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Year: 2025 Vol : 09 No : 02 Page : 36 - 51



# A critical analysis of legal provisions for the prevention and combating of corruption in Algeria (Institutional mechanisms for combating corruption as a model)

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**Abstract**

In light of the widespread and alarming development of corruption as a global phenomenon, the inability of traditional institutional mechanisms to combat it, as well as globalisation and its resulting destruction of societal values and increase in the spread of social ills, Algerian legislators, like their counterparts elsewhere, have sought to create carefully studied strategies and mechanisms to address all aspects of the problem. This has been reflected in the establishment of new institutions and agencies as a mechanism to combat and prevent the phenomenon.

**Keywords:** Corruption, a global phenomenon, Algerian lawmakers, new agencies, tackling the phenomenon.

**الملخص**

في ظل الانتشار الواسع والتطور المخيف للفساد كظاهرة عالمية، وعجز الآليات المؤسساتية التقليدية لمواجهتها، وكذا العولمة وما أسفرت عنه من تهديم لقيم المجتمعات وزيادة انتشار الآفات، عمد المشرع الجزائري على غرار باقي التشريعات إلى خلق استراتيجيات وآليات دقيقة الدراسة للإحاطة بجميع جوانب المشكلة، مجسدا ذلك في انشاء مؤسسات وأجهزة جديدة كآلية لمواجهة الظاهرة والوقاية منها.

**الكلمات المفتاحية:** الفساد، ظاهرة عالمية، المشرع الجزائري، أجهزة جديدة، مواجهة الظاهرة.

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E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



## Introduction

Corruption is one of the biggest challenges and obstacles to the development and advancement of societies, as it represents a serious violation of human rights and a huge waste of countries' material and financial resources. This phenomenon has spread and worsened, becoming one of the most important issues today that all governments are concerned about at the local, regional, and international levels, it's taken up a lot of space in reform priorities because it's so widespread.

This has prompted all legislatures, both domestically and internationally, to focus on tackling corruption through national laws and international agreements, and to develop strategies and mechanisms to combat the phenomenon. Algeria, like these countries, has not been immune to this modern-day scourge, as it has suffered from widespread corruption in its society, with its many forms and varying levels, necessitating the adoption of numerous mechanisms and measures to combat this phenomenon. This has been reflected in the enactment of numerous laws and regulations and the creation of bodies and institutions active in the field of combating corruption, particularly the National Authority for the Prevention and Combating of Corruption and the Central Office for the Suppression of Corruption.

The importance of this study lies in the fact that corruption is a topic that has attracted considerable attention from the world as a whole. It has even come to be seen as a real threat to the development of countries, requiring the establishment of appropriate mechanisms and strategies to contain and control the phenomenon. On this basis, we can pose the following question:

**• How effective are the newly established national institutional mechanisms in combating corruption?**

To address this issue, we have decided to approach the subject from two main angles, as follows:

**The first topic: The conceptual framework of the phenomenon of corruption**

**The second topic: The reality of the institutional mechanisms developed to combat corruption in Algeria**

## THE FIRST TOPIC

## The conceptual framework of the phenomenon of corruption

The importance of researching corruption is evident in defining the concept of corruption and identifying its types in order to properly address and combat it, and ultimately eradicate it, despite the differences in studies and approaches used to study this phenomenon. Therefore, in this section, we will address the various definitions of corruption according to different approaches, then discuss the different types of corruption, whether administrative, political, economic, or social.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



## FIRST REQUIREMENT: The concept of corruption

In order to gain a good understanding of the concept of corruption, it is necessary to examine the various definitions of corruption, both jurisprudential and legislative, and then address its causes and manifestations.

### Firstly: Definition of corruption

There are many different definitions of corruption in an attempt to define it. Terminologically, the United Nations Development Programme defines corruption as: the abuse of official power, position, or authority for private gain, whether through bribery, extortion, influence peddling, favouritism, fraud, or the offering of gratuities to expedite services, or through embezzlement. However, this definition is limited in that it confines corruption to the public sector, excluding the private sector[1].

The definition of corruption provided by Transparency International is considered one of the most accurate, summarising it as 'the abuse of entrusted power for personal gain.' The organisation distinguishes between two types of corruption: corruption within the law, through facilitation payments made to obtain preferential treatment in a service provided by the recipient of the bribe in accordance with the law, and corruption against the law, which involves paying a bribe to obtain a service from the recipient of the bribe that is prohibited from being provided[2].

The International Monetary Fund defines corruption as: "an established relationship of influence aimed at obtaining benefits from this behavior for one person or a group of individuals ", In its 1999 report, it defines it as: "the misuse of public authority for private gain, which occurs when an official accepts, solicits, solicits or extorts a bribe."[3].

Corruption has been defined from an administrative perspective as: "Activities carried out within the government administrative apparatus that effectively divert that apparatus from its official purpose in favour of private interests, whether on a recurring or continuous basis, and whether individually or collectively. "[4].

Corruption has also been defined from a social perspective as:"the sum of actions that violate the law and customs, with the aim of achieving personal gain at the expense of the public interest. "[5].

From a legislative perspective, the United Nations Convention against Corruption of 2003 has been adopted[6], A specific description of criminal acts that are currently considered

[1]-Houria Ben Ouda, Corruption and Mechanisms for Combating It within the Framework of International Agreements and Algerian Law, doctoral thesis, Faculty of Law, Djillali Yebes University, Sidi Bel Abbes, Algeria, 2015–2016, p. 23.

[2]-Kara Malak, Anti-Corruption Mechanisms in Algeria: Theory and Practice, Presentation at the National Forum entitled Corruption and its Impact on Economic Development, University of 08 May 1945, Guelma, Algeria, 24-25 April 2018, p. 3.

[3] - Houria Ben Ouda, op. cit., p. 23.

[4]-Abdellali Haha, 2012-2013, Legal Mechanisms for Combating Administrative Corruption in Algeria, thesis submitted for a Doctorate in Law, Specialising in Public Law, Faculty of Law, Mohamed Khider University, Biskra, Algeria, p. 20.

[5] - Ibid., p. 21.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



corrupt behavior, leaving Member States the possibility of addressing other forms of corruption that may arise in the future, on the basis that the concept of corruption is flexible, making it adaptable from one society to another[7], This is through a set of practices that are to be criminalised, as set out in Chapter III, Articles 15 to 25, namely: "bribery of national officials, bribery of foreign public officials, embezzlement, misappropriation or leakage of property by an official, trading in influence, abuse of office, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of criminal proceeds, concealment, and obstruction of justice."[8].

As for the Arab Anti-Corruption Convention[9], It followed the same approach as the United Nations Convention against Corruption, focusing on the responsibility of public officials by criminalising acts limited to "bribery, embezzlement and misappropriation of public funds, torture and unlawful coercion, or infringement of freedoms and inviolability of homes, damage to or breach of public funds, obstruction of justice, and money laundering." Other conventions did not differ from the approach taken by the United Nations in the 2003 Merida Convention in calling on member states to criminalise misconduct by public officials, whether through bribery, abuse of power, embezzlement of public funds, or obstruction of justice[10].

As for the Algerian legislator's position on the definition of corruption, this term was not used in Algerian legislation before 2006, and was not even criminalised in the Penal Code. However, after Algeria ratified the United Nations Convention against Corruption in 2004 by Presidential Decree No. 04-128, dated 19 April 2004, it was obliged to adapt its domestic legislation to comply with this convention, which led to the enactment of Law 06-01 on the prevention and combating of corruption[11], which follows the same approach as the United Nations Convention, by referring to forms and manifestations of corruption, pursuant to paragraph A of Article 02 of Law 06-01[12].

**Secondly: Causes of corruption and factors contributing to its spread**

Research on corruption indicates that the phenomenon becomes more widespread and prevalent when the general conditions that allow it to flourish are present, although this varies from country to country, whether in the public or private sector.

With regard to the causes of corruption, there are direct causes that reinforce the spread of the phenomenon when public sector employees enjoy direct powers by law to approve certain public services or enact certain laws and legislation, especially when it comes to

[6]- United Nations Convention against Corruption, adopted by the United Nations General Assembly in New York on 31 October 2003.

[7]- Houria Ben Ouda, op. cit., pp. 29–30.

[8]- Presidential Decree No. 04-128 of 19 April 2004 ratifying, with reservations, the United Nations Convention against Corruption of 31 October 2003, J.R., No. 26, published in April 2004.

[9]-Arab Anti-Corruption Convention Published on the website: www.arabglnet.orgK, date of access: 02/04/2021.

[10]-Sharon Hassina, 'The Relationship between Corruption and Organised Crime,' Al-Ijtihad Al-Qadhai Magazine, Mohamed Khider University, Biskra, Issue No. 5, 2009, p. 60.

[11]- Law 06/01, dated 02/02/2006, relating to the prevention and combating of corruption, amended by Order No. 10-05, dated 26 August 2010, J.R., No. 50, dated 01/09/2010, amended and supplemented by Law 11-15, dated 02 August 2011, J.R., No. 11, issued on 10 August 2011.

[12]- See Article 02/a of Law 06-01 on the prevention and combating of corruption.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



granting licences and various official documents, which gives the administrative official varying degrees of control over government activities, such as contracts, administrative deals, incentives and tax privileges, especially in light of the inadequacy of the accounting and auditing system, as well as the granting of considerable powers to tax collectors in the absence of oversight, and the greed of employees to reap huge profits from government projects that require large expenditures. All of these are direct causes that tempt people to commit corruption[13].

There are also indirect causes that contribute to the spread of corruption, including low incomes among government employees, which leads some of them to accept bribes and engage in favouritism. Furthermore, the instability of the legal and legislative environment governing public institutions and the lack of transparency in laws and legislation related to corruption are all indirect causes that encourage corruption and its spread and prevalence in society[14].

As for the factors contributing to the spread of corruption, there are many that create conditions conducive to its spread, the most important of which are[15]:

- Absence of institutional state, or weak authority.
- Absence of democracy, freedom and participation.
- Absence of law, legislation and human rights guarantees.
- Lack of judicial independence.
- Lack of awareness and knowledge of mechanisms, accounts, laws and administrative systems.

**Third: Examples of corruption**

Corruption takes different forms depending on who's doing it and what they're trying to get out of it, so it's hard to list all the ways it happens. It could be an individual, a group, a private company, or a government agency. They might be doing it for money, political gain, or social status. Some of the main types are[16]:

**1- Bribery:** An economic crime and one of the oldest and most common types of corruption in various societies.

**2- Nepotism:** Corruption that embodies bad faith and malicious intent on the part of a government employee.

**3- Administrative negligence**: Resulting from the inability of administrative bodies to implement the state's public policies, and the resulting failure of employees to fulfil their obligations and duties.

**4- Abuse of power and authority**: A global phenomenon practiced in various countries and governed by prevailing awareness and laws that regulate the behavior of political and administrative leaders, varying in degree from one country to another.

**5- Misappropriation of public and private funds:** This is particularly prevalent in developing countries, where oversight of public funds is weak, means of detecting misappropriation are inadequate, and accountability and punishment are lacking.

**Fourth: Types of corruption**

[13]- Ben Hussin Naji, Corruption: Its Causes, Effects and Strategies for Combating It with Reference to the Situation in Algeria, Journal of Economics and Society, University of Constantine 02, Volume 4, Issue 4, June 2006, pp. 14-15.

[14]- Ibid., p. 15.

[15]-Ali Watoot, Description of the phenomenon of corruption, quoted from: https://annabaa.org/nbahome/nba79/019.htm, accessed on: 30/03/2021.

[16]- Houria Ben Ouda, op. cit., p. 80 ff.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



The types of corruption vary according to the criteria adopted by specialist researchers, who distinguish between two levels of corruption in terms of scale: greater corruption, committed by heads of state, governments, ministers and their counterparts; and lesser corruption committed by employees in various sectors, based on material needs or illegitimate ambitions, and usually taking the form of bribery, abuse of public office, and embezzlement[17].

In terms of prevalence, corruption is classified as international corruption, which spreads globally because of overlapping interests in a free economy, and local corruption, which is limited to what happens within a single country. Meanwhile, economic researchers classify corruption into two categories: corruption in the public sector, as a fertile ground for administrative irregularities such as bribery and embezzlement in the absence of individual incentives, and corruption in the private sector, such as foreign companies paying commissions and bribes to strengthen their positions[18].

As for the types of corruption according to their areas, and this is the most important, it is divided into administrative corruption, through the exploitation of the public employee's position and powers, by performing deviant bureaucratic acts with the aim of achieving personal benefits in an illegal and unjust manner, and political corruption, through the abuse of power by political leaders to achieve personal gain and increase their power and wealth, or the exploitation of influence to grant preferences, which leads to the poisoning and disruption of political and democratic life, and constitutes an obstacle to transparency in public life, a loss of trust in politicians and political parties, and a strong challenge to democratic values, and economic corruption, through obtaining material benefits and profits through acts contrary to values, ethics and the law, such as commercial fraud, price manipulation through the fabrication of crises in the markets, etc[19].

## SECOND REQUIREMENT: The reality of corruption in Algeria

Monitoring and measuring corruption is extremely difficult, as it is a sensitive phenomenon that usually takes place in secret, especially in developing countries, given the ineffectiveness of the bodies and institutions tasked with combating it. Algeria, like these countries, has seen political, economic and social developments that have created a fertile environment for the growth and spread of corruption in all its forms and in all areas. Corruption in Algeria has gone through several stages, with each stage dominated by a particular type of corruption. The period 1962-1965 saw the first signs of corruption emerge in the form of bureaucracy, nepotism and bribery. Among the most famous corruption cases during this period were the case of the fake mujahideen, the case of the Treasury of the National Liberation Front, and the case of the Solidarity Fund established by President Ahmed Ben Bella.

The period from 1966 to 1979 saw an upward trend in corruption, which became known as the era of grand corruption, because of the state pumping huge amounts of money into the industrial sector, leading to significant waste and embezzlement of state financial resources[20].

[17]- Naji ben Hussein, op. cit., p. 13.
[18]- Houria Ben Ouda, op. cit., p. 44.
[19]- Abdellali Haha, op. cit, pp. 29–30.
[20]- Bossaioud, Sarah and Agoun, Charaf, 'The Reality of Corruption in Algeria and Mechanisms to Combat It,' Economic and Financial Journal, University of om El Bouaghi, Volume 5, Issue 1, June 2018, p. 309.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



Despite the economic reforms that began in the 1980s, the period from 1980 to 1989 saw continued corruption and its penetration into the national economy, including important investment programmes in sectors that had experienced some delays, such as the construction of dams, urban development, health facilities and universities, and the construction of roads, railways and airports, all of which are projects in which corruption is easy to conceal, despite the controls imposed on large contracts starting in 1980. Algeria has recently witnessed strange paradoxes following serious manifestations of corruption, embodied in the involvement of senior officials and economic barons in scandals involving the embezzlement of billions of dollars, especially with the huge sums of money pumped into financing the national economy under the National Recovery Programme, growth support programmes and the 2010-2014 Five-Year Plan, which was allocated approximately $286 billion, and the latest five-year plan for the period 2014-2019, which was allocated $262 billion, as a tool for major projects and at the same time a breeding ground for corruption in its various forms[21].

## THE SECOND TOPIC

## The reality of institutional mechanisms established to combat corruption in Algeria

The Algerian legislator, like other legislatures, has sought to combat this phenomenon by criminalising acts of bribery, abuse of power and other corruption offences under the provisions of the Penal Code, and by adopting a number of measures and mechanisms that have come to be described as traditional, These include supervisory bodies, whether administrative through internal oversight within the administrative apparatus, external oversight from outside the administrative apparatus, or guardianship, and financial supervisory bodies embodied in the Monetary and Credit Council, the General Inspectorate of Finance, and the Accounting Council, in an attempt to eliminate the phenomenon.

However, the widespread prevalence of corruption and the proliferation of crimes in society in recent years, coupled with the inability of traditional institutions to combat the phenomenon, and with international agreements urging member states to establish internal agencies to prevent and combat corruption, Algerian lawmakers have been prompted to establish modern specialized bodies to combat this scourge, thereby strengthening traditional agencies and serving the new strategy for preventing and combating corruption. The National Authority for the Prevention and Combating of Corruption and the National Office for the Suppression of Corruption were established under the aforementioned Law 06-01.

### FIRST REQUIREMENT: National Authority for the Prevention and Combating of Corruption

After Algeria ratified the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, the Algerian legislature passed Law 06-01 on the prevention and combating of corruption, which provided for the establishment of the National Authority for the Prevention and Combating of Corruption as a special body to tackle the phenomenon. We will therefore examine the Authority by defining it, describing its functions, and assessing its role in combating corruption.

[21]- Ibid., p. 313.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



**Firstly: Establishment of the National Commission for the Prevention and Combating of Corruption**

This body was established to rescue the National Observatory for Monitoring Corruption[22], Established in 1996, replaced in 2000, and Decree 97-04 repealed[23], Regarding the declaration of assets, this body was established under Article 17 of Law 06-01, which states: **"A national body shall be established to prevent and combat corruption in order to implement the national strategy in the field of combating corruption."[24].**

This body was established in accordance with the United Nations Convention against Corruption, which stipulates that: **"Each State Party shall, in accordance with the fundamental principles of its legal system, ensure that there is a body or bodies, as appropriate, responsible for preventing corruption..."[25],** The second paragraph of the same article stipulates that the Authority shall be empowered to carry out its functions effectively and independently of any influence[26], And also in accordance with the African Union Convention[27], Through Article 05, which states**: "...States Parties shall undertake the following: ...Establish, operate and strengthen independent national bodies or agencies to combat corruption..."**[28].

In establishing this body, Algerian lawmakers followed the French model by making it an independent administrative authority, stipulating this independence in Law 06-01 on the prevention and combating of corruption[29].

**Secondly: The Role of the National Authority in Combating Corruption**

Article 20 of Law 06-01 on the prevention and combating of corruption sets out the numerous tasks and powers entrusted to the National Authority for the Prevention and Combating of Corruption, which are detailed and specified in Presidential Decree 06-413[30], The rate and completion, from monitoring, supervision, guidance and preparation of plans to protect integrity, through the distribution of these tasks and powers among its various departments, in implementation of the national strategy in the field of combating corruption[31], This is reflected in dual tasks of advisory and guidance measures, and supervisory and preventive measures.

[22]- Presidential Decree No. 96-233 of 2 July 1996 **establishing** the National Observatory for the Monitoring and Prevention of Corruption, J.O. No. 41 of 1996 (repealed).

[23]- Decree No. 97-04 of 11 January 1997 on the declaration of property, J.R., No. 03, published on 12 January 1997 (repealed).

[24]- See Article 17 of Law 06-01 on the prevention and combating of corruption.

[25]- See Article 06/1 of the United Nations Convention against Corruption.

[26]- See Article 6/2 of the United Nations Convention against Corruption.

[27]- African Union Convention on Preventing and Combating Corruption, adopted in Maputo on 11 July 2003, ratified by Algeria by Presidential Decree No. 06-137 of 10 April 2006, J.O. No. 24, issued on 16 April 2006.

[28]- See Article 05 of the African Union Convention on Preventing and Combating Corruption.

[29]- See Articles 18 and 19 of Law 06-01.

[30]- Presidential Decree No. 06-413, dated 22 November 2006, establishing the composition, organisation and operating procedures of the National Authority for the Prevention and Combating of Corruption, J.R., No. 74 of 2006, amended and supplemented by Presidential Decree No. 12-64 of 7 February 2012, Official Gazette No. 08 of 15 February 2015.

[31]- See Article 17 of Law 06-01.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



With regard to advisory tasks, the Authority proposes a comprehensive policy for the prevention of corruption, provides the necessary guidance to any person or public or private body, and proposes specific legislative and regulatory measures to embody the principles of the rule of law, through a department responsible for documentation, analysis and awareness-raising.

With regard to supervisory tasks, the Authority is responsible for collecting and utilising all information that may contribute to the detection and prevention of corruption. It also receives declarations of assets belonging to public officials and persons in similar positions, in accordance with the provisions of Article 06, paragraphs 1 and 2, of Law 06-01[32].

However, it should be noted that Presidential Instruction No. 03, dated 13 December 2009, on the implementation of the fight against corruption, reorganised the powers of this body and limited its role to prevention at the national level and international cooperation in this area, while creating another body tasked with combating and countering corruption, namely the Central Office for the Suppression of Corruption.

**Third: Assessment of the role of the National Commission in combating corruption**

A review of the Commission's tasks and powers in implementing the National Anti-Corruption Strategy reveals a gap between legislative texts and reality, given the limited nature of its oversight role, which is confined to preventive and awareness-raising measures, in view of the restrictions imposed on the Commission's work in several respects.

Although the Commission is called the National Commission for the Prevention and Combating of Corruption, the reality reflects otherwise, as its role is limited to prevention rather than combating corruption. This is clearly evident in the predominantly advisory nature of the Commission, from proposing a comprehensive policy for the prevention of corruption, researching legislative, regulatory and procedural frameworks for legal loopholes that facilitate the escape of those involved in these crimes and making recommendations to eliminate them, ensuring coordination between sectors and cooperating with other bodies involved in combating corruption, in addition to the awareness-raising role of the commission, Prepare programmes to raise awareness among citizens of the harmful effects of corruption. The preventive and advisory role of the Authority also includes the submission of an annual report to the President of the Republic, assessing its activities related to the prevention and combating of corruption and any shortcomings identified, as well as its recommendations, where appropriate. In addition, the failure to publish and publicise this report, either in the official gazette or in the media, as is the case with the French legislator, creates obscurity, ambiguity and a lack of transparency in Algeria's anti-corruption policy, and is not in line with the objectives for which the Authority was established[33].

The limited supervisory role of the commission is also evident in its deprivation of all mechanisms that would enable it to exercise its supervisory role and perform it to the fullest extent, which has led to the establishment of a commission with limited powers in the field of combating corruption, if not its complete absence, particularly with regard to restricting decision-making authority in cases where corruption is discovered[34], Furthermore, restricting the Commission to requesting information and documents with the approval of the relevant

[32]- See Article 6, paragraphs 1 and 2, of Law 06-01 on the prevention and combating of corruption.
[33]- Houria Ben Ouda, op. cit., p. 311.
[34]- Abdellali Haha, op. cit., pp. 501–502.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



administration, which in some cases may be refused, would hinder the provision of information to the Commission[35].

In addition, the Authority's inability to refer cases to the judiciary in the event of discovering criminal acts without first obtaining approval from the Minister of Justice is proof of the Authority's lack of functional independence and demonstrates its advisory, preventive and sensitising nature[36], This prompted lawmakers to establish a repressive and deterrent body in the form of the Central Office for Combating Corruption.

## SECOND REQUIREMENT: Central Office for Combating Corruption

The Algerian legislature has strengthened institutional mechanisms to combat corruption with a repressive deterrent mechanism to cover the shortcomings of the National Authority for the Prevention and Combating of Corruption, which was established by Decree 10-05[37], Complementing Law 06-01, as an operational unit of the judicial police, under the Ministry of Justice, The creation of this office was in implementation of Presidential Instruction No. 03 on the fight against corruption, dated 13 December 2009, which stipulated the need to strengthen and support anti-corruption mechanisms at the institutional and operational levels, This body is under the direct authority of the Minister of Justice and enjoys independence in its management and work, but not financial independence[38].

### Firstly: The role of the Central Bureau for Combating Corruption in tackling the phenomenon

This body is tasked with conducting investigations into corruption-related crimes under the supervision of the Public Prosecutor's Office, by strengthening the procedural rules for the judicial prosecution of such crimes, particularly with regard to extending the local jurisdiction of judicial police officers attached to the Office to cover the entire national territory, as well as referring the task of examining corruption crimes to courts with expanded jurisdiction.

It should be noted in this regard that, despite the repressive and punitive nature of the Office's powers, they combine oversight and recommendation in some cases. Furthermore, limiting the tasks related to combating corruption to investigation and inquiry and assigning them to the Bureau's Investigation Directorate, to the exclusion of its other structures and departments, raises many questions about the real purpose for which the Bureau was created[39].

### Secondly: Assessing the role of the Bureau in combating corruption

The assessment of the role of the Central Anti-Corruption Office is no different from that of the National Authority for the Prevention and Combating of Corruption. Although the

[35]- Houria Ben Ouda, op. cit., p. 312.

[36]-Kada Shahida, June 2019, The Algerian Experience in Combating Corruption and Its Paradoxes: An Ambitious Legal and Institutional Framework Lacking Enforcement Mechanisms, article published in the Journal of the Centre for the Rule of Law and Anti-Corruption, Qatar, Issue 01, p. 05.

[37]- Decree No. 10-05, dated 20 February 2010, supplements Law No. 06-01 on the prevention and combating of corruption, J.R., No. 50, published on 1 September 2010.

[38]- See Article 03 of Presidential Decree 11-426, dated 8 December 2011, establishing the composition, organisation and functioning of the Central Office for the Suppression of Corruption, J.O., No. 68, published on 14 December 2011.

[39]- Abdellali Haha, op. cit., p. 510.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



Algerian legislature established the Bureau to strengthen institutional mechanisms for combating corruption through repressive deterrent measures to compensate for the shortcomings of the National Authority for the Prevention and Combating of Corruption, a review of the elements that make up the legal nature of the Office shows that it is merely an external agency of the Ministry of Finance, no different from other agencies such as the General Inspectorate of Finance, especially given that the Office is subject to dual supervision and control by the executive and judicial authorities and is not granted legal personality or financial independence, which reduces its role in combating corruption[40].

It is nothing more than a body lacking legal and financial independence and subject to the authority and directives of the executive branch, which confirms the doubts of the UN and Transparency International regarding the independence of these newly created bodies and the effectiveness of their contribution to combating the spread and growth of this phenomenon in Algeria. Moreover, there are growing signs of corruption following the creation of these bodies, to a degree that portends danger[41].

## THIRD REQUIREMENT: Supreme Authority for Transparency, Prevention and Combating Corruption

In an attempt to remedy the shortcomings of previous bodies in dealing with complex corruption crimes, the Algerian legislature established the High Authority for Transparency, Prevention and Combating Corruption as a constitutional advisory institution through the 2020 constitutional amendment[42], Specifically, Article 204 considers the Supreme Authority for Transparency, Prevention and Combating Corruption to be an independent institution.

Article 02 of Law 22-08 stipulates that[43], However, the Supreme Authority is an independent institution with legal personality and financial and administrative independence[44].

Accordingly, the Supreme Authority for Transparency, Prevention and Combating Corruption can be defined as: "an independent constitutional institution concerned with achieving transparency in public life and preventing and combating corruption. **".**

According to Articles 16 to 20 of Law 22-08, this body is composed of a president appointed by the president of the republic in accordance with Article 21 for a term of five years, renewable once, and a council composed of three members chosen by the president of the republic from among independent national figures, Three judges, one from the Supreme Court, one from the Council of State and one from the Court of Auditors, are selected by the Supreme Judicial Council and the Council of Judges of the Court of Auditors, in addition to three independent figures selected by the presidents of the two chambers of parliament and the prime minister, as appropriate. They are selected on the basis of their competence in financial and legal

**[40]-** Far Jamila, 'The Reality and Challenges Facing the National Authority and Central Office in the Fight Against Corruption,' Journal of Rights and Freedoms, University of Mohamed Khider, Biskra, Issue 2, March 2016, p. 470.

**[41]-** Kada Shahida, previous reference, p. 05.

**[42]-** Constitutional amendment 2020, issued by Presidential Decree No. 20-442, dated 30/12/2020, relating to the issuance of the constitutional amendment, approved in the referendum of 01/11/2020.

**[43]-** Law 22-08, relating to the establishment, organisation, powers and composition of the High Authority for Transparency, Prevention and Combating Corruption, Official Gazette of Algeria, No. 32, published on 14/05/2022.

**[44]-** See Article 02 of the aforementioned Law 22-08.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



matters, as well as their integrity and experience in preventing and combating corruption[45], the members of the Council are appointed by presidential decree for a non-renewable term of five years[46].

**Firstly**: **The role of the High Authority for Transparency in addressing the phenomenon**

Considering that the High Authority for Transparency is a newly established oversight mechanism through which the legislator seeks to keep pace with developments in the field of corruption, this body has been granted broad powers, some of which are enshrined in the Constitution and others in Law 22-08.

**1- The powers of the Supreme Authority for Transparency as defined in the Constitution**

These powers are as follows:

- Developing a national strategy for transparency and the prevention and combating of corruption, and ensuring its implementation and follow-up.
- Collecting, monitoring and reporting information related to its area of competence and making it available to the competent authorities.
- Notifying the Accounting Council and the competent judicial authority whenever it detects irregularities, and issuing orders to the relevant institutions and agencies when necessary.
- Contributing to strengthening the capacities of civil society and other actors in the field of combating corruption.
- Follow up, implement and disseminate a culture of transparency, prevention and combating corruption.
- Express opinions on legal texts related to its area of competence.
- Participate in the training of officials of agencies responsible for transparency, good governance, prevention and combating corruption[47].

**2- Powers of the High Authority for Transparency as defined in Law 22-08**

The last paragraph of Article 205 of the Constitution, as amended in 2020, stipulates that the law shall determine the organisation and composition of the High Authority for Transparency, Prevention and Combating Corruption, as well as its other powers. In accordance with this, the aforementioned Law 22-08 was issued, which in turn specified the other powers of the Authority, as complementary to the tasks assigned to it under the Constitution. Article 04 of Law 22-08 stipulates the following: "... In addition to the powers provided for in Article 205 of the Constitution, it shall have the following powers:

- Collecting, centralising, exploiting and disseminating any information and recommendations that may help public administrations and any natural or legal person to prevent and detect acts of corruption.
-Periodically evaluating legal instruments relating to transparency, corruption prevention and control, and administrative measures and their effectiveness in the area of transparency, corruption prevention and control, and proposing appropriate mechanisms for their improvement.
- Receiving declarations of assets and ensuring that they are processed and monitored in accordance with the legislation in force.

[45]- See Article 23 of Law 22-08 mentioned above.
[46]- See Article 24 of Law 22-08 mentioned above.
[47]- See Article 205 of the 2020 Constitutional Amendment.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



- Ensure the coordination and follow-up of activities and actions related to the prevention and combating of corruption, based on periodic and regular reports supported by statistics and analyses and submitted to it by the relevant sectors and stakeholders.
- Collecting, centralising, exploiting and disseminating any information and recommendations that may help public administrations and any natural or legal person to prevent and detect acts of corruption.
-Periodically evaluating legal instruments relating to transparency, corruption prevention and control, and administrative measures and their effectiveness in the area of transparency, corruption prevention and control, and proposing appropriate mechanisms for their improvement.
- Receiving declarations of assets and ensuring that they are processed and monitored in accordance with the legislation in force.
- Ensure the coordination and follow-up of activities and actions related to the prevention and combating of corruption, based on periodic and regular reports supported by statistics and analyses and submitted to it by the relevant sectors and stakeholders.

It is clear from these texts that the High Authority for Transparency plays a preventive role, i.e. before corruption offences occur, which is reflected in its awareness-raising activities, and a deterrent role through its investigation of corruption-related crimes, and a supervisory role through its competence to investigate the conformity of legislative and regulatory action with the Constitution, as well as the use and management of material resources and public funds[48], This clearly demonstrates the promotion of the Commission's role from an advisory body to a supervisory body, reflecting the legislator's intention to strengthen its role in combating corruption, unlike the National Commission, which has not gone beyond an advisory role[49].

**Secondly: Assessing the role of the Supreme Authority for Transparency in combating corruption**

The role of the Supreme Authority in combating corruption may be different from that of its predecessors, given the broad powers and responsibilities conferred upon it by the constitutional founder. However, this does not hide the fact that subsequent legislation introduced regulatory and practical obstacles that limit the Authority's role in combating corruption, reducing it to a mere advisory body that makes recommendations and suggestions in this area, This is the same reason for the failure of the previous National Authority, with only a change in name from "Authority" to "Commission"[50].

Perhaps one of the most significant obstacles to the Supreme Transparency Authority's ability to carry out its work is the requirement that it operate under the supervision and approval of other entities or bodies. This necessitates a reconsideration of the Authority's independence as a criterion for its success in carrying out the task for which it was created. It also cannot take deterrent measures to prevent corruption or impose penalties without resorting to the judiciary, by notifying the judiciary whenever it detects violations, which widens the gap between theory and reality. The constitutional founder included the Authority's position through the 2020

[48]- See Article 184 of the Constitution after the 2020 amendement.
[49]- See Articles 202 and 203 of the Constitution after the 2016 amendment.
[50]- Boraoui Ahmed Boraoui, Daraji Shahrazed, Addressing Corruption in Algeria: The New National Anti-Corruption Strategy (The High Authority for Transparency, Prevention and Combating Corruption as a Model), Tebna Journal of Academic Studies, University Centre Si El Hawas Barika, Volume 06, Issue 01, 2023, p. 150 ff.

E.ISSN: 2661-7404 Academic Journal of Legal and Political Researchs P.ISSN:2571-9971
Year: 2025 Vol : 09 No : 02 Page : 36 - 51



constitutional amendment among the supervisory institutions, While a closer look at Article 205 reveals that the Supreme Authority for Transparency's role is limited to raising awareness and sensitising people to the dangers of corruption, collecting and processing information related to its area of competence, and making it available to the relevant authorities[51].

**Conclusion**

In conclusion, after reviewing the national anti-corruption strategy, we conclude that the evaluation of this strategy fell short of expectations. The results were meagre and weak, failing to achieve the stated objectives of eradicating or at least mitigating the phenomenon. Neither the legal arsenal nor the newly created bodies in this regard were effective. On the contrary, corruption in Algeria has worsened and developed, with a series of financial scandals in most sectors, both public and private, involving senior officials and politicians, who have not been punished because corruption cases are not subject to legal frameworks and provisions, but rather to higher-level instructions, and the bodies specialising in prosecuting those involved in corruption are subject to the advice of the highest authorities in the state.

It should be made clear that the establishment of new bodies specialising in combating corruption, represented by the Commission and the Bureau, was nothing more than a reaction by the political regime to the media, which dealt fiercely with corruption during that period, and in implementation of international commitments to prevent and combat corruption. Although this was done within the framework of legal texts that do not differ from international standards and measures to combat this scourge, these texts lack the fairness and comprehensiveness necessary to enable these special bodies to carry out their work in a sovereign and independent manner and to protect them from the control of the executive authority.

However, the situation is different with the High Authority for Transparency, which, as we have said, reflects the legislator's intention to keep pace with developments in the field of corruption and to combat it by creating this body and empowering it with mechanisms and characteristics that distinguish it from previous bodies, the success of this body will depend on addressing the shortcomings that marred its legal organisation. Nevertheless, it should be noted that Algeria has taken a major step towards combating administrative and financial corruption and promoting transparency in public life, in response to civil society groups that took to the streets in February 2019 demanding change, transparency in public life and accountability for the corrupt.

Therefore, the most important recommendations we have concluded are as follows:

-First and foremost, there must be political will to effectively and fairly implement the provisions and procedures contained in these mechanisms, ensuring transparency and accountability, and the balance of power and impartiality of the judiciary vis-à-vis the executive branch and the power of money. This effort must be supported by independent and effective administrative bodies. This is what we see in Algeria's new approach to curbing corruption, or at least reducing its incidence.

-Calling for support for the effective financial and administrative independence of bodies responsible for preventing and combating corruption, thereby strengthening their legal status and

[51]- Ahmed Amiri, Public Life Ethics and the Promotion of Transparency Principles in Accordance with the 2020 Constitutional Amendment (The High Authority for Transparency, Prevention and Combating Corruption as a Model), Journal of Research in Law and Political Science, Ibn Khaldoun University, Tiaret, Volume 07, Issue 01, 2020, p. 70.

regulatory framework and reducing their dependence on the executive branch, particularly by involving representative bodies in the appointment of their members and the election of their chairpersons.

-Raising public awareness of the dangers of corruption and activating and expanding the work of civil society within a strong social front that works to raise awareness of the high cost and dangers of corruption and increase the capacity to assist through a legal framework specific to the role of civil society in combating corruption.

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