

The conflict of interest crime in public transactions**جريمة تعارض المصالح في الصفقات العمومية*****(1)Ferdous Stambouli**

**(1)The Laboratory of Legal Mechanisms for Sustainable Development ,
University of mohammed bougara boumerdes,f.stambouli@univ-boumerdes.dz
Algeria**

Received: 04/05 /2025**Accepted: 07/10 /2025****Published: 01/12/ 2025****Abstract:**

The crime of conflict of interest in public procurement is one of the manifestations of administrative corruption that threatens the transparency and integrity of public administration. The intervention presents the conceptual and legal framework of this crime, with a focus on the position of the Algerian legislator in the anti-corruption law and the law of public procurement. It also reviews the forms of the offence, its elements, and the challenges associated with its detection and prevention. It concludes with the need to reform the legal system by adopting a precise definition of conflict of interest, strengthening control and disclosure mechanisms, and intensifying awareness and training to avoid these practices that undermine citizen confidence in the public administration.

Keywords: public transactions, corruption, conflict of intrest, public employee, function.

***Ferdous stambouli, f.stambouli@univ-boumerdes.dz**

INTRODUCTION:

Public procurement is a central mechanism on which the state depends to meet its needs and realise its economic and social projects, as it represents an area in which public and private interests largely interfere, making it highly vulnerable to the risks of corruption and administrative deviations. In this context, conflict of interest is one of the most important illegal risks that threaten the principles of transparency and integrity in the management of public funds and negatively affect the credibility of public institutions and society's trust in them.

The existence of a conflict of interest in itself is not always an offence, but becomes one when it leads to influencing the decision making process or giving unjustified privileges, as a result of illegal abuse of office or position. In this sense, the offence of conflict of interest in public procurement is one of the offences that modern legislation, including Algerian legislation, attempts to address by establishing precise legal and regulatory mechanisms aimed at preventing and combating it, in order to preserve the principles of transparency and integrity in the management of public funds.

The importance of the topic stems from several aspects, including: The increase of administrative corruption cases related to public procurement , and the limited legal awareness of the concept of conflict of interest and its risks , also The need for effective

oversight mechanisms to prevent the exploitation of public office to achieve private interests.

The question of this paper is: What is the role of the Algerian legislature in controlling the offence of conflict of interest in the field of public procurement?

The legal analytical method was adopted by analysing the relevant Algerian legal texts, particularly Ordinance No. 06-01 on the fight against corruption, as well as a critical reading of comparative legislation and international recommendations in this field.

1. First section: The concept of the crime of conflict of interest in the field of public procurement

Public procurement is a vital area in the management of public funds, and a conflict of interest occurs when an employee's personal interest interferes with his duties. When this conflict affects decision-making, it becomes an offence that requires legal proceedings. This first theme aims to clarify the concept of this offence through its definition and the effects of committing it, in addition to clarifying the cases of conflict of interest in the field of public procurement.

1.1. First: Definition of the crime

According to this first point we will deal with jurisprudential definition and Definition of International Organisations and the algerian legislation definition.

A. Jurisprudential definition

The term conflict of interest is defined as ‘a particular situation in which a public government employee, lawyer, politician or responsible person in an organisation in the execution of their duties is in a competitive and profitable position that disqualifies them from discharging their duties to others fairly’¹.

It is also defined as a situation where a public official is in a position where he chooses between his own interest or to put it aside for the benefit of the public interest, and the crime exists when he is intentionally present in a deal or transaction that conflicts with his interests, directed by the direction that serves his objectives².

B. Definition of International Organisations

1. Organisation for Economic Co-operation and Development (OCDE) definition

The OCDE defines the crime of conflict of interest ‘A conflict of interest means a conflict between the public interest and the private interests of a public employee through which that public employee, in a private setting, has interests that could incorrectly impact the method by which he discharges his obligations and responsibilities’³.

2. United Nations definition

A reading of the United Nations Convention against Corruption (UNCAC) of 2003 shows that the definition is not clear, but on the other hand, the Legislative Guide for the execution of this Convention includes conflict of interest in two articles, through Article 8, which states: 'Each State Party shall endeavour, where necessary and in accordance with the fundamental principles of its internal law, to establish measures and systems that require public officials to declare to the public authorities, among other things, their outside activities, employment, property, gifts or significant benefits that may lead to a conflict of interest with their duties as public officials'⁴.

It is also mentioned in Article 12 (e), which states: "Prevent conflicts of interest by imposing restrictions, as necessary and for a specified period of time, on the practice of professional activities by retired public employees or on the employment of public employees in the private sector after their resignation or retirement when such activities or employment are directly related to the functions performed or supervised by such public employees during their term of service."⁵

C. Definition of the crime of the conflict of interest in public procurement according to Algerian legislation

The Algerian legislator defined the crime of conflict of interest in Law 06-01 on preventing and combating corruption through Article 8 : "A public official is obliged to inform the governing authority to which he is subject if his private interests conflict with the public interest or would affect the normal exercise of his duties."⁶

Article 67 of Law 23-12 regulating the rules of public procurement contains a reference to conflicts of interest, but it specifies the cases in which a public official may have a conflict of interest, according to the article, which states: 'When the direct and/or indirect private interests of a public official or public servant who participates in the preparation, conclusion, monitoring, negotiation or execution of a public transaction conflict with the public interest and would affect the normal exercise of his duties, he must inform his competent authority, in writing, and recuse himself from this function'⁷.

1.2. Second: Consequences of committing the crime of conflict of interest in the public procurement field

This part will discuss the most important consequences and effects of committing the crime of conflict of interest in the field of public procurement.

A. abuse of the principles of public procurement

Article 5 of Law 23-12 establishing the rules of public procurement states that there are three basic principles of public procurement, which are the principle of free access to public requests, the principle of equal treatment of candidates and the

principle of transparency of procedures, which ensure the effectiveness of public procurement on the one hand and a means of protecting public funds on the other hand⁸.

These principles affect the proper management of public funds and protect them from corruption, especially since the principle of transparency involves revealing appropriate and sufficient information to the administration in a reasonable and appropriate time in order to ensure the good management of public funds and the rationality of spending and not wasting public money⁹.

B. Prejudice to the public interest

The crime of conflict of interest is mentioned through Article 8 of Title 2, entitled Preventive Measures in the Public Sector, where we find that the process of informing the employee to his supervisor about the existence of a conflict between public interests and personal interests ¹⁰that may affect his work process has a preventive role in order not to damage the administration or expose it to suspicion and accusation by those who deal with it¹¹.

The act of committing corruption in the field of public procurement is common due to its complex procedures. The employee may harm the public interest intentionally or unintentionally, so this offence can only be committed if there is a special intent on the part of the perpetrator in favor of personal interest over public interest¹².

1.3. Third: Situations related to conflicts of interest in public procurement

There are many forms of conflicts of interest in public procurement:

A- At the stage of preparing the public procurement

Employees are asked to make some administrative decisions aimed at preparing for the transaction, but there may be some cases that may affect the normal performance of their duties, which are as follows¹³:

- 1- If the employee has a direct or indirect financial interest in the public transaction in which he makes the decision alone or with others, which may affect the objectivity of the decision-making.
- 2- If the public servant participates in a commercial or professional business in which there is a conflict between his interests and the interests of the contracting authority in which he works.
- 3- To use his position to provide unjustified advantages or privileges, whether for himself or his relatives.
- 4- Participating in a commercial business or profession that is practiced with a permit without providing notification to the entity in which he is responsible or the supervisory authorities to which he is subject.

B-At the stage of preparing the Book of Conditions

Article 17 of Law Number 23-12 establishes that the preparation of the Book of Conditions is the initial stage before the beginning of any procedure for inviting competition, including the special instruction books that specify the conditions for each public transaction¹⁴.

In addition, Article 67 confirms that if a public official prepares a public transaction, he is considered to be in a state of conflict of interest between his personal interest and the public interest, whether directly or indirectly¹⁵.

Therefore, this case is considered one of the most serious cases in which a public official can be in a conflict of interest, as he steals the smallest details of the financial or technical conditions of the public deal, which directly affects the integrity of his performance of his duties and impartiality¹⁶.

2. The second section: The procedural framework of the crime of the conflict of interest in public procurement

The crime of conflict of interest in public procurement is based on the existence of 4 elements, which will be clarified through this axis.

2.1. First: The legal element of the crime of conflict of interest in the field of public procurement

The crime of conflict of interest in the field of public procurement is established in both the Prevention and Combating of Corruption Law and the Public Procurement Law.

A- Law related to the Prevention and Combating of Corruption

Article 8 of Law No. 06-01 states that a public official is obliged to inform the governing authority¹⁷.

In addition to Article 34, entitled Conflict of Interest, which stipulates that a public official who violates the provisions of Article 9 shall be punished by imprisonment from 6 months to 2 years and a fine from 50,000DA to 200,000 DA¹⁸.

We note that Article 9 was amended by Ordinance 10-05 amending and supplementing Law 06-01¹⁹.

B- Public Procurement Law

Article 67 of Law 23-12 states: "When the direct and/or indirect private interests of a public official or public employee who is involved in the preparation, conclusion, approval, drafting, approval or execution of a public procurement contract conflict with public interest and would affect the normal exercise of his duties, he must inform his supervisory authority, in writing, and leave this task"²⁰ which corresponds to Article 90 of Presidential Decree 15- 247²¹.

2.2. Second: The presumed element (character of the criminal)

The presumed element of the offence of conflict of interest in the field of public procurement is the character of the perpetrator responsible for committing the offence, which is the public official²².

Article 4 of Law 06-03 containing the General Statute of the Public Service defines the offence as follows: "An employee is any person appointed to a permanent public post and assigned to a rank in the administrative hierarchy."²³

Article 2 of Law 06-01 defines it in paragraph B as:

"1. Any person who holds a legislative, executive, administrative, judicial or judicial position or an elected local popular council, whether appointed or elected, permanent or temporary, paid or unpaid, irrespective of rank or seniority, and whether appointed or elected, permanent or temporary, paid or unpaid.

2. Any other person who holds, even temporarily, a paid or unpaid position or agency and contributes in that capacity to the service of a public body, a public institution or any other institution whose capital is wholly or partly owned by the State, or any other institution providing a public service.

3. Any other person defined as a public official or equivalent in accordance with the applicable legislation and regulations."²⁴

Consequently, the crime of conflict of interest in the field of public procurement must be committed by a public official, despite the difference in the two previous definitions, where we find that the definition contained in Law 06-03 on the Public Service was brief and left the rest of the details to other laws, unlike the definition contained in Law 06-01, which was more comprehensive and included a description of various categories of employees, and the legislator did well by imposing expanded sanctions on various categories of employees and in all sectors²⁵.

2.3.Third: The material element in the crime of conflict of interest in public procurement

The material element is based on the existence of an act or behaviour that depends on the crime committed. The act may be positive or negative, immediate or continuous, and may be sudden or come as a result of habitual doing and may consist of a single act or a series of acts²⁶.

The material element is divided into two elements:

A- The presence of a public official in a situation of conflict of interest

The material element of the conflict of interest offence is met by the presence of the criminal, the public official, in a situation in which his private interests conflict with the public interest and this would affect the normal performance of his duties. This first requires that the employee has parallel activities that meet with the activity that

the public official is engaged in and he knows that his private interests are in conflict with the public interest²⁷.

The Algerian legislator did wisely in describing the public employee's interest without connecting it to the person of the public employee himself, as it may include his ascendants, descendants, in-laws and spouse²⁸.

The conflict of interest in the field of public procurement is the preference of personal interest over the public interest unfairly and in order to achieve certain interests. This affects one of the principles of public procurement, such as the principle of equality between applicants, as it is a misdemeanour of providing others with exclusive information that harms the freedom of competition between the parties, and therefore the purpose of criminalising this act is to ensure equality between economic operators in concluding the public transaction and exclude all types of discrimination between them²⁹.

B- Not informing the governing authority of the existence of a conflict of interest

Article 8 requires that a public official is obliged to inform his governing authority of the existence of a conflict of interest between his private interests and the public interest³⁰.

The Algerian legislator did not criminalise conflict of interest itself, but rather criminalised the non-declaration of it to the presidential authority, i.e. the existence of a conflict of interest alone is not sufficient to commit the offence, but must be accompanied by a failure to disclose this conflict, and if the employee declares this conflict, he will not be prosecuted for the offence of conflict of interest, although the legislator did not specify the manner of notification in this case³¹.

2.4.Fourth: The moral element

The crime of non-declaration of conflict of interest in the field of public procurement is a deliberate crime that requires both general and specific criminal intent.

A. The existence of the general criminal intention

The existence of the general criminal intention in this offence requires the presence of both elements. On the one hand, there must be knowing that the perpetrator knows that he is a public official, as well as knowing that he has a conflict of interest that affects the normal conduct of his duties and that he is required to inform his governing authority of this. On the other hand, the intention must be free and directed towards the commission of the physical conduct of the offence³².

B. The existence of the special criminal intention

The special criminal intention, like the general criminal intention, is based on knowledge and will, except that it is not limited to knowledge of the elements of the

crime, but extends to facts that are not in themselves elements of the crime³³, as the employee's will tends to prefer private interests over the public interest, for example, the employee wants to amend a contract clause to prefer a relative for his interest over the public interest.³⁴

CONCLUSION:

In conclusion, it is clear that the crime of conflict of interest in the field of public procurement represents one of the most serious aspects of administrative corruption that threatens the foundations of justice and transparency in the management of public funds. Despite the legislative efforts made by the Algerian legislator, particularly through Ordinance 06-01 and the Public Procurement Law, addressing this phenomenon still faces practical challenges in terms of detection, proof and prevention.

The paper reached a number of conclusions, the most important of which are as follows: The following:

- There is no standard or precise definition of the offence of conflict of interest in Algerian legislation, which opens the way for different legal interpretations.
- There is an interference between conflict of interest as an administrative case and conflict of interest as a criminal offence, which requires a precise distinction in practice.
- The need for continuous training for those in charge of conducting transactions in the areas of professional ethics and transparency.

In light of the previous, we propose a set of recommendations:

- The need to include a clear legal definition of the concept of conflict of interest within the laws regulating public procurement.
- Strengthening the role of oversight bodies and disciplinary councils in tracking conflict of interest cases.
- Activate preventive mechanisms such as property declaration and disclosure of special relationships.
- Prepare codes of ethical behaviour that clarify cases that represent conflicts of interest.
- Expand legal awareness campaigns and professional training for public officials.

Marginalization:

¹- بوغازي سماعيل، جريمة تعارض المصالح في مجال الصفقات العمومية –دراسة مقارنة-، الطبعة الأولى، مركز الدراسات العربية للنشر والتوزيع، 2016، ص 26.

²- عنان جمال الدين، مكافحة الفساد في إطار الصفقات العمومية –جريمة تعارض المصالح نموذجاً-، مجلة الأستاذ الباحث للدراسات القانونية والسياسية، المجلد 02، العدد 09، مارس 2018، ص 1006.

- ³- Rapport de la commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique, Remis au président de la république le 26 janvier 2011, du site internet, www.conflits-interets.fr, p13.
- ⁴ -article 08 , Legislative Guide for the Implementation of the United Nations Convention against Corruption, United Nations Bulletin, January 2008, page 26.
- ⁵ - المادة 8، الدليل التشريعي لتنفيذ اتفاقية الأمم المتحدة لمكافحة الفساد، مرجع سابق ذكر، ص 36.
- ⁶ - Article 8, Law 06-01 dated 20 February 2006 concerning the prevention and fight against corruption, as amended and supplemented, official gazette No 14, issued on 08 March 2006, p. 6.
- ⁷ - Article 67, Law 23-12 dated 5 August 2023, establishing the general rules on public procurement, official gazette no 51, issued on 6 August 2023, p. 13.
- ⁸Article 5, Law 23-12, op. cit. p. 6.
- ⁹ - بوغازي سماعيل، مرجع سابق ذكر، ص 60.
- ¹⁰ - Article 8, Law 06-01, op. cit. p. 6.
- ¹¹ - بوغازي سماعيل، مرجع سابق ذكر، ص 61.
- ¹² - بوغازي سماعيل، مرجع سابق ذكر، ص 62.
- ¹³ - براهيم عبد الرزاق، جريمة تعارض المصالح في مجال الصفقات العمومية والعقوبات المقررة لها في التشريع الجزائري وبعض التشريعات المقارنة، مجلة الأستاذ الباحث للدراسات القانونية والسياسية، المجلد 4، العدد 2، سنة 2019، ص 1928، 1929.
- ¹⁴ - Article 17, Law 23-12, op. cit. p. 07.
- ¹⁵ - Article 67, op. cit. p. 13.
- ¹⁶ - براهيم عبد الرزاق، مرجع سابق ذكر، ص 1929.
- ¹⁷ - Article 8, Law 06-01, on preventing and combating corruption, p. 6.
- ¹⁸ - Article 34, Law 06-01, on preventing and combating corruption, p. 6.
- ¹⁹ - Article 2, Ordinance 10-05 dated 26 August 2010, supplementing Law No. 06-01 dated 20 February 2006, on the prevention and fight against corruption, official gazette no 50, issued on 1 September 2010
- ²⁰ - Article 67, Law 23-12 establishing the general rules on public procurement, p. 13.
- ²¹ - Article 90, Presidential Decree 15-247, dated 16 September 2015, regulating public procurement and public utility delegations, official gazette No. 50, issued on 20 September 2015, p. 26.
- ²² - ريطاب عز الدين، جريمة تعارض المصالح في مجال الصفقات العمومية العمومية، مجلة قانون النقل والنشاطات المينائية، المجلد 9، عدد خاص، سنة 2022، ص 86.
- ²³ - Article 4, Law 06-03 of 15 July 2006 containing the General Statute of the Public Function, JR No. 46 of 16 July 2006, p. 04.
- ²⁴ - Article 2, Law 06-01 on Preventing and Combating Corruption, p. 5.
- ²⁵ - ريطاب عز الدين، المرجع السابق الذكر، ص 86، 87.

²⁶- براهيم عبد الرزاق، المرجع السابق الذكر، ص 1931.

²⁷- بوغازي سماعين، المرجع السابق الذكر، ص 115.

²⁸- تبون عبد الكريم، المرجع السابق الذكر، ص 306.

²⁹- براهيم عبد الرزاق، المرجع السابق الذكر، ص 1931.

³⁰- Article 8, Law 06-01, on preventing and combating corruption, p. 6.

³¹- عثمانى فاطمة، جريمة عدم التبليغ عن تعارض المصالح تكريس لمكافحة الفساد في الوظائف العمومية، مجلة البحوث والدراسات القانونية والسياسية، العدد 12، ص 483.

³²- عنان جمال الدين، المرجع السابق الذكر، ص 1014.

³³- بوغازي سماعين، المرجع السابق الذكر، ص 143.

³⁴- المرجع نفسه، ص 144، 145.

Bibliography List:

Legislation

1. Legislative Guide for the Implementation of the United Nations Convention against Corruption, United Nations Bulletin, January 2008.
2. Law 06-01 dated 20 February 2006 concerning the prevention and fight against corruption, as amended and supplemented, official gazette No 14, issued on 08 March 2006.
3. Law 06-03 of 15 July 2006 containing the General Statute of the Public Function, JR No. 46 of 16 July 2006.
4. Law 23-12 dated 5 August 2023, establishing the general rules on public procurement, official gazette no 51, issued on 6 August 2023.
5. Presidential Decree 15-247, dated 16 September 2015, regulating public procurement and public utility delegations, official gazette No. 50, issued on 20 September 2015.
6. Ordinance 10-05 dated 26 August 2010, supplementing Law No. 06-01 dated 20 February 2006, on the prevention and fight against corruption, official gazette no 50, issued on 1 September 2010.

Books:

1. بوغازي سماعين، جريمة تعارض المصالح في مجال الصفقات العمومية –دراسة مقارنة-، الطبعة الأولى، مركز الدراسات العربية للنشر والتوزيع، 2016.

Journal article:

1. براهيم عبد الرزاق، جريمة تعارض المصالح في مجال الصفقات العمومية والعقوبات المقررة لها في التشريع الجزائري وبعض التشريعات المقارنة، مجلة الأستاذ الباحث للدراسات القانونية والسياسية، المجلد 4، العدد 2، سنة 2019.
2. ريطاب عز الدين، جريمة تعارض المصالح في مجال الصفقات العمومية العمومية، مجلة قانون النقل والنشاطات المينائية، المجلد 9، عدد خاص، سنة 2022.

3. عثمانى فاطمة، جريمة عدم التبليغ عن تعارض المصالح تكريس لمكافحة الفساد في الوظائف العمومية، مجلة البحوث والدراسات القانونية والسياسية، العدد 12.
4. عنان جمال الدين، مكافحة الفساد في إطار الصفقات العمومية –جريمة تعارض المصالح نموذجاً-، مجلة الأستاذ الباحث للدراسات القانونية والسياسية، المجلد 02، العدد 09، مارس 2018.

Internet websites:

Rapport de la commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique, Remis au président de la république le 26 janvier 2011, du site internet, www.conflits-interets.fr.