

# COUNTERMEASURES CORRUPTION CRIMES IN PUBLIC PROCUREMENT IN ALGERIAN LEGISLATION

OKBA KHADRAOUI<sup>1,2</sup>, LOURIA ZOUAOUI<sup>2,3</sup>

<sup>1</sup>Faculty of Law, University of Algiers 1, (Algiers).

<sup>2</sup>The Legal Laboratory for Artificial Intelligence and Society

<sup>3</sup>Enterprise: Abdul Rahman Mira University, Faculty of Law and Political Science, Bejaia, Algeria

E-mail: o.khadraoui@univ-alger.dz , louria.zouaoui@univ-bejaia.dz

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## Abstract:

*By implementing the development programs that it has established, the state aims to reach agreements with the public in order to accomplish development and growth for the nation in a number of areas. Sadly, though, as a result of the proliferation of corruption offenses after they are finalized, public deals have turned into a vehicle for obtaining money and illegal gain. In order to prevent corruption offenses in public procurement, legislative measures have been put in place at both the national and international levels. Since Algeria gained independence, its lawmakers have developed laws to fight corruption. One such law is Law 06-01, which was passed in 2003 and is aimed at preventing and eliminating corruption in accordance with the United Nations Convention against Corruption.*

**key words:** Law-fighting-corruption- procurement -crime.

## INTRODUCTION

Corruption is one of the biggest threats to the growth of nations and communities because it obstructs the path toward reform, development, and stability in a number of areas, with public procurement being one of the area's most vulnerable to corruption in all its manifestations. In the context of public procurement, it manifests itself as undue favors, bribery, and the unlawful acquisition of benefits from agreements and contracts made by the government or an entity under public law. It also includes the crime of accepting gifts, which is regarded as one of the new ways that the Law on Preventing and Combating Corruption has criminalized public procurement.

Crimes of corruption are no longer just domestic crimes, but have crossed borders. It has become necessary for countries to cooperate with each other to combat corruption more effectively by establishing legal mechanisms that facilitate communication and collaboration between the various agencies responsible for pursuing corrupt criminals, whether for gathering evidence and information or for apprehending suspects or accused of corruption crimes.

The spread of crimes related to public procurement has compelled legislators to establish a legal system to combat these crimes by taking necessary measures through laws, regulations, and procedures that are deemed effective in combating these crimes in order to enhance transparency, integrity, and fair competition in public contracting, as well as to respect the procedures related to their conclusion as stipulated in the Anti-Corruption Law and taking the necessary deterrent measures in light of criminalization and punishment.

These preventive measures related to crimes related to public procurement, some of which are applied at the national level, are entrusted to be implemented jointly between the responsible authorities for the deterrent and punitive aspect, which are the judicial control and criminal justice, and other oversight bodies such as the National Anti-Corruption and Accountability Council.

Among these measures are those applied at the international level to facilitate cooperation between the various agencies responsible for pursuing corrupt criminals, whether for gathering evidence and information or for apprehending suspects or accused of corruption crimes related to public procurement? This study analyzed and responded to a fundamental problem: How effective are legal mechanisms in combating corruption offences in public procurement?



## **1/ National measures to combat corruption in public procurement**

Corruption is defined as (the abuse of public power for personal gain), a definition adopted by Transparency International and the World Bank but with similar formulations.<sup>(1)</sup>

In this section, we will focus on the specific procedures for investigating and detecting corruption crimes in the field of public procurement, and the specificity of public prosecution related to these corruption crimes.

### **1/1 Procedures for investigating and detecting corruption crimes**

In the field of public procurement The Algerian legislator emphasized in Article 56 of Law No. 06-01 dated February 20, 2006, related to the prevention and combating of corruption, that in order to facilitate the collection of evidence related to corruption crimes, resorting to controlled delivery or following special investigation methods such as electronic surveillance and hacking can be used. Referring to the Criminal Procedure Law, we find that it now includes special investigation methods, as the amendment made by Law No. 06-22 dated December 20, 2006, integrated two chapters in the second section of the first book concerning investigations, the fourth chapter titled interception of correspondence and recording of voices and capturing images, and the fifth chapter titled undercover. As for controlled delivery, despite the legislator's mention of it in Article 56 of Law No. 06-01 mentioned above, the legislator did not include it in the Criminal Procedure Law unlike the case for interception of correspondence, recording of voices, capturing images, and undercover procedures.

#### **1/1/1 interception of correspondence, recording of voices, capturing images**

The Algerian legislator allowed the interception of correspondence, recording of voices, and capturing of images for the purposes of investigating crimes caught in the act and in the preliminary investigation of corruption crimes, as one of the crimes stipulated in Article 65 bis 5 of the Code of Criminal Procedure, which states: "If the necessities of investigating the caught crime require it, or the preliminary investigation of drug crimes or transnational organized crime or crimes affecting automated data processing systems or money laundering crimes or terrorism or crimes related to expenditure as well as corruption crimes, the authorized public prosecutor may authorize the following: -Intercepting correspondence conducted through wired and wireless communication means. -Implementing technical arrangements without the consent of the concerned parties for capturing, recording, broadcasting, and registering spoken words privately or secretly by one or more individuals in private or public places, or capturing images of one or more individuals present in a specific location, and broadcasting and recording spoken words privately or secretly by one or more individuals in private or public places, or capturing images of one or more individuals present in a specific location." The Algerian legislator mentioned corruption crimes for the first time in the Code of Criminal Procedure regarding the interception of correspondence, recording of voices, and capturing of images, as confirmed by Article 56 of Law No. 06-01 on combating corruption.

The Algerian legislator has made this measure one of the most important new measures under Law No. 06-22 amending and supplementing the Code of Criminal Procedure, which allows judicial police officers to intercept correspondence conducted through wired and wireless communication means, and to implement technical arrangements without the consent of the parties involved, such as sensitive microphones capable of capturing images and recording conversations privately and secretly by one or more individuals in public and private places.)<sup>2)</sup>

This measure is considered a serious violation of privacy rights, as it contravenes the constitutional right to the secrecy of correspondence and communications in all its forms as stipulated in Article 39 of the Constitution, and it also violates the constitutional right to the inviolability of the home as guaranteed by Article 40 of the Constitution. Intercepting communications is defined as the secret monitoring of wired and wireless communications within the framework of investigating and gathering evidence or information about individuals suspected of committing or participating in criminal activities<sup>3)</sup>.



Monitoring is done through interception, recording, or copying of communications, which consist of data that can be produced, distributed, stored, received, or displayed. Voice recording is done by monitoring phones and recording conversations conducted through them, as well as by using sensitive microphones capable of capturing wireless or radio signals <sup>(4)</sup>.

Taking pictures involves taking a picture of a person or several people in a private place, and these methods are used in residential places and private locations. Public law and jurisprudence distinguishes between the term of intercepting telephone calls and the term of placing a telephone line under surveillance. While the former is without the consent of the concerned party, the latter is at the request or with the consent of the concerned party, and is subject to the discretion of the judicial body and is deemed to be the use of postal and transportation services.<sup>5)</sup>

This modern procedure is considered one of the most important investigative measures that enables the judicial police officer to carry out to uncover the crimes specified exclusively in Article 65 bis 5 under the Criminal Procedure Law. It is carried out by judicial authorities in some felonies and misdemeanors that have occurred or may occur in the near future, meaning that it is a measure for inquiry and investigation. Everything resulting from it serves as evidence against anyone serious investigations have implicated in committing this crime, or who has evidence related to it and in monitoring their telephone conversations that can help reveal the truth, after it became difficult to access it through ordinary search methods.

Another opinion distinguishes between inspections and monitoring, considering the former as a measure aimed at finding physical evidence, seizing it by laying hands on it, and collecting it for the benefit of justice. The latter, on the other hand, does not have tangible material existence and may lead to overhearing the speaker's secret but it is oral and heard by the speaker, without having a tangible existence. Claiming that this conversation merges into a material entity such as telephone wires or a recording tape should not be understood to mean that the conversation has a tangible existence that can be controlled, as telephone wires or recordings are not the evidence itself but merely a means or tool for hearing or replaying the conversation, and the evidence derived from them remains intangible, where its nature is not affected by the means or tools used to obtain it.

Therefore, the majority of jurisprudence considers monitoring phone conversations as a special type of measure, resembling inspection but not reaching its level. Most legislations have surrounded it with the same guarantees specific to inspecting messages, because phone conversations are by their nature oral messages.)<sup>6)</sup>

Despite the legislator's recognition of investigation methods in corruption crimes in the field of public procurement, the validity of these procedures is contingent on the presence of two conditions: the authorization of the public prosecutor and adherence to professional secrecy. It is worth noting here that the legislator did not specify who the individuals are against whom these measures can be taken. This could include a person suspected during the research and investigation phase, or a person suspected of possessing evidence that could reveal the truth, or a person accused during the judicial investigation phase, or a hidden person or possessor of information that could also reveal the truth. The only restrictions stipulated by the legislator are formal restrictions related to the necessity of having authorization for the procedure, whether issued by the public prosecutor or the investigating judge. As for the content of the authorization, the legislator in Article 65, bis 7, only emphasized on mentioning the elements that allow for the interception of required communications, the intended residential or other premises, the crime justifying resorting to these measures, and their duration. The law does not mention the attribute of the person owning the place or the correspondence. The legislator of criminal procedures deviated from its approach regarding the requirement to justify all measures taken against individuals that infringe upon their rights, by not specifying the identity of the person who will carry out the procedure against them, as is the case for the search of residences.)<sup>7)</sup> Because dangerous actions in general are taken against suspects of committing or contributing to a crime, as well as against accused individuals or those in possession of evidence related to the crime. As for intercepting communications, recording voices, and capturing images, the authorizing or delegated authority has absolute freedom to take action against anyone, as the legislator has not specified the duration of retaining these recordings after the qualified officer in a

public or private entity or body responsible for wired and wireless communications technically and operationally handles the mentioned audio recordings.

### **1/1/2 Undercover or infiltration**

The Algerian legislator allowed resorting to the technique of undercover - or infiltration - as referred to in the Anti-Corruption Law in its Article 65 bis 11 - when the necessities of investigation require in cases of crimes mentioned in Article 65 bis 5, with the difference that the legislator allowed interception of correspondence, recording of voices, and capturing images in cases of caught-in-the-act crimes, while infiltration was not permitted in the latter case but limited to use during the judicial investigation phase.)<sup>8)</sup>.

The legislator defined infiltration in Article 65 bis 12 of the Criminal Procedure Law No. 06-22 as: "The act of an officer or agent of the judicial police, under the responsibility of the officer of the judicial police assigned to coordinate the operation, to monitor individuals suspected of committing a crime by deceiving them into believing that he is a perpetrator, partner, or confederate." The legislator allowed in Article 65 bis 14 of the Criminal Procedure Law for the infiltrating officer or agent to use physical means such as money, products, or documents obtained from committing crimes or used in their commission, and may also make available to the perpetrators of these crimes all physical means available to carry out the crime, such as transportation, storage, shelter, preservation, or communication means, as well as legal means such as providing official documents if necessary, such as obtaining a national identity card, grey card, or passport even if it requires forgery, without holding the infiltrating officer or agent criminally responsible for these actions. The legislator required that for these measures to be valid, the officer of the judicial police must obtain permission from the competent public prosecutor, and also imposed on them the obligation of professional secrecy.

It is noted that the legislator has defined the persons against whom the leakage action is taken as those suspected of committing a crime or misdemeanor, and did not leave the field open as he did for correspondence, recording voices, and taking pictures. At the same time, he did not mention taking action against the accused, which raises confusion about the permissibility of authorizing leakage in the preliminary investigation stage, especially since the legislator in Article 65 repeated 11 mentioned "inquiry and investigation" without specifying whether it refers to the initial investigation or the judicial investigation. However, referring back to the text in French, we find that the legislator used the term "instruction," which means judicial investigation, and not "enquête," which indicates that infiltration is also allowed in the judicial investigation stage.

### **1/2 The procedures of public prosecution related to corruption crimes in the field of public procurement**

The Algerian legislator has regulated the procedures of public prosecution and the authorities responsible for initiating and considering them in the Code of Criminal Procedure. Public prosecution arising from corruption crimes is distinguished by specific provisions from those arising from other crimes. In this article, we will discuss the judicial jurisdiction over corruption crimes in the field of public procurement in the first section, and then we will present the specifics of initiating public prosecution in corruption crimes related to public procurement in the second section.

#### **1/2/1 Judicial jurisdiction over corruption crimes in the field of public procurement**

Judicial jurisdiction over corruption crimes in the field of public procurement the legislator adopted a method of expanding the local jurisdiction of certain specified courts, assigning them with specific types of crimes, such as drug crimes, cross-border organized crime, crimes involving automated processing systems, money laundering crimes, terrorism, and crimes related to special expenditure legislation)<sup>9)</sup>.

Considering corruption crimes as transnational organized crimes according to the United Nations Convention against Transnational Organized Crime, ratified by Algeria under Presidential Decree No. 02-55 of February 5, 2002, which criminalizes corruption after considering it as one of the crimes

covered by the Convention in Article 3. This is confirmed by Article 24 bis 1 of Law No. 06-01 as amended and supplemented by Order No. 10-05 of August 26, 2010, which states that crimes specified in this law fall under the jurisdiction of specialized judicial authorities in accordance with the provisions of the Code of Criminal Procedure

#### **Extending the Local Jurisdiction of the Public Prosecutor**

The second paragraph of Article 37 of the Criminal Procedure Law included provisions for expanding the local jurisdiction of the public prosecutor in relation to corruption crimes, stating: "The local jurisdiction of the public prosecutor may be extended to the jurisdiction of other courts through the regulation of drug crimes, organized crime across national borders, crimes affecting automatic data processing systems, money laundering crimes, terrorism, and crimes related to expenditure.

The same extension can be inferred for the Attorney General who supervises the public prosecutor extending his regional jurisdiction under Executive Decree 06-348 mentioned above, as it is natural for his local jurisdiction to include the jurisdiction of all councils attached to the jurisdiction of the public prosecutor to whom he is subordinate, contrary to Article 33 of the Criminal Procedure Law which specifies the regional jurisdiction of the public prosecutor at various levels according to the regional jurisdiction of the judicial entity in which the public prosecutor is appointed.

#### **Extending the Local Jurisdiction of the Investigating Judge**

Investigating corruption crimes is one of the cases in which the legislator allowed the extension of the regional jurisdiction of the investigating judge, as explicitly stated in Article 24 bis 1 of Law No. 06-01 on combating corruption, noting that this extension of jurisdiction was previously mentioned in the amendment of Article 40 of the Criminal Procedure Law<sup>10)</sup> According to Law No. 04-14.

Articles 2, 3, 4 and 5 of Decree No. 06-348 issued on 5 October 2006, which includes extending the local jurisdiction of some courts, prosecutors, and investigating judges. The scope of this extension is for the investigating judges of the Sidi M'hamed Court, the Court of Constantine, the Court of Ouargla, and the Court of Oran, with regard to extending the local jurisdiction of the prosecutors of the Republic.

#### **Extension of Local Jurisdiction for Courts**

The trial phase, like the initial investigation phase and the judicial investigation, has seen an exception introduced to the criteria of local jurisdiction for the misdemeanor court stipulated in Article 329 of the Criminal Procedure Code, which includes the scene of the crime, the residence of one of the defendants or their partners, or the place of their arrest, even if this arrest occurred for another reason. Article 8 of Law No. 08-14 amended and completed the aforementioned Article 329 by adding a second paragraph stating: "The local jurisdiction of the court may be extended to the jurisdiction of other courts by regulation, in drug crimes, organized crime across national borders, crimes affecting automated data processing systems, money laundering crimes, terrorism, and crimes related to expenditure".

Articles 2, 3, 4, and 5 of Executive Decree No. 06-348 dated October 5, 2006, which extends the local jurisdiction of some courts, public prosecutors, and investigating judges, specify the scope of this extension for judges of the judgment court of Sidi M'hamed, the court of Constantine, the court of Ouargla, and the court of Oran, as mentioned above regarding the extension of local jurisdiction for public prosecutors and investigating judges.

#### **1/2/2 The initiation of public prosecution related to corruption crimes in the field of public**





### **procurement**

Refers to the initial action taken for criminal prosecution before the investigating authority or the court by the public prosecutor or the injured party this is the action that initiates the criminal litigation between the parties, allowing the investigating authority or the court to access the file. In this regard, Article 1 of the Criminal Procedure Law states: "Public prosecution for the application of penalties is initiated and pursued by the judiciary and officials entrusted with it under the law, and it is also permissible for the injured party to initiate this prosecution according to the conditions specified in this law."<sup>(11)</sup>.

The public prosecutor has the genuine right to initiate public prosecution as the representative of society in defending the public right that is affected whenever a crime occurs. Nevertheless, the Criminal Procedure Law grants the victim of a crime the right to initiate public prosecution through civil action before the investigating judge or through direct summons for crimes specified in Article 337 of the Criminal Procedure Law, considering that the individual is also personally affected by the crime and therefore has the right to seek compensation for the damage suffered before the criminal court.<sup>(12)</sup>.

In Law No. 06-01, the Algerian legislator classified corruption crimes as crimes against public safety in the section designated for felonies and misdemeanors against public affairs, in addition to felonies and misdemeanors against state security, assembly, felonies and misdemeanors against the constitution, and other crimes that occur against public interests.

Corruption crimes threaten public safety by damaging the reputation and integrity of public office, as they are primarily crimes committed by public officials. This is confirmed by the United Nations Convention against Corruption, which stated in its preamble that corruption harms democratic institutions, ethical values, justice, sustainable development, and the rule of law.

Corruption crimes are considered crimes against public interest, not crimes against individuals, therefore the prosecution of these crimes falls under the jurisdiction of the public prosecution first, and then under the jurisdiction of the individuals who have suffered from the unlawful public deal. It is worth noting that corruption scandals in public procurement, which have been widely discussed in recent years, were discovered as a result of investigations conducted by various security agencies, especially those under military security, as they are issues that affect state security. These agencies handed over the files to the public prosecution, which took action on the public prosecution regarding them.

## **2/ international Mechanisms for Combating Corruption in Public Procurement**

The Algerian legislator in Article 57 of Law No. 06-01 states: "Taking into account the principle of reciprocity and within the limits allowed by treaties, agreements, relevant arrangements, and laws, judicial cooperation is established to the widest possible extent, especially with the states parties to the United Nations Convention against Corruption, in the field of investigations, follow-ups, and judicial procedures related to crimes stipulated in this law."

According to this text, the Algerian legislator has enshrined the principle of international cooperation in criminal matters related to strengthening prosecutions and investigations of corruption crimes, primarily by enhancing extradition procedures on one hand and introducing some procedures that allow the establishment of evidence of corruption crimes on the other hand, as we will present through the following two demands:

### **2/1 enhancing procedures for apprehending and extraditing criminals**

Extradition of criminals is considered one of the oldest and most important means of cooperation between countries in apprehending criminals. It is not considered a mechanism introduced by the United Nations Convention against Corruption. However, given the importance of extradition in the fight against corruption crimes and the pursuit of their perpetrators, this convention regulated it within its fourth chapter dedicated to international cooperation and allocated Article 44 to it. While Law No. 06/01 does not include specific provisions on the extradition of criminals, it can be inferred that the general legal provisions regulating this issue continue to apply, namely the aforementioned



United Nations Convention and the provisions of the Criminal Procedure Law, with priority given to the convention in case of a contradiction between the sources, considering that treaties prevail over domestic law.

The Algerian legislator has organized the surrender of criminals in articles 694 to 719 of the Code of Criminal Procedure. The legislator stated in Article 694 of the Code of Criminal Procedure that: "The provisions set forth in this book determine the conditions for surrendering criminals, the procedures thereof, and their effects, unless political treaties and agreements state otherwise." Therefore, Algeria is not among the countries that require the existence of surrender agreements as long as its domestic legislation regulates the conditions and procedures of surrender.

While the basic legal framework for surrender does not pose any problems in principle for Algerian law, it is worth noting that the United Nations Convention against Corruption, given its importance in surrendering criminals, stipulates in the fifth paragraph of Article 44 that if a state party not bound by a surrender treaty receives such a request, it may consider this convention as the legal basis for surrender regarding any offense covered by this article.

Thus, the United Nations Convention provides a solution for ratifying states whose domestic laws do not include specific legislative texts on surrender and find themselves facing a surrender request from a state with which they have no surrender agreement. In such a case, the United Nations Convention can be used as a basis for responding to the request.

The issue of surrendering criminals usually raises many issues related to surrender conditions, especially the condition of double criminality, the conditions related to the crime's location, and the conditions related to the person to be surrendered. These issues are presented as follows:

#### **The condition related to dual criminality**

It is required Most extradition treaties)<sup>13</sup>The crime for which extradition is requested must be stipulated in both the law of the requesting state and the law of the requested state, which is what has been called the principle of "dual criminality."

This principle constitutes a real obstacle to the extradition process if the requested state does not criminalize the act for which extradition is sought. Therefore, international agreements related to modern crimes, such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, try to find a solution to this principle when it impedes extradition for specified crimes.

The Algerian legislator has enshrined this principle in Article 697 of the Code of Criminal Procedure, stating: "Extradition shall not be accepted in any case if the act is not punishable under Algerian law by a criminal or misdemeanor penalty."

Crimes of corruption specified in the United Nations Convention are extraditable regardless of their criminal description or penalty amount, as the convention supersedes the criminal procedure law. Moreover, states party to the convention are obligated to extradite individuals for corruption crimes even if they have not yet criminalized them in their domestic law, in compliance with paragraph 44 of the convention, which allows for extradition despite the requirement for dual criminality, if the requesting state's law permits it for crimes covered by the convention and not punishable under its domestic law.

#### **Conditions related to the reason for extradition**

Referring to the texts of the United Nations Convention against Corruption, we find that it did not clarify whether it requires in the crime subject of extradition a specific penal description or a minimum punishment in each of the two countries. It referred in this regard to the domestic law of the requested state or the treaties to which it is a party in its text in paragraph 8 of Article 44 as follows: "Extradition shall be subject to the conditions provided for by the domestic law of the requested State or by the extradition treaties in force, including the conditions relating to the



minimum penalty required for extradition and the reasons on which the requested State may rely in refusing extradition."

Referring to Article 697 of the Code of Criminal Procedure, we find that the legislator requires in crimes for which extradition is permissible that they constitute a felony or misdemeanor under the law of the requesting State if the maximum penalty is two years or more<sup>(14)</sup>, or if the matter concerns a defendant sentenced to imprisonment equal to or exceeding two months. The Algerian legislator, in addition to requiring dual criminality, restricts crimes for which extradition is possible to felonies and misdemeanors mentioned earlier according to their description in the law of the requesting State, and did not require that Algerian law punishes with the same penalty, but it is sufficient for it to be a felony or misdemeanor.

#### **Conditions related to the person being delivered**

Referring to the Algerian Code of Criminal Procedure, we find that Article 695 states: "A person shall not be extradited to a foreign government unless proceedings have been taken against him for an offense specified in this chapter or he has been sentenced for it." This is contrary to the text of the same article in French, which only allows extradition in the case of a conviction. Based on the Arabic text, extradition is only permissible for accused or convicted individuals, which does not contradict the United Nations convention. The latter allowed in paragraph 15 of Article 44 the refusal of extradition if the requesting state discovers that the extradition request was made for the purpose of pursuing or punishing a person because of their gender, race, religion, nationality, ethnic origin, or political opinions, or if compliance with the request would harm that person's situation for any of these reasons. The principle is that extradition of any foreign person is permissible when the conditions for extradition are met<sup>(15)</sup>.

As for Algerians, the established principle in the field of extradition is not to extradite nationals to a foreign country, as explicitly stated in Article 696, considering that extradition concerns non-Algerians. Likewise, Article 698(2) expressly prohibits the extradition of Algerians. The United Nations Convention against Corruption recognized the principle of not extraditing a state's nationals, but it attempted to mitigate the negative effects through the recognition of some alternatives, primarily trial, execution of the penalty, or conditional extradition with the return of the individual to their country.

#### **2/2/ Expanding cooperation on the collection of evidence related to corruption crimes**

The framework of cooperation in apprehending criminals has expanded to include a range of measures aimed at facilitating the search for evidence of crimes. This is included in the United Nations Convention against Corruption through its provisions on the transfer of persons and procedures, cooperation in investigation and evidence gathering, and mutual legal assistance. The following will be presented:

##### **Transfer of persons and procedures**

The transfer of persons and procedures is considered a form of cooperation between countries in combating corruption crimes. The transfer of persons refers to moving them from the country where they are located to another country, either as convicted individuals to serve their sentence in the requesting country, or as witnesses in corruption cases to provide testimony or assistance.

Regarding the transfer of persons, Article 45 of the United Nations Convention against Corruption states: "States Parties may consider concluding bilateral or multilateral agreements or arrangements on the transfer of persons convicted of imprisonment or any other deprivation of liberty for committing criminal acts under the Convention to their territory to serve their sentence there."

According to this article, taking such action is recognition of the validity of foreign criminal judgments, representing an important development in international criminal law.

As can be inferred from it, the transfer of convicted individuals from the state where the judgment was issued to the state of execution has legal importance and practical feasibility at the same time,





as this procedure is considered evidence of surrender based on the fact that the state preferred to try the accused present in its territory rather than surrender him in accordance with the principle of "either surrender or trial". The legal importance is highlighted especially in case one of the surrender conditions is not met, while the practical importance lies in the fact that the convicted person belonging to the nationality of the state requesting his transfer is close to his family and relatives, making it easier for them to visit him. As for the conditions for the transfer of individuals, the United Nations Convention has stipulated a set of conditions for the transfer of individuals, including those related to the person being transferred, the state requesting the transfer, and the state to which the person is transferred. With regard to the person to be transferred, it was stipulated that his acceptance and explicit consent are mandatory, meaning that no pressure, coercion, or threat should be exerted on him. It was also required that he be aware of the purpose for which the other state is requesting his transfer. This is in line with the principle of voluntary acceptance, but we wonder why the Algerian legislator did not regulate this issue in its domestic law. The Convention also required the approval of the competent authority in the state requested to transfer the person, and this authority must link its approval to the conditions it deems appropriate when accepted by the state requesting the transfer, with the necessity of deducting the time spent in the other state if transferred to it.

The agreement also placed the majority of the conditions on the state to which the person is transferred, as it must commit to keeping the transferred person detained unless otherwise agreed upon. It is also obligated to return the transferred person to the state party from which he was transferred without delay, as agreed upon in advance between the two states. It is prohibited from initiating extradition procedures for this person to prevent fraud. It is also prohibited from following up on the transferred person, regardless of his nationality, as well as prohibiting him from detaining or punishing him or imposing any other restrictions on his personal freedom due to any act, omission, or conviction prior to his leaving the territory of the country from which he was transferred unless The State Party from which he was transferred agrees to this.

However, the Algerian legislator, through the text of Article 724 of the Code of Criminal Procedure, subjected the process of transferring convicted persons to the approval of the state in which they were present and conditioned this approval on three conditions. The first condition is the necessity of returning the imprisoned person within the shortest period, while the United Nations Convention explicitly stipulates that the detained person must be returned. The convict was executed without delay in accordance with what was previously agreed upon between the two countries. The second condition is that it is not permissible to prosecute the convict or the detainee for actions or rulings that preceded the request for his presence, noting that the condition was not restricted by its approval, as did the international agreement that permitted detention, punishment, and the imposition of restrictions. On the freedom of the transferred convict due to acts or omissions or a previous conviction for leaving the territory of the state from which he was transferred, if the latter agrees to this through the text of Article 46/12 of the Convention, and from there, the Algerian legislator has granted the transferred person an adequate guarantee.

### **Cooperation in the field of investigation**

The United Nations Convention against Corruption addresses the principle of cooperation and its mechanisms in the field of investigation and reasoning under the title "Cooperation in the Field of Law Enforcement." Article 48 of the Convention stipulates exclusively the forms of this cooperation. The form is represented by The first In cooperation with countries the parties With regard to the crimes covered by this Convention Procedure Identity investigations People Those suspected of involvement in these crimes, their whereabouts and activities, or Places People Other concerned parties, as well as with respect to such property, equipment or Tools The other Used or intended to be used in committing these crimes.

The second form is represented, when necessary, by providing Items Or the necessary quantities of materials for the purposes of analysis and investigation, while the third form is to exchange information, when necessary, with other States Parties regarding specific means and methods used



in committing the crimes covered by this agreement, including the use of false identities, forged documents, or other means of concealing activities. The agreement also stipulated the necessity of exchanging information and coordinating the administrative and other measures taken as necessary for the purpose of detecting the crimes covered by it, in addition to adopting special investigative methods.

It is important to remember that Article 49 of the United Nations Convention to Combat Corruption stipulated the creation of cooperative inquiry bodies with the authority to begin inquiries, prosecutions, or legal proceedings in one or more nations. Given its strong relationship to national sovereignty, the practical implementation of this policy still seems premature, even though the creation of these entities is thought to be a novel method in the field of international cooperation.<sup>16)</sup>

### **Mutual legal assistance**

Mutual legal assistance is considered one of the most important means by which international cooperation is carried out to combat cross-border crime in general, and corruption crimes in particular, by prosecuting its perpetrators, whether in the evidentiary stage or the investigation or trial stages. The International Convention against Corruption has regulated the subject of mutual legal assistance within the framework of international cooperation in its text: In Article 46/1, it states: "States Parties shall provide each other with the greatest possible amount of mutual legal assistance in investigations, prosecutions and related judicial proceedings covered by this Agreement."

The legal basis for mutual legal assistance is the bilateral or multilateral agreements that exist between the countries concerned. If the countries concerned are not bound by treaties for the exchange of legal assistance, the United Nations Convention against Corruption represents a treaty legal basis for conducting legal assistance. However, it can be said that given the There are many international agreements and instruments in the field of mutual legal assistance. The principle is to give priority to these agreements, whether bilateral or multilateral, other than the United Nations Convention against Corruption, which remains a treaty basis that can be resorted to when necessary, and this is what Article 46/6.7 of the Convention stated.

The forms of legal assistance vary according to the nature of the procedure to be undertaken and whether it relates to evidence of the crime or information related to the circumstances and circumstances of its commission or the proceeds obtained from it or the persons accused of it. Therefore, it can be said that it has three forms:

It is portrayed in form in the first instance, voluntary automatic help provided by one state to another state. This was not done at the individual's request. Lastly The United Nations Anti-Corruption Committee has stated in Article 46/4 of the Convention that this situation does not require the slightest conditions and that it occurs at the state's will and in a manner that does not conflict with its internal law. This assistance may also serve as a pretext for other countries to request additional assistance.

The second form is assistance provided in response to a request, which the Convention lists in Article 46/2. These manifestations include getting statements from witnesses, delivering court documents, conducting searches, seizures, and operations that involve freezing, inspecting objects and locations, providing information, resources, evidence, and expert opinions, and turning in original documents and pertinent records, such as financial, banking, and government records, as well as records of businesses or commercial establishments or certified copies thereof, in order to calculate revenues criminal or assets, equipment, or other items, or Following Its Impact For the purpose of providing evidence, enabling an appearance The proceeds of crime in nations that make requests must be voluntarily identified in compliance with the guidelines for asset recovery, freezing, and tracing their impact.

The third form is represented by conditional assistance, which is considered assistance based on a request coupled with conditions implicitly imposed by the multiplicity of jurisdiction between the two countries or it is explicitly required by the State providing assistance. To ensure that the ongoing investigations are not compromised And procedures a criminal offense that arises in the event of



multiple jurisdictions between two states or multiple jurisdictions, the state that initiated it has the right procedures. Concerning the same crime, you must respond to the request for judicial assistance in a manner that does not prejudice what you are doing in its territory from procedures.

There are three restrictions on the legal assistance that countries exchange in combating corruption and prosecuting its perpetrators, as stated in Article 46/19, 20, and 27 of the United Nations Convention, which are adherence to the content of the request, maintaining the confidentiality of information, and not attacking witnesses and experts due to the immunity they enjoy from non-compliance. They may be prosecuted, detained, or sentenced.

Legal assistance between countries regarding a corruption crime is carried out through a written request submitted by one country to another. The request is implemented in accordance with the internal law of the country receiving the request, which is something that the two countries agree upon.

Cases of rejection of a request for legal assistance can be attributed to three reasons. The first is related to the form of the request, which must include the data stipulated in the United Nations Convention against Corruption in its Article 46/21 and what is stated in bilateral and multilateral agreements. As for the second, it is political and occurs whenever the state deems it a recipient. The request is that the implementation of the request affects its sovereignty, security, order, or other basic interests. As for the latter, it is legal and has three cases: the absence of dual criminality, if the internal law of the requested state prohibits its authorities from implementing the requested action regarding any similar crime, even if that crime is subject to investigation. Or prosecution or judicial proceedings within its jurisdiction, and finally when fulfilling the request conflicts with the legal system of the requested State with regard to mutual legal assistance.

### CONCLUSION

Through our study of the topic of combating corruption in public procurement between Algerian legislation and international law, we have found the Algerian legislator's keenness to pursue corrupt individuals in the field of public procurement at the national level by establishing legal procedural mechanisms to combat corruption in these transactions, as outlined in Law No. 06-01 dated February 20, 2006, concerning the prevention and combating of corruption, as well as Law No. 06-22 dated December 20, 2006, amending and supplementing the Code of Criminal Procedure. These mechanisms include investigation methods such as interception of communications, audio recording, image capture, surveillance, and infiltration. They also involve the distinct features of public prosecution arising from corruption crimes in the field of public procurement, in addition to the establishment of the High Authority for Transparency, Prevention, and Combating of Corruption under Law 22-08.

- The initiation of public prosecution regarding corruption crimes in public procurement falls under the jurisdiction of the public prosecutor's office primarily, then under the jurisdiction of individuals who have been harmed by illegal public procurement. The automatic nature of the public prosecutor's office in relation to corruption crimes is unrestricted, unlike some other crimes.

- Despite the establishment of national procedural mechanisms by the legislator to combat corruption in public procurement, they remain insufficient as the severity of corruption crimes extends to other countries.

Therefore, it is necessary for the countries of the world to agree to cooperate among themselves in developing existing international cooperation mechanisms in the field of pursuing criminals on the one hand, and in developing new cooperation mechanisms that were originally of a national nature. Thus, some of the problems raised by the issue of extradition of criminals on the one hand were addressed and Strengthening cooperation in the field of transfer of persons, procedures and establishing evidence on the other hand.



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4. Hassan Sadiq Al-Marsafawi, *Al-Marsafawi in Criminal Investigation*, Mansha'at Al-Ma'arif, Alexandria, Egypt, 1990, p. 7.
5. Abd al-Rahman Khalafi, *opcit*, p. 73.
6. Sohaila Bouzira, *Confronting Suspicious Deals*, Master's Thesis, Faculty of Law, Mohamed Seddik Ben Yahia University, Jijel, Algeria, 2008, p. 125.
7. The text of Article 65 bis 5 of the Code of Criminal Procedure stipulates that persons whose homes are searched include persons suspected of contributing to the commission of a felony and persons suspected of possessing papers or objects related to criminal acts.
8. Karima Illah, *opcit*, p. 112.
9. Karima Illah, *opcit*, p. 114.
10. See Article 40 of the Algerian Code of Criminal Procedure.
11. Muhammad Hazait, *Principles of Criminal Procedure in Algerian Law in Light of the Latest Amendments to the Code of Criminal Procedure and Jurisprudence*, Dar Belqis, Casablanca, Algeria, 3rd edition, 2022, p. 14.
12. Abdullah Ouhabia, *Explanation of the Algerian Code of Criminal Procedure*, Dar Houma, Algeria, 2008, p. 163.
13. For example, the agreement regarding the extradition of criminals concluded between Algeria and the United Kingdom of Great Britain and Northern Ireland, signed in London on July 11, 2006 and ratified by Presidential Decree 06/464 of December 11, 2006, issued in Official Gazette No. 81, as stated in Article 2 of the agreement. ...crimes that require extradition are crimes punishable under the laws of each party..."
14. In the text of Article 697 F (2), he wrote "...two years or less..." while the text in French did not include this error. Ford:
15. «...deux ans or au-dessus...»
16. Taking into account the cases of inadmissibility of extradition stipulated in Article 696 of the LawproceduresPenalThe Algerian.
17. Suleiman Abdel Moneim, *opcit*, p. 135.