerned authorities to correct the observed deviations, makes the Court reports stuck in the drawers, and does not affect positively in improving the level of public sector in terms of their performance and/or in terms of public services provided by them.

b. Activating oversight and anti-corruption mechanisms as mechanisms for reform:

It is essential to frame the oversight process through legal texts that regulate its mechanisms and regulate its qualities and determine the responsibilities of its participants, whether they be prior, timely or subsequent oversight processes.

Importance of oversight at the public sector level

Oversight is considered an essential task for all institutions and organizations, whether public or private, as it: "requires a clear identification of plans and expected results, discovery of errors, deviations and weaknesses in implementation, and work to correct them, or control them in service of the established plan." (Desouky, 2000)

Therefore, the effectiveness of the oversight process depends mainly on the existence of a prior plan, on the basis of which the quantitative and qualitative measurement of the extent to which the set objectives are achieved, and the extent of the effectiveness of the adopted plan, in terms of the volume of

resources, the value of expenses and revenues, and the nature of products or services provided to the public.

Thus, oversight is one of the core functions of management, as it is an audit function, which is required at all managerial levels. (Remini, 2015)

Balance of oversight Practices:

The strictness of oversight procedures and the expansion of their scope can spread fear among public sector employees, especially those in positions of responsibility. This makes them refrain from taking the initiative in making administrative decisions, for fear of being subject to judicial prosecution, which causes slow performance, procrastination in providing services and disrupting the functioning of public facilities.

In this regard, a presidential instruction was issued in 2021, according to which no judicial investigations or prosecutions should be initiated against judicial officials without taking into account the opinion of the Minister of Interior, Local Communities and Urban Development. (Presidential Instruction No. 02/2021, 08/25/2021)

On the other hand, this instruction liberates administrative work and removes the criminalization of the act of management, and puts administrative officials in a more comfortable situation, but its content actually leads to a question about the reality of the independence of the judicial authorities, and the extent to which they subordinate to the instructions of the executive authorities. (Presidential Instruction No. 05, 08/19/2020)

In the same context, a presidential directive was issued to exclude anonymous reporting messages, encouraging citizens to go directly to the competent authorities, or to the media, accompanied with evidence, which will be taken into consideration during possible investigations.

The exclusion of anonymous reporting messages is considered important, as this mechanism may be used not to combat corruption, but rather in the context of settling scores. However, it remains an important resource in this field, especially given the absence of effective mechanisms to protect witnesses and whistle-blowers of corruption cases.

Algerian commitment to fighting corruption

The repercussions of recent years have placed the official Algerian authorities before a moral responsibility to take the necessary measures in order to combat the phenomenon of corruption, and to take the necessary legal and practical mechanisms to limit its effects.

In this regard, the President of the Republic affirmed that: "Algeria, loyal to the message of the martyrs, will never allow the continuation of practices and

mentalities that planted the seeds of political and financial corruption and spoiled morals, fueled the souls of youth with despair, and with their dangerous deviations almost undermined the pillars of the national state..." (President, Message of the President of the Republic on the occasion of Victory Day, 03/19/2020)

Whoever examines the content of the speech notes that the president intends, through this paragraph, to emphasize the seriousness of the previous situation and its disastrous effects, as it almost completely undermined the foundations of the Algerian state, while noting the state's commitment to combating the practices and mentalities that previously led the country to a rotten situation, which is a moral obligation before it was a political commitment. Rather, it has become a popular demand that is unanimously agreed upon by all, regardless of the different political orientations, sectarian currents, or intellectual tendencies.

In the same context, the arrests and trials of those accused of corruption, and watching them on television channels under the roof of the court, showed different reactions, among supporters who believe that the time has come for the corrupt to be held accountable, and those who are skeptical.

Whatever the case, the substantive issue is that the content of the Government's official speeches, arrests and prosecutions, and the content of media publicity, are considered support and confirmation of the attempts to apply the legal arsenal created in order to establish a solid ground for combating corruption.

Conclusion:

It is possible to understand the reality of the Algerian public sector and its distinctive peculiarities, as it suffers from multiple applied imbalances, which revolve around the observed practices. And the public sector also faces an imbalance at the level of employing the legal texts in effect, which has led to the emergence of manifestations of corruption and the pervasiveness of its effects, to the extent that illegal practices have become considered by the collective consciousness as normal practices, these circumstances, in parallel with the global trend in this field, prompted the idea of relying on the governance system as a mechanism for reform in an urgent manner. This is what the Algerian authorities have tried to adopt, albeit gradually, through several legal and institutional frameworks, where Algeria relied on a two-pronged approach, namely activating the role of oversight in the country, as well as vigilance against corruption and the corrupt.

However, the achievement of governance, whether as a system or as a goal, is not only related to the legal text and institutional structures, as it is primarily a mentality and a daily practice, as it is noticeable in the recent period that the Algerian authorities seek to abandon the pattern of traditional practices and methods and adopt more modern administrative methods in the public sector in Algeria, this proves the fact that there is an actual tendency to develop the

public sector, adopt a participatory approach, and integrate oversight and anti-corruption methods, in view of the contents of the newly issued legal texts, most notably the constitutional amendment of 2020.

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