

The Crime of Bribery as a Form of Covering up the Proceeds of Money Laundering and the Culprit Parties

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Abstract: Corruption, with its various manifestations, is no longer according to the same state, but rather it is to become an international dimension, just as the confidence of individuals is low in the task that the state entrusted to employees and the seriousness of bribery, as the Algerian legislator criminalized it for its association with the world of money and business and being a hidden face for other crimes, including the crime of money laundering, and from it here it was taken this crime. Another curve for its association with economic changes from here has become a concern for members of society and the state.

Keywords: Corruption, laundering, bribery, crime.

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Introduction:

Corruption has been associated with favoritism and arbitrariness and influence with power, bribery and spreading this Crimes, within the public office, have become a grievance or appeal in administrative decisions that are useless The privileges obtained by public officials and employees without being control or accountability.

Corruption The necessity of intensifying international efforts to unify visions and concepts, and this Make it urged by the difficulty of what was required What actually happened, as international efforts were concluded with the conclusion of many agreements in this regard. The launch of the United Nations Anti-Corruption Agreement approved by the United Nations General Assembly 2003, and the fact that Algeria is one of the countries affected by corruption, where it occupied very advanced ranks and this is what It is confirmed by global transparency reports, so it was quick and was the first Arab country to ratify the agreement for a year 2004.

From this standpoint, the Algerian legislator issued the law to prevent and combat corruption. The overall corruption crimes stipulated in this agreement, in addition to other complementary laws, were from Among the most important crimes Which is included in the Law on the Prevention and Combating of Corruption No. 06 01, which concerns the crime of bribery with the most luck of treatment, in terms of the seriousness of the corruption as a whole, as its forms varied between bribery in the private sector, bribery in public procurement, bribery of foreign officials and employees of international organizations, as well as bribery of the national public official.

Bibery itself stipulated in Article 25¹.However, it has common elements and each image is independent of the other images in some elements.

SECTION ONE - Passive bribery ‘elements’:

The first picture (Bribery itself): This is the crime stipulated in Article 25 of the Anti-Corruption Law, and it is divided into:

The first image of the bribee: This is a passive crime.

The second image of the briber: This is an active crime (active corruption).

In this respect, we either take it from the employee who requests, receives, or accepts it, or we take it from the briber who gives it or promises him to give it.

In Egypt, for instance, bribery is the same in which there is an accused and an accomplice. The latter is the bribee.

By contrast, in Algeria, each is independent in his crime and this rule applies to all forms of bribery in public service, bribery in the private sector, and bribery of foreign employees and international organizations².

¹ Law No. 06-01 of 21 Muharram 1427, corresponding to February 20, 2006, on the prevention and fight against corruption, amended and supplemented by the Official Gazette No. 14 of March 8, 2006.

² Bribery of public officials under the Penal Code is governed by two provisions, Article 126 of the Code (passive bribery) and Article 129 of the Code (positive bribery), which have been repealed and replaced by Article 25 of

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1. **Characteristics of the offender** 'Public employee': Article 25, paragraph 2, which defines the character of the offender to be a public employee. Article 2 of the Corruption Law defines him as Public Servant³; who is in abroad sense an employee in the traditional sense of the public service law, also someone who holds a job or agency in public economic institutions, or even in a private institution. That performs a public function.

2. **His request or acceptance:** Meaning by directly, "on his own" or indirectly, "assigning others" requests or accepts bribe. This includes either an active action, such as a request, even if it was not met with acceptance by the other party, or a passive situation, such as accepting what was offered or granted to him, whether it was a request for himself or otherwise. Acceptance may be immediately accepted or a benefit may be given to a family member.

The request, acceptance, or offer of the person in need must be serious and not out of joking or flattering.

3. **The benefit is undeserved to him or to others:** This may be anything that brings benefit, and it may be a moral advantage, promotion, an honorary position, and it does not matter if it is a legitimate benefit or an illegitimate one. The French judiciary, in this case, considered the sexual benefit represented by sexual pleasure to be the subject of a crime and that it is undeserved. That is, the doer does not have the right to demand it for it is not linked to the service he provided, as it is not the wage for his work⁴.

The Algerian law, on the other hand, does not care who the beneficiary of the benefit is and the mere request constitutes a crime. Moreover, asking the manager of his sexual needs in exchange for a promotion is bribery and sexual harassment. Also, if a family member of the employee demands a benefit from others without the knowledge of the employee⁵, the latter is not a criminal due to the absence of criminal intent.

The advantage could be, as well, buying a property for less than its price, or selling the perpetrator a property for more than its price, or performing work for the employee without payment. Regarding the sexual benefit, the text is general and not precisely specified, and yet the important thing is that it is a benefit even if the work he performs is lawful, as long as this does not carry a wage. In other terms, there is no crime in paying a debt to the employee that is due or give him a present justified by kinship.

Law No. 06-01 of February 20, 2006, on the prevention and fight against corruption, which combined the forms of passive and positive bribery.

³ Article 42 of the Penal Code states: 'Anyone who does not participate in the crime shall be deemed to have been an accomplice to the crime, but who knowingly assists the perpetrator or perpetrators in committing the preparatory, facilitating or executing acts.e in the crime shall be deemed to have been an accomplice to the crime, but who knowingly assists the perpetrator or perpetrators in committing the preparatory, facilitating or executing acts.

⁴ Abd Al-Wahhab Al-Shishani, The Role of Absent Values That Govern the Construction of the Individual in Combating the Crime of Bribery, Research of the Fifth Scientific Symposium, held at the Center's headquarters in the period from 1715 August 1983, Bribery and Dangers, Publishing House of the Arab Center for Security Studies and Training, 1992, pp. 13 and 15.

⁵ Ahcen Bouskaia, Al-Wajeez in Criminal Law, on Employee Crimes, Business Crimes, Forgery Crimes, Part Two, Dar Houma, Algeria, 2003, p 33.

4. **For the Purpose:** The purpose of requesting or accepting the advantage is to comply with the briber's desire as a courtesy to him in exchange for:

Performing an active act or in return for performing a passive action.

- And that this work falls within the competence of the briber's job in the Corruption Law if it does not facilitate his job. This is not considered a bribe, such as a clerk who receives a sum on the pretext that he participates in governance. In such case, the sum is not considered a bribe because it is not within his powers.

Attempt: It is impossible to imagine attempt here, especially in acceptance, but the request can be considered attempt if it is issued by the employee and it is prevented from reaching the person in need due to some reason that has nothing to do with the perpetrator.

5. **The moment of bribery:** It is required that the request or acceptance be prior to performing the work or abstaining from it. It may happen that the employee is fired in favour of a citizen who performed his duty through legal means, and then after performing the work he asked for a sum. Bribery is not valid, as it was presented to the French judiciary that bribery is not performed⁶. As for what is immoral, the legislator amended in June 30, 2000 Article 432 added at any time, whether before or after.

6. **Criminal intent:** It is a crime with the intention of knowing and intending to be aware of all the elements of the crime. There is no crime, however, if the person is unaware that he is not an employee, such as someone who was not informed of the decision to appoint him or was informed of a forged arrest decision⁷. Or else, if he believes that he is not competent or that the gift he was given is for an innocent purpose and not in exchange for work or abstention from it. Also, if he believes that what he receives is deserved or he receives a gift thinking that it was sent to him by one of his relatives.

SECTION TWO- Active bribery(article 25/1)⁸:

1. **. All of:** Without specifying.

- A promise, offer or grant given to a public employee.
- An undue benefit for the benefit of the public employee or others.
- In order to perform an act or abstain from performing an act that is one of his duties and specializations.

2. **Behaviour:** It is not necessary for him to fulfil his promise since by merely offering a promise of a benefit the act constitutes the crime⁹, which is known as a promise in the future.

⁶ Abdullah Ahmed Malaki, Explanation of the Penal Code, Special Section, First Edition, Dara Al-Nahda Al-Arabiya, Egypt, 1988, p 37.

⁷ Ramses Behnam, Penal Code, Special Section Crimes, Knowledge Foundation, Alexandria, Egypt, p 320.

⁸ Law No. 06-01 mentioned above.

⁹ Abdelmajid Zaalani, Penal Code, Special Section, Kahnina Press, Algeria, 2000, p 139.

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3. Promise: It must be serious and its purpose is to incite the employee to breach his duties in addition to it being specific¹⁰. Just a promise is enough.

4. Offer: It may be present and presented immediately, not delivered, but shown.

5. Grant: It is delivery.

6. Benefit: As previously mentioned, offer of a woman to promise her body to an employee or someone else.

7. Purpose: In the Arabic text, it means performing an act or abstaining from an act. In the French text, it is performing an act while doing the job or while being employed, thereby the competence of an employee is limited¹¹, while performing the job in the latter; the example of a clerk is suitable for a bribe in the French text.

8. Parties to bribery: They are the briber and the bribee.

They agree on the most important thing, which is trading in the job¹², whether by the employee or the briber. It does not matter who benefits from the work or abstention from work, it may be the briber himself or someone else.

9. Attempt: It is impossible in the form of a promise, but permissible in the form of an offer or grant. The difference is that the legislator does not require a specific characteristic for the briber, and his activity is to promise, offer, or deliver, while the bribe person's activity is to accept an offer or grant, and he is always the employee.¹³

SECTION THREE - The one who is in charge of bribery:

It has two forms:

- Receiving gifts.
- Unjust enrichment.

1. Unjust enrichment:

Article 37 of the Corruption Law, which is a new crime, which is an application of the proverb: where did you get this from?

- Every public employee.

¹⁰ Ahsan Bouskaia, op. cit., p. 55.

¹¹ Azza Nasira, 'The Crime of Bribery under Law No. 06 01 on the Prevention and Combating of Corruption', National Forum, Faculty of Economic, Commercial and Management Sciences, Biskra University, 7-6 May 2012, p 3.

¹² Saeed bin Fahd Al-Zuhri Al-Qahtani, Measures to prevent the crime of bribery in the Kingdom of Saudi Arabia, Master's thesis, Department of Criminal Justice, specialization in Islamic criminal legislation, Naif University of Security Sciences, Riyadh, 2005, p 23

¹³ Ahmed Sobhi Al-Attar, The Audacity of Assaulting the Public Interest: A Study in the Special Section, Egyptian Book Authority, Egypt, 1993, p. 193

- He cannot provide a reasonable justification.

- For the significant increase that occurred in his financial liability compared to his legitimate income. That is, the increase must be significant and eye-catching, and most often it is a change in the offender's lifestyle, such as buying a villa or a luxury car, frequenting amusement parks, travelling a lot abroad, or an increase in his bank balance¹⁴.

The legislator reversed the rule of proof; the culprit is the accused, and he cannot prove the opposite. The legislator reversed the burden of proof and began with proof and did not provide the elements of the crime if the charge is the considered increase in financial liability compared to his legitimate income¹⁵.

This is done by inspecting and observing any employee whose financial liability increases compared to his legitimate income. He is, thus, accused of corruption, but rather of all corruption crimes and all the laws of the Republic, and he must present the opposite evidence to the burden of proof and this is not on the prosecution. Whoever submits a commercial register for importation in it will be an accomplice.

Enrichment is a continuing crime, which continues through the possession or exploitation of illicit property¹⁶, directly or indirectly.

It is distinguished from the two crimes in two ways:

Regarding the statute of limitations on illicit enrichment, there is a special provision for bribery, not embezzlement.

In the case of embezzlement, the statute of limitations for a public lawsuit is 10 years, and the rest of the crimes other than bribery are subject to a statute of limitations according to general law. However, if the proceeds of the crime are transferred abroad, there is no statute of limitations, and the statute of limitations for the penalty is determined according to the length of the sentence.

2. Receiving gifts:

It is a modern crime related to every public employee, and thus it refers to a form of passive bribery.

A -Accepting a gift or benefit: Unlike passive bribe, the one who accepts a benefit or a gift be they material or moral, legal or illegal. The receipt must be before initiating the matter, but after that there is no crime. That is, the subsequent reward is not criminal¹⁷.

B - The reality of the benefit is broader than the gift: The gift is not necessarily in exchange for something else, but the benefit may be in return. However, even the gift is

¹⁴ Ahcen Bouskaia, Private Criminal Law, Part Two 'Employee Crimes. Business crimes. Forgery Crimes', Darhouma for Printing, Publishing and Distribution, Algeria, 2004, p 37.

¹⁵ Hamad Ahmad Al-Mashhadani, Explanation of the Penal Code, Special Section in Positive Law and Islamic Sharia, International Scientific House, Dar Al-Thaqafa, Amman, Jordan, 2001, p 352.

¹⁶Ramses Behnam, op. cit., p318.

¹⁷ Hanan malika crimes of corruption, bribery and embezzlement and the gain of the public employee from behind his employment in Islamic jurisprudence and the Algerian anti-corruption law compared to some of the Arab-law / New University Publishing House, Alexandria 2010 p 27.

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considered a benefit. From the title of the section, we understand receiving gifts, but Article 38 came in the sense of accepting gifts¹⁸, and from the context of the text it is understood as receiving, and not just accepting, as in the crime of passive bribery

c- The nature of the gift or benefit: This gift or benefit may affect the conduct of a procedure or affect a transaction related to public service. In contrast to bribery, it is required that in exchange for the offer or promise of the gift, the performance of an action or abstention from an action¹⁹. That is, fulfilling a need is the price of the gift, and yet receiving gifts is not a condition of fulfilling a given need.

d- Criminal intent: It is the public employee's knowledge that the person giving the gift or benefit has a need for him, and he nevertheless proceeds to receive it²⁰. As such, in bribery, the employee accepts a benefit in return, which is the performance of an act or abstention from it.

Receiving a gift for which there is no compensation may affect him when the case is decided or a submitted request or a decision made regarding a process in which he is not necessarily competent to work, performing work or refraining from doing work. In principle, this does not affect the progress of the case because he has no role in that. As soon as he accepts, the crime is committed²¹. Subsequently, the judge must adhere to the narrow interpretation that whoever hands him the gift has a demand on his part. In addition, he must adhere to the issue Jurisdiction that it is a potential crime.

We understand from the wording of the bribery text that the gift is accepted before initiating, but if it occurs after that or there is no agreement that it will be delivered later than, then there is no crime.

Bribery is a type of job trading using the position of someone who receives gifts. The crime occurs merely by accepting a gift from a person with some interest. Here, it is impossible to imagine the attempt being either a complete crime or preparatory acts.

3- Bribery of foreign public officials and employees of international organizations:

A - The status of a foreign public employee: This is every person who occupies a legislative, executive, administrative, or judicial position in a foreign country, whether appointed or elected²². He may be, as well, every person who exercises a public function for the benefit of a foreign country, including work for the benefit of public bodies or public institutions.

B - The status of an employee in international organizations: (Official), not a (Public Servant), who is every international employee or every person authorized by an institution of this type to act on its behalf. Public international organizations comprise organizations affiliated

¹⁸ Central Office for the Suppression of Corruption, Corruption in Belgium (a first strategic analysis 2002 edition).

¹⁹ Law No. 06-01 mentioned above.

²⁰ Hanan malika, op. cit., p28.

²¹ Mayhoub increases European efforts to combat corruption First National Forum on Good Governance and Anti-Corruption, University of May 8, 1945 Guelma, on 08/07 April 2007.

²² Belaliyat Ibrahim, Elements of the crime and methods of proving it in the Algerian Penal Code, first edition, Dar Khaldounia, Algeria, 2007, p 17.

with the United Nations, such as the World Health Organization, the International Labour Organization, and the Supreme Council for refugees, the Education, Science and Culture Organization (UNESCO), as well as regional organizations such as the African Union and the League of Arab States²³.

C - The material element: The same in passive bribery and active bribery.

D - The purpose of bribery: It is to carry out an action or refrain from an action in order to obtain or maintain a deal or any other undeserved privilege related to international trade and the like.

E - Jurisdiction: The principle of territoriality and personality applies.

4- Bribery in the private sector: Same as previous provisions. There is passive and active bribery. The difference is in the character of the perpetrator with regard to passive bribery, while the legislator stipulates:

- He must be the director of an entity or working in it under any capacity in the private sector. That is, he belongs to the institution as a legal person whatever the form and activity of the entity; civil, commercial, association, party, cooperation, federal union, and whatever the position of the perpetrator therein is as a director or employee²⁴.

- The beneficiary of the benefit must be the manager of the entity or someone who works for it under any capacity. This is in active bribery.

A - Criminal intent: This is the general criminal intent as previously explained.

Article 40: A bus owner who is not a company is a natural person and has workers²⁵. This article does not apply to him in addition to a doctor or a lawyer. The legislator also abolished bribery from the Penal Code that concerns public and private parties, and the Corruption Law introduced bribery an entity.

There is a dual image of the public employee: active and passive, also in the private sector and in the bribery of foreign employees. He accepts demands, and the activeness or passiveness of who offers.

B - General penal provisions:

• **Natural person:**

- Active and passive bribery, bribery of foreign public officials and employees of international organizations in its passive and active forms, and illicit enrichment: Imprisonment from two to 10 years and a fine from 200,000 to 1,000,000 DZD.

²³ Consideration of Presidential Decree No. 04-128 on the ratification by reservation of the United Nations Convention against Corruption No. 44 of April 43, 2004.

²⁴ Abderrahmane Khalfi, Criminal Procedures in Algerian and Comparative Legislation, Dar Belkis, 2015, Algeria, pp. 105-106.

²⁵ Saadi Haidara, 'How the Algerian legislator dealt with the crime of bribery in Law No. 06 01 of 20/02/2006 on 112 on the prevention and fight against corruption', Academic Journal of Legal Research, Faculty of Law, Abderrahmane Mira University, Bejaia, 2010, No 1. pp 161. 162.

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- Receiving gifts carries imprisonment from six months to two years and a fine from 50,000 to 200,000 DZD.

- **Bribery in the private sector:** Imprisonment from 6 months to 5 years and a fine from 50,000 to 500,000 DZD²⁶.

- **Increased punishment:** If the offender is a judge or an employee who exercises a high position in the state, or a public officer, or an officer or judicial police officer, or someone who exercises some of the powers of the judicial police, an employee of the police secretariat, or a member of the National Authority for the Prevention and Combating of Corruption, imprisonment from 1 to 20 years.

- **Exemption from and reduction of penalties:** Shall be in accordance with the conditions stipulated in Article 49, which were previously explained in the crime of embezzlement.

- **Supplementary penalties:** They are applied as they are in the Penal Code and are permissible according to Article 50 of the Corruption Law.

- **Confiscation of funds and illegal proceeds:** Resulting from the crime of bribery, taking into account the case of recovering funds and the rights of others third well-meaning parties, Article 51/2²⁷.

- **Restitution:** As a result of bribery in its various forms, the value of the benefit or profit obtained by the convict has to be returned. The restitution ruling is mandatory, as in embezzlement.

- **Invalidation of contracts, deals, patents, and privileges obtained from -- committing bribery:** Article 55 by the criminal judge.

- **Participation and attempt:** The general provisions of the Penal Code in Articles 52 of the Corruption Law must be applied.

- **Penalties applied to a legal person:** A legal person is responsible for corruption crimes in all their forms, which is a fine equal to “1” to “5” times the maximum fine legally prescribed for the crime when committed by a natural character, in addition to the rest of the penalties.

- **Follow-up:** The crime of bribery in its various forms and manifestations is distinguished from the crime of corruption in the issue of statute of limitations.

- **Regarding the statute of limitations for public lawsuits and punishment:** In embezzlement, the crime is subject to statute of limitations only in one case if the proceeds of the crime are transferred abroad²⁸.

With regard to bribery, neither the public lawsuit nor the penalty shall be subject to statute of limitations in all cases in accordance with Article 54, Paragraph 02 of the Anti-Corruption

²⁶ Law No. 06-01 mentioned above.

²⁷ Law No. 06-01 mentioned above.

²⁸ Dalila Mbarki, 'Controlled delivery of proceeds of crime', National Forum on Combating Corruption and Money Laundering, Mouloud Mammeri University - Tizi Ouzou -, Faculty of Law, 10 March 11, 2009, p 4.

Law, which refers us to the Code of Criminal Procedure, Article 08 bis and Article 612 bis, which were added pursuant to Law 04/14, dated November 10, 2004.

Conclusion:

Through this study for the crime of bribery in the law to prevent and combat corruption No. 06 01,

- According to which we touched on the objective and procedural aspect of the crime, with an analytical reading of the text of Article 25.

- From it, then we moved to analyzing the various procedures mechanisms to combat the crime of bribery, whether it was in measures.

- Preventive or repressive, and from the entirety of this study we have reached the following conclusions:

- We find it associated with corruption So much.

- The crime of bribery is considered one of the most dangerous and widespread corruption crimes.

- Through book addresses and articles.

- The Algerian legislator adopted the bilateral system in criminalizing the bribery that settles between the briber and the briber in.

- The criminal risk is considered original actors so that neither of them escapes, but the new is new.

- In this law, the legislator integrated the text of Article 126 and Article 129 canceled by the Penal Code in Article 25 of Law No. 06 01.