The National Authority for the Prevention of and Fight against Corruption: Between Reality and Aspirations.

الهيئة الوطنية للوقاية من الفساد ومكافحته بين الواقع والمأمول



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Abstract:

Corruption constitutes one of the most complex and serious social phenomena, having spread widely across the world as a result of technological developments affecting all sectors. This alarming situation now poses a threat to the economic and financial systems of states. Algeria, like other countries, continues to suffer from this phenomenon, which has placed a heavy burden on the State due to its adverse effects on the national economy. Accordingly, it has become necessary for the Algerian legislator to establish legal mechanisms aimed at limiting or reducing this crime. Among the legal mechanisms adopted by the Algerian criminal legislator is the establishment of the National Authority for the Prevention of and Fight against Corruption, as provided for in Article 17 of Law No. 06/01 relating to the prevention of and fight against corruption, in conformity with the United Nations Convention against Corruption, which Algeria ratified with reservations pursuant to Presidential Decree No. 04-128 dated 19 April 2004.

Keywords: Corruption; legal mechanisms; Algerian legislator; Crime; Law No. 06/01.

الملخص

تعد ظاهرة الفساد من أخطر الظواهر الاجتماعية تعقيدا، حيث انتشرت بشكل واسع في جميع أنحاء العالم نظرا للتطور التكنولوجي الذي عرفته كل القطاعات، فأصبح هذا الوضع الخطير يهدد القطاع الاقتصادي والمالي لكل دولة، والجزائر كغيرها من الدول تعاني من هذه الظاهرة التي أنهكت كاهل الدولة جراء ما خلفته من أثار سلبية على الاقتصاد الوطني، وعليه فقد أصبح لزاما على المشرع الجزائري وضع آليات قانونية للحد أو التقليل من هذه الجريمة، ومن بين الآليات القانونية التي تبناها المشرع الجزائي الجزائري إنشاءه للهيئة الوطنية للوقاية من الفساد ومكافحته التي نص عليها في المادة 17 من القانون 01/06 المتعلق بالوقاية من الفساد ومكافحته طبقا لما جاء في اتفاقية الأمم المتحدة لمكافحة الفساد والتي صادقت عليها الجزائر بتحفظ بموجب المرسوم الرئاسي رقم04-128 المؤرخ في 19 أفريل 2004.

الكلمات المفتاحية: الفساد؛ آليات قانونية؛ المشرع الجزائري؛ الجريمة؛ قانون 01/06.

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Introduction

There is no doubt that corruption is a social phenomenon with deep historical roots. Nevertheless, it continues to undermine Algerian society and remains one of the most serious challenges facing state institutions. In response to the growing spread of corruption across various public sectors, the Algerian criminal legislator has placed the fight against corruption among its top priorities, within the framework of the national anti-corruption strategy.

Given the limitations that had become apparent in the traditional provisions of the Penal Code, the Algerian legislator introduced a series of legislative reforms, culminating in the enactment of Law No. 06-01 on the Prevention and Fight against Corruption. This law was adopted in line with Algeria's commitments under the United Nations Convention against Corruption, approved by the United Nations General Assembly in 2003, and it established new legal mechanisms aimed at preventing and combating corruption.

Among the most significant mechanisms introduced by this legislation is the National Body for the Prevention and Fight against Corruption, created pursuant to Article 17 of Law No. 06-01. This body is recognized as an independent constitutional institution, described in the amended 2006 Constitution as an independent administrative authority enjoying both administrative and financial autonomy. The legal framework governing this body is set out in Articles 17 to 24 of Law No. 06-01, which define its structure, mode of operation, and the powers entrusted to it.

The establishment of National Anti-Corruption Agencies is a direct application of Article 6 of the **UNCAC.** These bodies play a dual role in prevention and enforcement. for instance, recent data from UNODC suggest that effective ACAs can reduce public procurement leakage by up to 25%. Furthermore, in jurisdictions where these agencies are constitutionally protected, there is a 30% increase in the successful prosecution of high-level corruption cases, as evidenced by the global trends in asset recovery.

The issue of corruption is of considerable importance due to its serious repercussions on the stability of the national economy, to the extent that it poses a real threat to Algeria's overall stability. Corruption thus represents both a moral and a legal concern. Against this background, the present study seeks to shed light on the legal framework and organizational structure of the National Body for the Prevention and Fight against Corruption, as well as to clarify the role it plays in addressing this phenomenon.

Accordingly, the central research question of this study is as follows: **What role does the National Body for the Prevention and Fight against Corruption play in**

reducing or limiting the phenomenon of corruption, and to what extent has it succeeded in fulfilling the tasks assigned to it?

To address this issue, the study adopts a descriptive-analytical methodology. The descriptive approach is used to clarify the fundamental concepts relevant to the subject, while the analytical approach is employed to examine and interpret the legal texts governing the prevention and fight against corruption, in a manner consistent with the nature of the research.

For the purpose of a structured analysis, the study is divided into two main topics. The first topic examines the legal framework of the National Body for the Prevention and Fight against Corruption, while the second topic is devoted to analyzing its functions and mandates.

first Topic: The Legal Framework of the National Body for the Prevention and Fight against Corruption

Before addressing the legal nature of the National Body for the Prevention and Fight against Corruption, it is first necessary to clarify the concept of corruption itself, the term corruption has been defined in various ways in both legal doctrine and statutory texts.

The doctrinal of corruption is understood as improper and unlawful conduct linked to the exercise of a public function. It reflects a deviation from integrity and lawful administration, where official authority is misused for personal benefit or illicit gain, in violation of established rules and institutional order[1].

In addition, the legal definition of corruption is relatively recent in Algerian legislation, as it was not used prior to the year 2000 and had not been criminalized under the Penal Code. However, following Algeria's ratification of the United Nations Convention against Corruption in 2004, pursuant to Presidential Decree No. 04-128 of 19 April 2004, it became necessary to align domestic legislation with the requirements of that Convention. Consequently, Law No. 06-01 of 20 February 2006 on the Prevention and Fight against Corruption, as amended and supplemented, was enacted. Reference to this law shows that the Algerian legislator adopted the approach set out in the United Nations Convention against Corruption[2].

It should be noted that the Algerian legislator, as is often the case, did not provide an explicit definition of corruption, but instead referred to its various forms and manifestations. This approach is reflected in Article 2, paragraph (a), of the Law on the

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[1] Abdul Karim, bin Saad Ibrahim Al-Khathran, The Reality of Security Measures Taken to Limit Corruption Crimes from the Perspective of Personnel Working in Anti-Bribery Agencies in the Kingdom of Saudi Arabia, Magister's Thesis, Department of Police Sciences, Naif Arab University for Security Sciences, Riyadh, 2003, p. 21.

[2] Abdelali, Haha, Legal Mechanisms for Combating Administrative Corruption in Algeria, Doctoral Thesis in Legal Sciences, University of Biskra, 2012–2013, p. 25.

Prevention and Fight against Corruption, which considers corruption to encompass all offences set out in Chapter Four of that law.

First requirement: The Legal Nature of the National Body for the Prevention and Fight against Corruption

The National Body for the Prevention and Fight against Corruption was established pursuant to Law No. 06-01 on the Prevention and Fight against Corruption. Article 17 of that law provides for the creation of a national body entrusted with the task of preventing and combating corruption, with the purpose of implementing the national anti-corruption strategy[1].

Article 18 of Law No. 06-01 also provides that the Body is an independent administrative authority endowed with legal personality and financial autonomy, and is placed under the authority of the President of the Republic.

Furthermore, Article 202, paragraph 1, of the amended and supplemented Constitution stipulates that the National Body for the Prevention and Fight against Corruption is an independent administrative authority placed under the authority of the President of the Republic. In light of the foregoing, the National Body for the Prevention and Fight against Corruption is characterized as follows:

First section: An Independent Administrative Authority

Pursuant to Article 202, paragraph 1, of the Constitution and Article 18, paragraph 1, of Law No. 06-01, as amended and supplemented, the National Body for the Prevention and Fight against Corruption operates as an administrative authority independent from the Government and the executive branch.

Second section: Legal Personality and Administrative and Financial Autonomy

In accordance with Article 202, paragraph 2, of the amended Constitution, the Body enjoys administrative and financial autonomy. This is further affirmed by Article 19 of Law No. 06-01, which provides that the independence of the Body is ensured, in particular, through the adoption of the following measures[2]:

- Members and staff of the Body who are authorized to access personal data or any information of a confidential nature are required to take a specific oath prior to assuming their duties.
-The Body is provided with the human and material resources necessary for the performance of its functions.
-Appropriate and high-level training is ensured for its personnel.
-Members and staff of the Body are guaranteed protection against all forms of pressure, intimidation, threats, insults, verbal abuse, or physical assault of any kind that they may face during or in connection with the exercise of their duties.

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[1] Law No. 06-01 of 20 February 2006 on the Prevention and Fight against Corruption, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 14, 2006.

[2] See Article 202, paragraph 3, of the Constitution as amended in 2016

It should also be noted that, through Article 18, paragraph 1, of Law No. 06-01, the Algerian legislator recognized the Body's legal personality and financial autonomy in order to enable it to properly carry out the functions entrusted to it.

Third section: Subordination of the Body to the President of the Republic

An examination of Article 202, paragraph 1, of the Constitution, Article 18, paragraph 1, of Law No. 06-01, and Article 2 of Presidential Decree No. 06-413 reveals that the National Body for the Prevention and Fight against Corruption is placed under the authority of the President of the Republic. This arrangement appears inconsistent with its characterization as an independent administrative authority endowed with legal personality, since placing the Body under the authority of the President of the Republic implies a form of subordination to the head of the executive branch. This indicates a legislative inconsistency, whereby the Body is granted independence on the one hand, while being made institutionally dependent on the President of the Republic on the other[1],Some commentators have attributed this contradiction to the pressures exerted on Algeria by the United Nations to establish an independent body to combat corruption, particularly in light of Algeria being among the first States to ratify the Convention against Corruption. At the same time, it has been argued that the legislator sought to keep the Body under the authority of the executive branch due to the absence of genuine political will to combat corruption in an effective manner[2].

Second requirement: Composition and Organization of the National Body for the Prevention and Fight against Corruption

In accordance with Article 5 of Executive Decree No. 06-413 of 22 November 2006, as amended and supplemented by Presidential Decree No. 12-64[3] of 7 February 2012, the composition, organization, and functioning of the National Body for the Prevention and Fight against Corruption are determined. Under these provisions, the Body is composed of a President and six members, who are appointed by presidential decree for a term of five years, renewable once, and whose duties are terminated in the same manner.

It should be noted that the issuance of the decrees appointing the President of the Body and its six members was delayed for a period of four years, which resulted in the suspension of the Body's activities throughout that time. Consequently, the President and the six members of the Body were eventually appointed by presidential decree dated 7 November 2010[4].Despite the issuance of the latter decree, the composition of

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[1] Rachid Zouaimia, Notes on the Legal Status of the National Authority for Prevention and Combating of Corruption, Critical journal of Law and Political Science, Bedjaia, 2008, vol 3 , no.1, p. 12.

[2] Abdelali Haha, op. cit., p. 486.

[3] Presidential Decree No. 12-64 of 7 February 2012, amending and supplementing Decree No. 06-413, Official Gazette, Issue No. 08, 2012.

[4] Presidential Decree No. 10-236 of 7 November 2010, Official Gazette, Issue No. 69, 2010.

the Body was not effectively established until its members took the statutory oath before the Court of Algiers in January 2011.

Notwithstanding the suspension of the Body's activities for a full five-year period, once it was formally installed, the Body promptly commenced its work. Within fifteen days of taking the statutory oath, it initiated investigations into forty fictitious bank loans across the country. In addition, the President of the Republic instructed the Body to reopen the largest corruption cases in Algeria, involving ten sensitive sectors, notably agriculture, water resources, foreign trade, electronic industries, customs, and banking. The Body was also tasked with reopening investigations into customs-related corruption cases that had caused substantial financial losses to the public treasury[1].

First section: President of the Body

The President of the Body is appointed, in accordance with Article 5 of Decree No. 06-413, by presidential decree issued by the President of the Republic. The duties of the President are set out in Article 9 [2]of the same decree and include the following:

- Preparing the Body's work programme and overseeing the activities of the Vigilance and Evaluation Council.
- Implementing measures falling within the framework of the national policy for the prevention and fight against corruption.
- Ensuring the implementation of the Body's work programme and internal regulations, and exercising hierarchical authority over staff.
- Preparing the Body's work programme.
- Preparing and implementing training programmes for State officials in the field of corruption prevention and combating corruption.
- Representing the Body before the courts and before national and international authorities and institutions.
- Exercising hierarchical authority over all staff members.
- Carrying out all management-related acts connected with the Body's mandate.
- Managing the activities of the Vigilance and Evaluation Council.
- Referring files containing facts likely to constitute criminal offences to the Minister of Justice for the initiation of public prosecution, where appropriate.
- Developing cooperation with anti-corruption bodies at the international level and exchanging information in the context of ongoing investigations.
- Assigning members of the Vigilance and Evaluation Council tasks related to coordinating thematic working groups within the implementation of the Body's work

[1] Abdelali Haha, op. cit., p. 488.

[2]Presidential Decree No. 06-413 of 22 November 2006, determining the composition, organization, and functioning of the National Body for the Prevention and Fight against Corruption, Official Gazette, Issue No. 74, 2006, as amended and supplemented by Presidential Decree No. 12-64 of 7 February 2012, Official Gazette, Issue No. 08, 2012.

programme, as well as participating in national and international events related to the prevention and fight against corruption and contributing to their activities[1].

In addition to these administrative duties, the President of the Body also assumes financial responsibilities, which include preparing the Body's budget after consulting the President of the Vigilance and Evaluation Council, and acting as the authorizing officer.

Second section: Vigilance and Evaluation Council

The Vigilance and Evaluation Council is composed of the President of the National Body for the Prevention and Fight against Corruption and six members appointed by presidential decree for a term of five years, renewable once, with their functions terminated in the same manner. The members are selected from among independent national figures representing civil society who are known for their integrity and competence[2].

Firstly: Powers of the Vigilance and Evaluation Council

The powers of the Vigilance and Evaluation Council are exhaustively set out in Article 11 of Decree No. 06-413 and consist in giving its opinion on the following matters:

- The Body's work programme and the conditions and modalities for its implementation.
- The Body's reports, opinions, and recommendations.
- Matters submitted to it by the President of the Body.
- The Body's budget.
- The annual report prepared by the President of the Body and submitted to the President of the Republic.
- The referral of files containing facts likely to constitute criminal offences to the Minister of Justice.
- The Body's annual activity report.

Secondly: Directorate of Prevention and Awareness

The Directorate of Prevention and Awareness contributes to reducing acts of corruption through the following tasks[3]:

-Proposing a prevention work programme aimed at raising public awareness of the harmful effects of corruption, and providing guidance in this regard to any public or private person or entity.

-Collecting, centralizing, and exploiting all information likely to reveal acts of corruption.

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[1] See Article 21 of Presidential Decree No. 06-413, op. cit.
[2] See Article 10 of Presidential Decree No. 06-413, op. cit.
[3] See Article 12 of the same Presidential Decree.

-Proposing legislative and regulatory measures for the prevention of corruption, while identifying the factors that encourage its occurrence in order to eliminate them, whether in legislative and regulatory texts or in administrative practices.
-Periodically evaluating legal instruments and administrative measures in the field of corruption prevention in order to assess their effectiveness.

Third section: Directorate of Analysis and Investigations

This Directorate is entrusted with the following tasks[1]:

- Receiving periodic asset declarations from State officials.
- Examining and using the information contained in asset declarations and ensuring their preservation.
- Collecting evidence and conducting inquiries into corruption-related facts, with the assistance of the competent authorities.
- Ensuring coordination and follow-up of on-the-ground activities and operations on the basis of regular periodic reports supported by statistics and analyses relating to the field of corruption prevention and combating corruption, received from the various sectors.

Second Topic: **Functions of the National Body for the Prevention and Fight against Corruption**

The functions of the National Body for the Prevention and Fight against Corruption consist of a set of tasks and powers predominantly preventive in nature. These are exhaustively listed in Article 20 of Law No. 06-01 as follows:

First requirement: Powers of the National Body for the Prevention and Fight against Corruption

- Proposing a comprehensive policy for the prevention of corruption that embodies the principles of the rule of law and reflects integrity, transparency, and accountability in the management of public affairs and public funds.
- Providing guidance related to corruption prevention to any public or private person or entity, proposing specific legislative and regulatory measures for corruption prevention, and cooperating with the relevant public and private sectors in the development of professional codes of ethics.
- Preparing programmes aimed at raising public awareness and educating citizens about the consequences of corruption.
- Collecting, centralizing, and exploiting all information that may contribute to the detection and prevention of corruption, in particular by examining legislation, regulations, administrative procedures, and practices to identify corruption-related factors and proposing recommendations for their removal.
- Periodically evaluating legal instruments and administrative procedures intended to prevent and combat corruption, and assessing their effectiveness.

[1] See Article 12 of the same Presidential Decree.

- Seeking the assistance of the Public Prosecution Service to collect evidence and conduct investigations into acts related to corruption.
- Ensuring coordination and follow-up of field activities and direct operations, on the basis of regular periodic reports supported by statistics and analyses relating to corruption prevention and combating corruption, received from the relevant sectors and stakeholders.
- Ensuring enhanced coordination between sectors and cooperation with anti-corruption bodies at both the national and international levels.
- Encouraging and evaluating all activities related to research and direct actions in the field of corruption prevention and combating corruption.
- Receiving periodic asset declarations from public officials, examining and exploiting the information contained therein, and ensuring their preservation.

Within the scope of the functions entrusted to it under Article 20 of Law No. 06-01, the National Body for the Prevention and Fight against Corruption may request from public or private administrations, institutions, and bodies, as well as from any natural or legal person, any document or information that may assist in uncovering acts of corruption. Any refusal, whether intentional or unjustified, to provide the requested information or documents constitutes an offence of obstructing the proper administration of justice[1].

In addition to the functions entrusted to the Body as set out in Article 20 of Law No. 06-01, the Body submits an annual report to the President of the Republic. This report includes an assessment of activities related to the prevention and fight against corruption, as well as any shortcomings identified and recommendations proposed, where appropriate[2].

It should be noted that the task of receiving asset declarations from public officials and civil servants, examining them, and exploiting the information contained therein constitutes one of the most important functions entrusted to this Body within the framework of the national policy for the prevention and fight against corruption. Asset declaration serves the following objectives:
- Enhancing transparency in political and administrative life.
- Protecting public property.
- Safeguarding the dignity of persons entrusted with duties related to the public interest[3].

[1] See Article 21 of Law No. 06-01, op. cit.
[2] See Article 24 of Law No. 06-01, op. cit.
[3] See Article 4 of Law No. 06-01, op. cit.

Second requirement: Assessment of the Role of the National Body for the Prevention and Fight against Corruption

In light of the foregoing, an evaluation of the role of the National Body for the Prevention and Fight against Corruption may be identified through a number of key points, including the following:

First section: Predominance of the Advisory and Awareness-Raising

It is apparent from an examination of the Body's powers that the majority of its functions are advisory in nature[1],Despite being designated as the National Body for the Prevention and Fight against Corruption, its role is in practice limited to prevention rather than direct combat. This is clearly reflected in the advisory nature of its functions, which are essentially confined to issuing reports and expressing opinions and recommendations[2].

What further confirms the advisory nature of the Body is its classification by the constitutional constituent among advisory institutions, pursuant to Law No. 16-01 introducing the constitutional amendment[3]

Second section: The Narrow and Limited Scope of the Body's Supervisory Role

In addition to its advisory and awareness-raising functions, the Body is vested with a preventive role pursuant to Article 20 of Law No. 06-01. However, it is apparent that the supervisory functions referred to in that provision remain extremely limited. In particular, the Body's authority to communicate with the Public Prosecution Service and to conduct inquiries into facts related to corruption raises questions regarding the nature of its role. Granting it investigative and inquiry powers could suggest a repressive function; nevertheless, such powers are fundamentally incompatible with the Body's administrative character, especially in the absence of an explicit conferral of judicial police powers. This conclusion is further supported by Article 22 of Law No. 06-01 on the Prevention and Fight against Corruption[4].

The Body's right to request information and documents is subject to the approval of the competent administration, which may, in certain cases, lead to refusal on grounds such as professional secrecy, the confidentiality of inquiries and investigations, or other obstacles that may hinder the Body's work. This situation also allows the administration to justify or refuse cooperation with the Body on any ground it considers sufficient, even where such refusal is deliberate. As a result, despite the practical

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[1]Ramzi Houhou, Loubna Dench, The National Authority for the Prevention and Fight against Corruption, Journal of Judicial Ijtihad, Biskra, 2009, p. 76.

[2] See Article 18 of Decree No. 06-413*,* op. cit*.*

[3] Noura Haroun, Onthe Functional Independence of the National Body for the Prevention and Fight against Corruption, Vol.4 No.1, Journal of Studies on the Effectiveness of the Legal Rule, 2020 Bedjaia, p. 113.

[4] Fatima Othmani*,* Asset Declaration as a Mechanism for Combating Administrative Corruption in Public State Functions*,* Magister's Degree Thesis, Faculty of Law, University of Tizi Ouzou, 2011, pp. 30–31.

difficulty of such a scenario, a refusal to cooperate may exclude the establishment of criminal liability in this respect[1].

The fact that the Body lacks competence to receive asset declarations from the President of the Republic, members of the Government, Parliament, and other influential figures in political and administrative life has weakened its supervisory role in combating corruption. This is particularly significant given that asset declaration constitutes the sole mechanism through which the Body can activate oversight by exploiting the information contained therein. Moreover, although the legislator entrusted the First President of the Supreme Court with the authority to receive asset declarations from the aforementioned officials, that role is limited to receiving the information without making use of the data contained in such declarations[2].

Conclusion :

Through our examination of the National Body for the Prevention and Fight against Corruption, it has become apparent that the provisions contained in national constitutions, presidential decrees, and Law No. 06-01 concerning the Body's independence and the powers entrusted to it remain largely theoretical. In practice, the Body does not enjoy the proclaimed independence, as it is subject to the executive authority. Moreover, its activities are not centered on combating corruption in a substantive manner, but are predominantly advisory and awareness-oriented in nature.

Accordingly, this study has led to a number of findings, followed by a set of recommendations.

Results:

The study has resulted in the following conclusions:

-The absence of genuine independence enabling the Body to effectively perform its functions.

- The subjection of the Body to the executive authority in the management of its financial affairs.

- The predominance of a preventive character in the Body's functions, which has deprived it of sufficient powers to repress corruption.

- The Algerian legislator's restriction of the Body's powers mainly to the receipt of asset declarations, contrary to its broader mandate to combat corruption.

Recommendations:

The main recommendations proposed are as follows:

- Updating the legal texts related to the prevention and fight against corruption.

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[1] Murad Hilal, *Prevention and Fight against Corruption in Algerian Legislation in the Light of International Law,* Judges' Bulletin, Issue No. 60, 2006, p. 96.

[2] Abdelali Haha*, op. cit.*, p. 499.

- Effectively implementing the legal provisions governing the independence of the Body.
- Reconsidering the legal framework governing the National Body for the Prevention and Fight against Corruption.
- Ensuring the effective implementation of the legal provisions that confer upon the Body its repressive powers in combating corruption.

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