

AUTHORIZATION OF PROPERTY AS A MECHANISM FOR COMBATING ADMINISTRATIVE CORRUPTION IN ALGERIA

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Abstract:

Administrative corruption is the most serious type of corruption ever, as it cripples management and renders it unable to carry out the tasks required of it. This is a serious problem, given its adverse and destructive effects. The Algerian legislature has relied on numerous legal mechanisms and methods to reduce the spread of this scourge. Among these legal mechanisms is the mechanism for declaring property adopted by Algerian legislation as a legal mechanism for reducing and addressing administrative corruption. The Algerian legislature has therefore put in place an effective legal framework and controls to ensure the effective reflection of this mechanism and the achievement of the objectives to be relied upon; This mechanism is more effective in combating administrative corruption by placing it with an independent body.

Keywords: *corruption, effects, mechanisms, declaration of property, controls, legal methods.*

INTRODUCTION

Introducing the topic: Corruption is an ancient phenomenon that has been known to humankind over time. It has been the main factor in the collapse and fall of most civilizations, empires and regimes and an engine of revolutions and uprisings, and this phenomenon has increased as well as attention to it significantly in recent times. "The Arab Spring" raises the fight against corruption as its motto, a phenomenon that does not recognize the time limits as we have seen or the spatial limits State ", where its existence is not confined to a society or a State but not to another, there is not simply that virtuous society that is free from corruption and spoilers. It is widespread in developed and developing countries, although it is more prevalent in the latter and its impact is more serious.

Corruption is a complex and multifaceted political phenomenon, given its multiplicity of manifestations and manifestations, which transcend the borders of a single State into an international problem beyond the possibilities of developing countries to control it. human rights ", especially in the light of the tremendous scientific and technological progress that the perpetrators of such crimes have invested in the development of the means and methods of their commission, taking on new and sophisticated forms and patterns that are sometimes difficult to identify such as complex business activities s rights ", where the entanglement of criminal acts by white collars takes on new serious dimensions that amount to undisputed infringement of their States' sovereignty.

In view of the foregoing considerations, the issue of combating administrative corruption has attracted considerable attention at all local, regional and international levels by focusing on administrative reform with a view to combating and reducing it. It is one of the most important issues and problems unanimous in experts' reports that it should be addressed in developing and underdeveloped countries if they are to achieve a civilized takeoff in all areas.

Controlling the concept of administrative corruption is a complex and difficult issue due to political and economic considerations, which disrupts the mechanisms of combating The latter is less difficult when the parameters of the phenomenon to be combated are clear, Since administrative corruption had not been fully defined, the issue of combating an unspecified gel was not possible. Indeed, the legislator had attached great importance to combating administrative corruption in his criminal and administrative legislative policy.

The problem with the topic: From the foregoing, the problem of this study is that of: what is administrative corruption, what is property declaration and how effective is it to combat administrative corruption in Algeria?

Because despite the emergence of indications of a reduction in the area of administrative corruption in Algeria, such as the existence of a large legislative and regulatory arsenal aimed at combating this phenomenon, as well as the establishment of bodies and bodies competent to prevent and combat it. But the problem remains, there's a big gap between theory and application. Algeria remains one of the most corrupt countries and places it at the top of the rank in this area. This is in addition to the judicial and disciplinary bodies that keep us constantly informed of the increase in cases of administrative corruption in Algeria.

The importance of the topic: "Legal mechanisms to combat administrative corruption in Algeria", in two respects: scientific and practical:

- **Scientific significance:** The importance of this scientific topic is that it aims to analyze and diagnose the concept of administrative corruption by identifying what it is, because the diagnosis of the problem is the first stage of the fight.

It also highlights the importance of the basic study in that it seeks to reveal the procedures for declaring property monitored by Algerian legislation to combat administrative corruption, in order to reflect them as a strategy adopted by the legislature to combat this widespread phenomenon in Algeria, in accordance with Algerian legislation's criminal policy under the Law on the Prevention and Control of Corruption, as well as the Code of Criminal and other relevant laws.

- **Practical importance:** Given the seriousness of the phenomenon of administrative corruption and its negative effects on administrative corruption, the practical importance of this study is one of the most important obstacles to administrative reform, comprehensive development and the establishment of good governance. This requires that special importance be attached to this phenomenon, which calls for further study and research.

It also highlights the practical importance of the topic in identifying the obstacles and obstacles to Algeria's efforts to combat administrative corruption in practice. That can only be done by reviewing the reasons for the failure of the National Strategy against Administrative Corruption, which requires thorough consideration. Despite the enormous arsenal of laws and regulations designed to combat the phenomenon of administrative corruption, Algeria still ranks behind in the list of the most corrupt States.

Objectives of the study: The primary objective of the study is to indicate the mechanism for declaring property established by Algerian legislation to combat administrative corruption. This is in addition to supplementary and subsidiary objectives, which can be limited to:

- Accurate diagnosis of what administrative corruption is.
- Review and evaluate criminal policy regarding the mechanism for declaring property to combat administrative corruption.

Study curriculum: Given the problematic nature of the issue and in order to achieve the prevailing objectives, we considered that it would be more appropriate for this study to rely primarily on the analytical descriptive curriculum on this topic. This is to analyse the concept of administrative corruption and to demonstrate the effectiveness of the mechanism for declaring property in the fight against administrative corruption and its position within the criminal policy to counter administrative corruption in this regard by reviewing the Corruption Prevention and Control Act and other relevant laws for study and analysis.

The limits of the study : are defined by the following three limits:

- **Substantive limits:** The objective limits of this study are the identification, evaluation and effectiveness of the Algerian legislature's legal mechanism to counter administrative corruption, which is the main variable, whereas corruption.

- **Spatial boundaries:** This study is limited to defining the legislative policy to combat administrative corruption in Algeria by examining the specialized agencies in the face of administrative corruption, as well as other oversight bodies provided for in Algerian legislation. We also do not forget the active role of criminal and administrative judicial bodies.



- **Time limits:** This study attaches particular importance to the research and tracking of the legal mechanisms introduced by Algerian legislation to combat and reduce corruption after the ratification of the United Nations Convention against Corruption in 2004 and the subsequent enactment of the Law on the Prevention and Combating of Corruption in 2006. economic penal pole specializing in combating complex economic issues of national jurisdiction".

The study plan: In response to the problem raised, we divided this study into two requirements. What is administrative corruption was the title of the first requirement. Through it, they were subjected to the concept of administrative corruption in the language and then the position of the Islamic Shari'a thereon, after which they were subjected to various terminological, jurisprudential and legal concepts and the definition of corruption by regional and international organizations. The legal framework for the declaration of property was the title of the second requirement, by which we defined the declaration of property, its procedure, its effects and its effectiveness in the face of Algeria's administrative corruption offences. The study's conclusion was also a set of conclusions and recommendations.

First requirement: What is administrative corruption?

Addressing a highly complex and intertwined phenomenon, as a multilevel phenomenon of corruption, requires the beginning of an attempt to identify and diagnose all aspects of the phenomenon before the search for ways of combating it is initiated. Every effective and successful response necessarily depends on an accurate and rigorous diagnosis. The word "corruption" is very frequent in Arabic dictionaries, in the literature of scholars in their various disciplines and in the texts of the Holy Koran and the Prophet's Sunnah. However, its connotations sometimes converge and diverge. The jurisprudence differed on the definition of corruption because of their different sources, stripes and intellectual orientations. Second, the terminological concept of corruption.

First, the concept of corruption in language and Islamic law.

1- **The concept of corruption in Arabic:** The definitions of corruption in scholars converge in their different disciplines and sometimes diverge.

Ibn Manzoor knew him that "corruption is the opposite of good, corrupt, corrupt, corrupt, corrupt, corrupt, corrupt, corrupt, corrupt, and corrupt the people: persecuted and severed the wombs, invoked the Sultan if he abused him until he eluded him, corrupted the conflict of interest, and corrupted the replay of replay. Ben alia bu al fadhel, Ibn Manzoor ; 2003,p.3412.)

The definition of corruption in foreign languages does not differ. In French, it has a multiplicity of uses, as the concept of bribery of a judge is expressed. (Moyens de corrompre un juge) or a misrepresentation of the text (Changement vicieux dans les texte) or distortion of the truth (Deparavation de la verite) or misrepresentation of the contract, (Denaturation du contrat), as reflected in Oppression, (Ben merzouq2011, p. 95.)

In English, it also has multiple meanings. The term "corruption" (Rumpere), which means breaking something, may be a code of ethical or social conduct or often an administrative basis for obtaining material gain (Ben Maruzek, 2011, p. 96).

The definition of corruption is contained in the dictionary: Oxford degradation of moral values (Immoral) in society or in an individual's brain, and is intended to waste honesty and fraud (Dishonesty) due to the use of bribery: (Oxford learner's pocket dictionary, 2012, p. 95) (Because of taking bribes) Bribery is one of the most expressive expressions of the term corruption in English and is almost (synonymous with it, as corruption means: Cause to change from good to bad also means: The absence of impartiality, harm or malice also reflects the state of rot (Ben Marwazek, 2011, p. 97).

2- **The meaning of corruption in Islamic law:** We have seen that the term "corruption" has more than one meaning in Arabic lexicons, although it shares, inter alia: a departure from moderation and is against Salah, and the Islamic sharia in its view of corruption does not differ significantly from the aforementioned meaning, although it considers corruption from a broader and broader perspective, as we will explain below:



- The meaning of corruption in the Holy coran:

The most corrupt term in the Holy Koran relates to the mention of the place, which is the earth, God Almighty said (And do not spoil in the earth after the restoration of which they prayed in fear and coveted the mercy of God.).(Customary verse 56),

Once he identified the land and sea, in his words, he said: "The corrupt appeared in the land and the sea, as the people's hands won to taste them some of which they did. (Rum verse 41),

Once in the villages, countries, territories, and cities, God Almighty says: "The Lord said that if they entered a village, they would corrupt it, they would make her dear." (Ants, verse 34).

In the Holy Quran, there is an imbalance between the term "corruption" and the word "Earth" (Maqri, 2005, p. 66). If we do a simple statistical exercise, we will find that the wise book used the word "corruption" and its actions combined with the Earth in 39 of the 50 places in the Holy Quran.

This indicates the general scope of corruption. The phenomenon of corruption referred to by the Holy Koran is not an individual or personal phenomenon, limited to a particular society or a particular need. It is all a phenomenon that pervades the entire human society (Abdul Wahid, 2003, p. 4).

The meaning of the term "corruption" in the Prophet's sunnah: many prophetic conversations have been made in corruption, spoilers, termination and warning, noting that the meaning of corruption in the cleansed Prophetic Year has come to indicate the same meanings as the Holy Quran, including:

- **1. The object is damaged and its benefit goes:** This is for Allah's sake and peace be upon him. "No. It is in the body chewed if it fixes the repair of the whole body and if it corrupts the whole body, the heart. (Al-Nisaburi, p. 1220): "But acts like the pot, if he pleases above, and if he corrupts below him, he corrupts above (Al-Fazwini, Dat, p. 1404)." He also says: "Islam has begun strange and will return strangely as it has begun. "(Women, DT, page 83)He said: "The first thing to be held accountable to the slave on the Day of Doomsday is prayer. If the rest of his work is repaired, the rest of his work is corrupted."

- **2. The situation changed to disadvantaged: As Prayer of God put it: "):"** The one who holds my year when my nation is corrupt has a martyred wage, "the corruption of the nation is to change it to dishonest.

-**3. Corruption of the same evil:** Prayer of Allah said: "The evil of the people is three snooping on his parents who despise them and a man who seeks corruption among the people by lying so that they indulge and distance..." As for his father, he said: "May I tell you better than the degree of fasting and honesty, they said: Salah is the same. (Al-Bogi Al-Ramadi, 1996)This is in addition to many conversations in which the word "corruption" reads as follows: "If you come from those who consent to his religion and his creativity, lest you do not be seditious in the land and great corruption" (Al-Bogi Al-Ramadi, 1996). (Al-Bogi Al-Ramadi, 1996)From the foregoing, we find that the meaning of corruption in the cleansed year is no different from that of the Holy Quran, and we have come to the conclusion that one of its connotations is: damage to the object and its going, its imbalance and its departure from the ordinary and invalidity, and the change in the situation to the conflict of the righteous, in the sense of severing relations and sabotaging connections between wombs.

Second: The concept of corruption

Addressing a highly complex and intertwined phenomenon, as a multilevel phenomenon of corruption, requires the beginning of an attempt to identify and diagnose all aspects of the phenomenon before the search for ways of combating it is initiated.

Each effective and successful confrontation necessarily depends on an accurate and rigorous diagnosis, and the jurisprudence disagrees on the definition of corruption due to their different sources, diversity and intellectual orientation. This is why Gardner says that there is no consensus on the definition of corruption, perhaps due to the generality and capacity of its use in the daily political sphere, which has been reflected in other sectors and currents.

To see the concept of corruption in the terminology, we selected a sample of definitions in some disciplines as follows:

A: Jurisprudence definitions of corruption: The definitions of corruption given by jurisprudence in its various disciplines, whether legal scholars, administrative sciences or sociology, are as follows:



1-Definition of corruption from a legal standpoint: legal scholars are interested in the phenomenon of corruption and Ulu is of particular importance, highlighted by the large number of definitions monitored in this area, including: the definition defining corruption as: "Bad conduct and conduct of a job, corrupt against reform, aimed at deviation and irreparable gain, and exit from order in a personal interest" (Al-Khalran, 2003, p. 21; thrombosis, 2003)

This definition is based on the indication that corruption is anti-reform, contrary to religion and lawlessness and does not address the benefit to a person who is not a perpetrator of corrupt behaviour, nor does it prevent the entry of legally prohibited and unlawful corrupt acts.

It is also defined as: "The intention to use public office in all its prestige, influence and authority to achieve personal benefits, financial or other, contrary to official laws and instructions." (Khalran, 2003, p. 21).

This definition limits corruption to going beyond the law of the use of public office and his use of the term intention, not as a criminal act. and also did not provide clarification of the purpose and benefit derived from corruption, A public servant's goal may also be to achieve goals for others and not for himself. And this definition confines corruption to one type: administrative corruption, but not other types.

2- Definition of corruption from an administrative standpoint: "Activities within the State administrative apparatus, which effectively deviate that organ from its official objective in favour of special objectives, whether in a renewed or continuous manner, whether in an individual or a systematic collective manner. (Mortaza, 2008, page 07).

This definition focused on administrative deviation and made no mention of the public official's role in these activities, which lead to the corruption of the administrative apparatus.

The definition of Samuel Huntington falls within this scope, defining corruption as: "The conduct of a public official deviates from the agreed criteria for achieving special goals and objectives." (Ha 'h, 2013, p. 20) This definition confines the corrupt act to the conduct of a public official who falls outside unidentified criteria.

3- Definition of corruption from a social standpoint: sociologists regard corruption as a social phenomenon and use it to generally refer to all acts contrary to law and custom, with a view to achieving personal benefits at the expense of the public interest.

In this context, Hijazi defines corruption as: "conduct that deviates from standards and norms governing the exercise of a public function, the performance of a collective role to obtain undue personal or collective benefit, or the reluctance to adhere to standards of proper performance of duties, or to facilitate this to others."

This definition focuses on the social role and its importance in directing corrupt behaviour, and excludes other administrative, political and economic roles.

In the view of George Modi Shawart, the sincerest definition of corruption is stated in the Encyclopedia of American Social Sciences: "Corruption is the misuse of public influence for private profits."

This clearly includes all kinds of bribes for national or political local officials but excludes bribes occurring within the private sector (Ha 'ah, 2013, p. 21).

B: The definition of corruption from the perspective of international organizations and bodies: We have seen that corruption has many definitions but without substantial differences. Some definitions are absolute to describe the term corruption, while others focus specifically on the term "administrative corruption". Notably, the definitions of international organizations and bodies do not differ significantly from this area, some of which are described below:

1- The World Bank's definition of corruption: the World Bank has developed several definitions of corruption, most recently: "Corruption is the abuse of public office for private gain (vaknin, 2003, p. 18). Corruption usually occurs:

1. When an employee accepts, requests or extorts a bribe, to facilitate the contract and public tender proceedings.



- 2. Where agents or intermediaries offer companies or private businesses, they offer a bribe to take advantage of public policies or actions to overcome competitors and make profits outside the framework of the laws in force.

- Corruption may also occur through the exploitation of public office without recourse to bribery by appointing relatives or directly stealing State funds. " (Shehli, 2006, p. 349)

It is noted that this definition focuses on the cause of corruption and abuse of public authorities, and links corruption to State activities and market interference with the presence of the public sector, in the sense that this definition excludes the possibility of corruption in the private sector, and focuses exclusively on corruption in the public sector. This Nobel laureate agrees: "If we abolish the State (Gary becker) definition with the beliefs of Gary Baker, we abolish corruption."

The problem with this definition is that not all cases of abuse of functional authority are considered corrupt, because from the perspective of this definition some cases have been classified as theft, forgery, embezzlement, but not as corruption.

2- The United Nations Organization's definition of corruption: the United Nations Convention against Transnational Crime of 2000 referred to corruption, but its meaning was synonymous with bribery entirely, under article 08 of the Convention.

The 2003 draft United Nations Convention against Corruption defines corruption as: "to perform acts that constitute improper performance of duty, abuse of position or authority, including omissions in anticipation of advantage or in pursuit of an advantage that is promised, directly or indirectly exposed or requested, or upon acceptance of a benefit directly or indirectly granted, either to the same person or to another person"

However, this definition was not agreed upon, and was reversed in the final draft convention, which did not define corruption but referred to its images, namely bribery, embezzlement of property, trading in influence and abuse of function, illicit enrichment...

We conclude from the foregoing that the concept of corruption has expanded to include, in addition to bribery, other manifestations of corruption that are more serious in terms of their effects.

3- INTERPOL's International Definition of Corruption: According to the Global Anti-Corruption Standards of INTERPOL's Police Services in Guellea 2002 the concept of corruption includes:

- Promise or request, acceptance or attempt to obtain, directly or indirectly, money or items of value, gifts, servants or rewards, or a benefit to military and civilian police personnel;

for themselves or for other persons, associations or gatherings, in exchange for work or omission related to the performance of their duties.

- Offer or provide money, items of value or gifts, services or rewards, or a benefit to military and civilian police personnel, whether for themselves or other persons, whether directly or indirectly in exchange for action or omission in connection with the performance of their duties.

- To act or refrain from acting in connection with the duties of military or civilian police officers, which results in a person being charged or sentenced for an offence, or to assist a person to avoid unlawful accountability.

- Provide confidential or prohibited police information in exchange for a reward or any benefit of any kind.

- To act or refrain from acting as corruption under the laws of Interpol's member States.

- Direct or indirect participation, initiative or use as a means or instrument before or after the performance of an act, leading to the acquisition of commissions or attempt to obtain commissions, or conspiracy to perform an act or omission of the work mentioned at all previous points.

4-Transparency International's definition of corruption: Transparency International, at the beginning of its era, defined corruption as: "Misuse of public authority for private benefit. "Or it:" Act against public office which is public trust ". Transparency International differentiates between two types of corruption: (Al-Shabra, 2007, p. 41)

Corruption by law (according to rule corruption), which is known as payments of facilities in which bribes are paid in order to obtain preference in a service provided by the recipient of the bribe in accordance with the law.

Corruption against the law against rule corruption ") is the payment of a bribe to obtain from the recipient of the bribe a service prohibited.

Notably, this definition was not exhaustive or contrary, so the organization returned late and under the influence of the jurisprudence of a number of researchers, such as Susan Rose Ackerman, to define corruption as: "The conduct of public or private officials, whether political or civil servants, with the aim of illicitly enriching themselves or their relatives, and through the abuse of their authority". (Elder David, 2003, p. 49)

5- Organization of African Unity and Corruption (OAU): OAU is one of the leading organizations in the fight against corruption, if it ratifies the African Union Convention on the Prevention and Combating of Corruption in Maputo in the 2003 Guellian 11. However, this Convention does not define corruption, but refers only to its images and manifestations. Article 1 of the Convention states: "Acts or practices, including related offences criminalized by the Convention, referred to in article 04 and referred to in the preceding article. The Convention merely mentions the images and manifestations of various acts and activities of corruption (www.ouanti.org).

C : Legislative definition of corruption: This element reviews the position of comparative legislation as well as Algerian legislation on corruption, as follows:

- The French legislator's definition of corruption: the French Penal Code distinguished between what he called active (positive) corruption and passive corruption, defining positive corruption as: "The active pursuit by the public official of the award of the contract (penal code)". Passive corruption defined him as: "The acceptance by the official of a gift or other reward after the award of the contract or the provision of the service."

- Algerian legislature's position on the definition of corruption: the term corruption is new in Algerian legislation. It was not used before 2006, nor was it criminalized in the Penal Code, but after Algeria ratified the United Nations Convention against Corruption in 2004 under Presidential Decree No. 04-128 of: 19 April 2004, it was obliged to adapt its domestic legislation in line with this Convention. The Prevention and Combating of Corruption Act No. 01/06 of 20 February 2006, amended and supplementary, criminalizes corruption in all its manifestations.

With reference to the above-mentioned law, Algeria ' He also chose not to define corruption philosophically or descriptively by defining it by referring to its images and manifestations, as confirmed in article 02, paragraph a, of the Prevention and Combating of Corruption Act above: "Corruption: all offences provided for in Title IV of this Act," and by reference to Title IV of the same Act above, corruption offences can be classified into four types: Embezzlement and damage to property, bribery, etc., offences related to public transactions, covering up corruption offences. According to Algerian legislation, when he did not involve himself in the doctrinal definitions of corruption, which have provoked great controversy not only among jurists, but also among the various jurists of the humanities and social sciences, as seen above.

However, the Algerian legislature notes that it refers only to some manifestations and images of corruption, without the rest of the images that go outside the field of criminalization, and remain permitted despite their gravity, such as medium, nepotism and subsequent reward....

Second requirement: Legal framework for the declaration of property.

The declaration of property is one of the mechanisms adopted by some States within the framework of their policy to combat administrative corruption by following up the financial disclosure of public officials and knowing the various changes in them. in order to detect instances of rapid affluence that may be caused by involvement in certain administrative corruption offences, This is through the obligation of any person with the burden of public authority to disclose to the authorities all his or her movable and real property. (Aaron, 2008, p. 47), that is to say, to make a statement of his financial indemnity with a view to suspending the truth about his actual financial assets in the event of any unlawful gain therein, and to hold him administratively and penally accountable for any gain or increase in the financial assets of him or others or the wealth of his wife or minor children.

Article 04 of the Law on Preventing and Combating Corruption is enshrined in the legislature. The duty to declare property is as follows: "In order to ensure transparency in political life and public

affairs, protect public property and safeguard the integrity of persons entrusted with public service, the public official shall be obliged to declare his property.

A public official shall subscribe a property permit during the month following the date of his or her placement in his or her post or commencement of his or her electoral institution, which shall be renewed immediately upon any significant increase in the financial position of the public official in the same manner as the first permit, and the property shall be declared at the end of the electoral custody or upon separation. "

Through the text of the above-mentioned article, it is clear that the declaration of property is a legal obligation arranged by the public official as a compulsory measure by which the legislator aims to achieve a range of objectives. The most important of these is to give effect to the public official's duty of responsibility and to instil conscience in the psyche of the public official.

I. Content of the declaration of property:

The declaration of property includes an inventory of real and movable property held by the subscriber or his minor children even in communism in Algeria or abroad. This is the issue set out in Presidential Decree No. 06-414, part of the Supplement precisely stipulates the content of the declaration of property, providing for three items of property to which the public official has written a declaration:

a. Real property built and not built: The permit shall include: the location of apartments, buildings, individual houses or any land, whether agricultural or prepared for construction or shops owned by the office and its minor children in Algeria or abroad.

Movable property: The declaration of property shall include: the identification of furniture of significant financial value, any masterpiece, valuables, cars, ships, aircraft, any artistic, literary or industrial property, or all movable values priced or unquoted on the exchange owned by the subscriber and his minor children in Algeria or abroad.

Cash liquidity and investments: The declaration of property includes: determining the financial position in terms of its assets and liabilities, as well as determining the nature of the investment and the value of earmarked funds owned by the subscriber and his minor children in Algeria or abroad.

Other property: The permit shall include the identification of any other property other than the aforementioned property.

With regard to the form of the permit, according to a model established by Presidential Decree No. 06-414, the permit contains the identity of the authorized employee, the description of the real property in terms of its location, nature, area, origin of the property, date of acquisition of the property, nature of the property, origin of the property, amount of cash and any other property, without forgetting to mention the date of the appointment, the date of the permit, its location and signature.

In article 02, paragraph (f), of the Corruption Prevention and Control Act, Algerian legislation defines property as: "Assets of all kinds, whether physical or intangible, movable or immovable, tangible or intangible, and legal documents or securities establishing ownership of such assets or the existence of related rights."

Under article 61 of the Corruption Prevention and Control Act, the legislator has also ensured that public officials with an interest in a financial account in a foreign country or other right or authority to sign that account must be bound. to report that relationship to the relevant authorities and to keep appropriate records of such accounts under disciplinary sanctions and without prejudice to established penal sanctions.

A declaration of property shall be prepared in two copies signed by the author and the depositary authority and a copy shall be received by the author in accordance with article 03 of Presidential Decree No. 06-414. The declaration of property is drawn up in accordance with a model established by the aforementioned Presidential Decree.

It should be noted in this regard that the legislator restricts the declaration of property to the property of the employee and his minor children only without his husband's property, which opens the way for the official who can evade criminal prosecution of the crime of illicit enrichment by transferring his illicit property to his husband's property (Ha 'a, 2013, p. 227).

Some members of Parliament proposed amending article 05 of the Corruption Prevention and Control Act by adding a provision requiring the spouse of the subscriber to declare her property, but this proposal was accepted by a majority of members of Parliament on the grounds of the spouses' financial autonomy (fifth legislative period, eighth ordinary session, 2006, p. 04).

We therefore stress the need to amend the aforementioned text of article 5 by obliging the wife to declare her property despite the separation of the latter's financial assets from the husband and her independence from him. s property and that of his minor children is insufficient to monitor all of his suspicious property, Thus, combating the crime of illicit enrichment requires closing all gaps and access to concealment of illicit funds in order to ensure integrity and transparency. and propose that the staff member's subscribed spouse and minor children be obliged to declare their property in line with comparable legislation such as Syrian legislation, So that any perceived and emergency changes can be easily tracked s closest and most trusted to the staff member who often transfers funds to their property (Ha 'ih, 2013, p. 228).

Second -Date of declaration of property and bodies competent to receive it and its qualifications

- Date of declaration of property: Pursuant to article 04-02 of the Corruption Prevention and Control Act, a public official shall sign a declaration of property during the month following the date of his placement in office or the date of commencement of his election.

This declaration shall be renewed as soon as each significant increase in the financial position of the public official in the same manner as the first declaration and in accordance with article 04-03

In the case of judges, they must renew the declaration of property every five years and at each appointment to a qualitative position, as stipulated in article 25 of Organic Law No. The Basic Law of the Judiciary 11-04, and property must be authorized at the end of the electoral custody or upon separation in accordance with article 04-04 of the Law on the Prevention and Control of Corruption for the electorate and other employees.

- Categories obliged to declare property and bodies competent to receive it: Algerian legislation has not obliged all public officials, as evidenced by article 04 of the Law on the Prevention and Combating of Corruption. of the duty to declare their property but to limit it to categories of employees, as well as the procedures and qualifications of each category and entity concerned with receiving such declarations ". This is confirmed in article 06 of the aforementioned Act and article 02 of Presidential Decree No. 415-06 establishing property permits for public officials not provided for in article 06 of the Act on Preventing and Combating Corruption.

The list of authorization officers as well as bodies eligible to receive such declarations is set out below.

Declaration before the First President of the Supreme Court: In accordance with article 06-01 of the Prevention and Control of Corruption, the declaration of property belonging to the President of the Republic, members of Parliament, the President and members of the Constitutional Council, the President and members of the Government, the President of the Accountancy Council, the Governor of the Bank of Algeria, ambassadors, consuls.

The content of the declaration of property is published in the Official Gazette during the two months following the date of the persons' election or assumption of their duties.

The observation that can be made through the above-mentioned exception to the legislature's exception to the above-mentioned category of high-ranking and high-ranking officials from declaring before the National Authority for the Prevention and Combating of Corruption?, Merely declaring before the first President of the Supreme Court, especially since the latter is a judge appointed by the President of the Republic, and is not a collective committee but a single individual. It is also noticeable that the legislature did not specify the role and powers of the first President of the Supreme Court when receiving the declaration of property. May it conduct the necessary investigations when discovering facts of a criminal description? Could he refer the file to justice or was his role limited only to the limits of receiving statements, and could the Anti-Corruption Prevention Authority intervene to transmit the file to the Minister of Justice, as stipulated in article 22 of the Corruption Prevention and Control Act? Although the Authority is not authorized to receive these officials' statements (Hamley, 2009, p. 03).



Thus, the first President of the Supreme Court's competence to receive statements is insufficient but must be strengthened by other powers, including the power to notify the competent judicial bodies to intervene in the case of acts of a criminal description.

It is further noted that the legislature has not specified the competent body to receive a declaration of property of the First President of the Supreme Court, on the understanding that the judges declare their property before him as he belongs to this service. The legislator could have avoided this problem by retaining the Property Permit Committee, as stipulated in Ordinance No. 97-04.

It is noteworthy that the Basic Law of the Judiciary No. 04-11 obliges the judge to subscribe to his property within the month following the assumption of his duties. The judge also renews that the property must be authorized every five years and at each appointment to a qualitative position. Article 62 of Act No. 04-11 also considered a serious disciplinary error:

- No declaration of property after excuses.
- False declaration of property.

Thus, article 62 of the Basic Law of the Judiciary, which considers the failure to declare property or to authorize property to be a serious error, establishes disciplinary responsibility, while article 36 of the Law on the Prevention and Combating of Corruption penalizes all public officials, including judges, for breaching the duty to authorize property and establishes criminal responsibility.

We therefore call on the Algerian legislature to coordinate the legal texts more in order to create harmony.

In order to avoid incompatibility and interpretation, the Law on the Prevention and Combating of Corruption was enacted after the Basic Law of the Judiciary and the legislature was able to exclude the category of judges from its provisions or refer it to the Basic Law of the Judiciary (Haha, 2013, p. 230). It is also noticeable that the legislature obliged the officials concerned to declare their property before the First President of the Supreme Court to publish the content of their statement in the Official Gazette during the two months following the date of their assumption of office or election. While people's control over the evolution of their financial diaspora could be enforced, it did not operate on a parallel basis with membership or functions, as stipulated in article 12 of the abolished 04-97, Although, in accordance with the content of article 04-04 of 06-01, the legislator obliged all staff members to declare their property at the end of the electoral custody or separation, However, it was not obliged to publish it in the Official Gazette as it did at the time of appointment so that citizens could extend their control over the evolution of their officials' finances.

Statement before the National Authority for the Prevention and Control of Corruption: In accordance with the content of article 06-02 of the Corruption Prevention and Control Act, the property of elected heads and members of local people's councils shall be authorized (Municipal and State) before the National Authority for the Prevention and Control of Corruption, which is provided for in article 17 et seq. of the Anti-Corruption Prevention Act The content of this declaration shall be published in the billboard of the municipal or state headquarters, as the case may be, within one month. The amendment was about obliging members of elected local councils to declare their property before the President of the competent court and the Judicial Council, but this proposal was rejected.

c. Declaration before the Guardian Authority: Article 06, paragraph 04, of the Prevention and Control of Corruption stipulates that the qualifications for declaring property for other public officials shall be determined by regulation.

Pursuant to Presidential Decree No. 06-415 of 22 November 2006, establishing the quantities of property permits for public officials not provided for in article 06 of 06-01. Article 2 of the Act stipulates that a declaration of property shall be made to public officials holding senior positions or positions in the State, within the time limits provided for in article 04 of the Act 06-01 i.e. within one month of the date of the appointment of the official and immediately upon any significant increase in the employee's financial position and thereafter upon separation.

It is noted that article 02 of Decree No. 06-415 does not specify the meaning of employees holding senior positions in the State.

However, with reference to the Public Service Act, chapter III of Title I clarifies the meaning of the State's higher positions and functions in articles 10 to 18 as follows:



"Senior positions" means qualitative positions of a structural or functional nature that allow for ensuring that administrative and technical activities in public institutions and departments are framed (art. 10-02 of S). a. " and. p.)

The higher functions are intended "to exercise responsibility on behalf of the State in order to contribute directly to the conception, preparation and implementation of public policies" (art. a. p) The number of senior posts and positions varies from ministry to ministry, and the conditions and names of appointment also vary.

Upon receipt of the property permit by the guardian authority, it deposits it in return for a receipt with the National Authority for the Prevention and Control of Corruption within reasonable time (article 02 of Presidential Decree No. 06-415)

Notably, the legislator did not set a specific deadline for the trustee's body to deposit the declaration and merely put the phrase (reasonable terms), which raises the question as to how long it may take to refer a statement to the National Authority for the Prevention and Control of Corruption, which can be reasonably described, leaving a wide range of discretion for the guardian to procrastinate, which would negatively affect the speed and effectiveness of the Authority's work and its processing of information (Hamley, 2009, p. 73).

Declaration to the Direct Peaceful Authority: This is for public officials whose list is determined by decision of the authority in charge of public office (article 02 of Presidential Decree No. 06-415)

The decision of 02 April 2007 by the Director-General of Public Office establishes the list of public agents obliged to authorize property.

However, the observation that can be made after consulting the attachment, which includes the list of public agents obliged to declare property, is that it is not covered by all ministries of the State. The legislature refers to only 14 ministries whose officials are concerned by the declaration, and not all officials of these ministries are concerned with the duty to declare but only those holding positions of responsibility.

The question is why does Algeria's legislature exclude the staff of other ministries from the obligation to declare property, such as the Ministry of Higher Education, Civic Education, National Solidarity and National Defence?

Although there is no justification behind their exception, especially as they occupy positions, centres and positions that enable them to abuse and use illicit rapid affluence.

Accordingly, if the legislature were to amend the above-mentioned decision by extending the scope and list of authorization officers to all State officials in its various sectors and holding positions of responsibility without exception or discrimination between ministries (Ha 'ih, 2013, p. 232).

We also reiterate our observation in the above element regarding the absence of a specific time limit for the direct peaceful authority to deposit a declaration of property, where the legislator merely refers to "reasonable terms", which opens up a wide range of discretion for peaceful power that may be misused, which may negatively affect the work of the National Authority for the Prevention and Control of Corruption (Ha 'ih, 2013, p. 232).

Third: Penalty for breach of the duty to declare property:

The lawmaker punished the failure to declare or falsely declare property under article 36 of the Corruption Prevention and Control Act, and the offence of breach of the obligation to declare property aimed at the control of a public official's finances as an indicator and criterion of his integrity or deviation.

The text of article 36 of S.R. and. V.F. ' M.L. ' The offence of non-declaration or false declaration of property is based on the following elements:

- Offender's status: According to article 36 above, this offence requires that it be committed by a public official legally subject to the duty to declare property.

Reference is made to Article 06 of 06-01 and the fight against it and Article 02 of Presidential Decree No. 06-415 establishing the quantities of property permits and the Decision of 02 April 2007 of the Director-General of Public Office establishing the list of public agents obliged to authorize property.



Category I: President of the Republic, Members of Parliament, President and Members of the Constitutional Council, President and Members of the Government, Chairman of the Accounting Council and Governor of the Bank of Algiers, Ambassadors and Consuls, Guardians and Judges.

Category II: Members of municipal and state elected people's councils.

Category III: Public officials holding senior or senior positions in the State.

Category IV: Includes the list of public officials established by the decision of the Director-General of the Public Service.

What is noticeable is that the legislature has singled out certain categories of employees, who are in charge of public authority, high-ranking, high-ranking or high-ranking positions in the State, or some authority or responsibility, whether elected or appointed.

The other public officials referred to by the legislator in article 02/b of the Anti-Corruption Prevention Act are not concerned with the duty to declare property and fall under this scope: List of high-ranking, senior or part-responsibilities employees to whom the previous texts do not refer, as well as the total number of employees holding regular positions in public institutions and departments, i.e., not holding senior or senior positions.

We disagree with the Algerian legislator's position that the duty to declare property is limited to a certain group of public officials without the rest of the staff. and that practical applications have demonstrated the prevalence and prevalence of corruption in both lower and higher administrations, It has also demonstrated that ordinary employees are better able to commit various forms of administrative corruption, although it is classified as petty corruption, but its impact is significant. civil servants ", compared with those in senior positions and positions, as the ordinary officer is the executing officer and is the most contact with the citizen with the public service offences of administrative corruption without mediation or interference by ordinary officials.

Therefore, if the legislature intervenes and obliges all categories of public officials of different degrees, mentioned by the legislature in article 02/b of 06-01, to authorize property, so that the scourge of administrative corruption can be trapped in its various aspects (Ha 'ih, 2013, p. 233).

Among the observations that can also be made in this area is the problem of following up on persons enjoying legal immunity, as in the case of the deputies of Parliament in both chambers. It is obvious that former persons enjoying immunity cannot be prosecuted if they have committed corruption offences in general and the crime of not declaring or falsely declaring property and thus impunity.

This point has given rise to a wide legal debate in Parliament during the debate on this law, especially since the original version, which was submitted to Parliament for discussion, contained provisions for the waiver of immunity, which gave rise to MPs' objection. In the face of this problem, the Algerian legislature must seek alternative provisions to address the penal and immunity obstacles of follow-up, as did article 17, Ordinance No. 97-04. in the absence of a declaration of property and the application of articles 228 and 301 of the Penal Code when it comes to incorrect declarations, However, the practical reality proved that even Order No. 97-04 remained locked in the drawers (Hamley, 2009, p. 74).

- Material element: The text of article 36 of S. and. V.F. ' M.L. ' The material element of this crime is divided into two manifestations, the first being non-declaration and the second: false declaration of property.

Non-declaration of property: The public official subject to the duty to declare the property in this photograph shall refrain from subscribing the declaration of property to the concerned authority, who has committed the offence of not declaring the property, provided that two months have elapsed since it was reminded of the property's legal methods (art. 36 of 06-01). Thus, the legislator's requirement to commit this offence in this manner is three conditions:

First, the non-declaration is intended to mean: the employee's failure to subscribe to the declaration of property required by law.

Second: The public official shall be reminded of the duty to declare legal methods, such as notification by a judicial record or a letter recommended with knowledge of arrival.

Three: Two months' permit may be granted, since the staff member cannot be said to have breached the duty to authorize property until after such time.

False declaration of property: The public official in this photograph does not refrain from declaring, but makes untruthful or contrary statements to those required by law, such as an incomplete, incorrect or erroneous statement, false remarks or breaches of the law's obligations.

It is noted that the breach of the duty to declare property in the first photograph is complete, while in the second, both are partially punishable under article 36 above.

- Moral element: The offence of non-declarations or false declarations is a deliberate offence expressly stipulated in article 36, which requires the general criminal intent of the elements of science and will.

There is therefore no breach of the duty to declare property if the failure to declare or declare property is false as a result of negligence, indifference or error.

It is difficult at the practical level to separate intentional and negligent, especially with regard to incomplete declarations (Beqqa 'a, 2015, p. 47).

My own belief is that for the rest of the images: such as the absence of a false or incorrect statement or statement, the making of erroneous observations or the breach of the obligations imposed by law. s intention is clear and easily accessible through the evidence surrounding the statement. For example, an erroneous statement or non-declaration cannot be the result of an error.

In any event, the burden of proof lies with the Public Prosecutor's Office, which proves that the breach of the obligation to declare is intentional.

CONCLUSION

In this study, we have tried to address the problem at stake, through which we have seen it difficult to determine what administrative corruption is, and the power to declare property is not sufficient to confront and combat the phenomenon of corruption, and its effectiveness is on a steady curve depending on the country's political orientation. Through this study you have reached a set of findings and recommendations as follows:

FIRST: RESULTS

- The absence of a uniform definition of administrative corruption, which means that there is a real problem in the conception and control of this term, the meaning of which varies according to the angle from which it is viewed.
- The legislature has enacted a separate law criminalizing various forms of administrative corruption, namely the Law on the Prevention and Combating of Corruption by virtue of the special nature of these offences and their continuing development, which the Penal Code has failed to keep pace with.
- The legislator obliges the employee to declare his property before, during and after taking up public office. Failure to declare it is an offence of administrative corruption.
- The legislator restricts the declaration of property to the property of the employee and his minor children only without his husband's property, which opens the way for the official who can evade criminal prosecution of the crime of illicit enrichment by transferring his illicit property to his husband's property.
- The legislature excludes the category of high-ranking and high-ranking officials from declaring before the National Authority for the Prevention and Control of Corruption and merely declaring before the First President of the Supreme Court, even though the latter is a judge appointed by the President of the Republic, and is not a collective committee but a single individual.
- The legislator also failed to specify the role and powers of the first President of the Supreme Court when receiving the declaration of property.

SECOND: RECOMMENDATIONS

- Operationalizing the property declaration mechanism because it is the only mechanical and method by which the crime of illicit enrichment can be combated. In this area, we suggest that the crime of illicit enrichment should be explicitly and explicitly linked to the crime of non-declaration of property or false declaration of property in one law under the name of the Illicit Profits or Enrichment Act.

- The fact that the offence of illegal use of property should be extended to include, in addition to material means, human means, which are not covered by the present criminalization, even though they may cause serious damage to both public administration and public finance, since in practice this picture is more widespread.

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