



# A READING OF LAW NO. 22-08 REGULATING THE SUPREME AUTHORITY FOR TRANSPARENCY, PREVENTING AND COMBATING CORRUPTION

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## Abstract:

*We can only say that the legislator, by reviewing the provisions of Law No. 22-08, had a genuine intention to embody transparency in order to prevent and combat corruption by facilitating the role of the Supreme Authority to achieve this noble objective. Despite the independence granted to it in administrative and financial matters, we believe that it has not been able to fully realize this sovereignty due to its implicit dependence on the President of the Republic. There is no independence without absolute independence. Therefore, it would be beneficial for the legislator to address this point by at least establishing an electoral mechanism for the President of the Supreme Authority and its council members to ensure independence in a democratic Algeria.*

**Keywords:** Supreme Authority, Effectiveness, Prevention, Fighting, Corruption, Law No. 22-08.

## INTRODUCTION:

The impact of corruption is negative on any society based on a state structure with institutions, affecting its apparatus in all fields without being limited to a specific timeframe. It remains a looming danger, its malignancy growing day by day, transforming from a reprehensible act within the community into a phenomenon embraced by its individuals as part of their daily lives, particularly in civil contexts. Crime has spread in a way that hinders development in many areas, prompting the legislator to take his first step by issuing Law No. 06-01 in 2006, which addresses the prevention and combating of corruption as a legal mechanism for this purpose.

Following this step, the legislator constitutionalized the National Authority for the Prevention and Combat of Corruption in the 2016 constitutional amendment through Article 202, establishing it as a regulatory authority with administrative, financial, and sovereign independence. This was all in line with the United Nations Convention Against Corruption, ratified under Decree 04-128, in which Algeria committed to creating an authority responsible for preventing and combating corruption.

Continuing with legislative reforms, the legislator reconstituted the authority following the 2020 constitutional amendment, naming it the Supreme Authority for Transparency<sup>1</sup>, Preventing and Combating Corruption. This position was reinforced by the issuance of Law No. 22-08 on May 5, 2022, which defines the organization, formation, and powers of this authority.

Thus, the following problem can be posed:

What legal framework has the Algerian legislator established to activate the work of the Supreme Authority in order to achieve the desired objectives of its establishment?

To answer this question, we propose to address the issue through two main components. The first concerns the definition of the nature of the Supreme Authority for Transparency and the Prevention and Combating of Corruption and its powers, which will be examined through two sub-components: the concept of the Supreme Authority and the definition of its powers. The second main component will include the structure of the High Authority through two subcomponents as well: one related to the President of the Authority and the other

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<sup>1</sup>- Presidential Decree 20-442, issued on December 30, 2020, concerning the amendment of the constitution ratified in the referendum of November 1, 2020, Official Gazette No. 82, dated December 20, 2020



related to the Council of the Authority. We will adopt a descriptive analytical approach to the texts of Law No. 22-08.

## 1- THE NATURE OF THE SUPREME AUTHORITY AND ITS POWERS

The Algerian legislator, through Law No. 22-08, presented in 43 articles, dedicated 15 articles to defining the Supreme Authority and specifying its powers. Therefore, we will address this section in two sub-parts: the concept of the Supreme Authority and the determination of its powers.

### 1-1 Concept of the Supreme Authority

We will examine this section in two parts. The first concerns the definition of the Supreme Authority, and the second highlights its characteristics.

#### 1-1-1 Definition of the Supreme Authority:

Referring to Article 1 of Law No. 22-08, we find that the Algerian legislator designated it as the Supreme Authority and described it in Article 2 as an independent institution that enjoys legal personality and financial and administrative autonomy<sup>2</sup>.

It is noteworthy that the Algerian legislator changed the designation used in Law No. 06-01 of February 20, 2006 on the prevention and combating of corruption, which referred to it in Article 17<sup>3</sup> as the National Authority for the Prevention and Combating of Corruption. This is also contrary to what is stipulated in Article 6 of the United Nations Convention against Corruption of 2003, which states that one or more bodies should be established to prevent corruption.

It appears that the Algerian legislator intended to transform the CCCI from a body subordinate to a specific authority into a decision-making authority, thereby raising its status in order to achieve the desired effectiveness in the fight against corruption. As a result, it is considered a decision-making authority and not just a formation or a subordinate body. Its strength lies in its capacity as a decision-making authority with full autonomy, thus establishing it as an independent institution within the framework of the public authority through article 204 of the constitutional amendment of 2020, based in Algiers and possessing numerous characteristics.

#### 1-1-2 Characteristics of the Supreme Authority

It can be observed from the texts establishing the Supreme Authority, both constitutional and through Law No. 22-08, that it is distinguished by several characteristics, including:

- Independence: The Supreme Authority is an independent institution that does not report to any entity, allowing it to exercise decision-making power and its authorities freely and without interference. This contrasts with the National Agency for Preventing and Combating Corruption, which was subordinate to the President of the Republic<sup>4</sup>.
- Institutional Nature: The Supreme Authority has an administrative character, possessing legal personality and financial independence. This status shields it from any form of influence or intervention from any party. Nevertheless, it remains an executive oversight body as defined by Law No. 22-08.
- Constitutional Status: The legislator allocated a specific place for the Supreme Authority in the 2020 Constitution, dedicating an entire chapter within the oversight institutions in Chapter Four. This is in contrast to the 2016 Constitution, which classified the agency as a consultative institution.

<sup>2</sup>- Law 22-08, issued on May 5, 2022, defining the organization, formation, and powers of the High Authority for Transparency, Prevention, and Fight Against Corruption, Official Gazette No. 32, issued on May 14, 2022, p. 6.

<sup>3</sup>- Law 06-01, issued on February 20, 2006, concerning the prevention and fight against corruption, Official Gazette No. 14, issued on March 8, 2022, p. 6.

<sup>4</sup>- Refer to Article 2 of Law 22-08 and Article 18 of Law 06-01.



- **Regulatory Framework:** The organization and operation of the Supreme Authority are governed by a law that follows the standard procedures for legislative enactment, including proposal, voting, and publication. This differs from the previous agency, which operated under direct regulation. Consequently, the legislator opened the door for popular participation in organizing the authority's operations, thereby enhancing its immunity from arbitrary amendments, unlike the simpler framework that governed the previous agency.

- **Ease of Interaction with Oversight Bodies:** The Supreme Authority is allowed to directly notify other oversight institutions, particularly the Court of Auditors and the judiciary, without any intermediary. This is a departure from the previous agency's practice, which always required referral to the Minister of Justice to initiate public legal action.

## **1-2 Powers of the Supreme Authority:**

Returning to the content of Law No. 22-08, the legislator organized the powers of the Supreme Authority within Chapter Two, consisting of twelve articles, from Article 4 to Article 15. A review of these articles reveals that the legislator diversified the roles of the authority, including foundational and declarative roles, oversight roles, and advisory roles. This diversification seems to stem from the desire to achieve the highest indicators of integrity and transparency in managing public affairs, as outlined in Article 4 of the law.

### **1-2-1- Foundational and Declarative Role of the Supreme Authority**

The Supreme Authority is tasked with developing a strategic plan that includes rules and principles to enhance transparency and integrity, ensuring effective contributions to the prevention and combating of corruption. It directs all public administrations to implement this plan, a commitment reinforced by the constitutional amendment of 2020. Before this amendment, the agency could only propose a policy in the form of a comprehensive perspective on preventing corruption without enforcing compliance or addressing transparency, and it had no means to compel the government.

Thus, the legislator established the term "authority" for the Supreme Authority, reflecting its unique role in founding and theorizing a general and national strategy, and providing consultations that embody transparency and integrity to activate its role in the prevention and combat of corruption. This is emphasized in Article 4 of Law No. 22-08, which references Article 205 of the Constitution<sup>5</sup>.

Additionally, it has the power to collect and centralize information according to the second paragraph of the aforementioned Article 4. However, the legislator did not specify how this information should be collected, effectively allowing the authority to gather information in any manner within a project framework, such as conducting administrative and financial investigations according to Article 5 of Law No. 22-08. This provision enhances the authority's capacity.

### **1-2-2- Oversight Role of the Supreme Authority**

To achieve its assigned objectives, the Supreme Authority exercises an oversight role within the framework of Articles 4/2, 12, 10, 9, 8, and 7. These articles outline its oversight responsibilities, which include:

- **Periodic Evaluation:** The authority conducts regular evaluations of legal instruments related to transparency and the prevention and combating of corruption. It establishes measures that are periodically updated and directs public administrations to comply with these measures to support transparency.

- **Information Collection:** It gathers accurate information related to corruption, subsequently storing and centralizing this data, which is then utilized and disseminated to assist individuals or public entities. This process does not violate the principle of confidentiality, as public administrations are obliged to maintain the confidentiality of their clients' secrets.

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<sup>5</sup>- Also see: Ijabi Elias, "The Legal Framework of the High Authority for Transparency and Prevention of Corruption Under Law 22-08," *Journal of Judicial Efforts*, Faculty of Law and Political Science, University of Biskra, Volume 15, Issue 1, March 2023, p. 151.



- Asset Declarations: The authority receives asset declarations and works on monitoring and following up on them<sup>6</sup>.
- Investigations of Illicit Enrichment: It conducts various administrative and financial inquiries concerning instances of illicit enrichment among public officials who are unable to justify significant increases in their financial status, or even based on mere suspicion or possibility.
- Receiving Reports: It accepts notifications and alerts from any individual regarding information, data, evidence, or indications of corrupt acts.
- Monitoring Compliance: The authority monitors and follows up on the extent of compliance and adherence of various public administrations to the rules and regulations concerning transparency and the prevention and combating of corruption, ensuring the quality, effectiveness, and appropriateness of their implementation.
- Recommendations: In the event of any violations, the authority issues recommendations to the concerned administration, necessitating the adoption of measures and actions to halt violations of compliance rules and regulations within a specified period. If necessary, it can issue binding orders that must be executed within a maximum of one year.
- Field Inspections: It conducts field inspections and notifies the public prosecutor of any shortcomings, particularly regarding the failure to declare assets. It may also inform the Court of Auditors if it finds notifications that fall within its jurisdiction, as established by Article 12 of Law No. 22-08.

### **1-2-3 Coordinating Role of the Supreme Authority**

The legislator has granted the Supreme Authority a coordinating role among various entities, whether administrative, security, or individual, as outlined in Article 4 of the law. This role includes:

- Coordination of Anti-Corruption Efforts: The Supreme Authority ensures coordination among different activities related to the prevention and combating of corruption based on clear and organized reports and statistics received from relevant agencies and administrations.
- Creating a Network: It works to establish a network connecting civil society members to unify efforts in promoting transparency and preventing and combating various forms of corruption.
- Organizing Activities: The authority organizes various activities at both local and national levels aimed at supporting appropriate systems for the prevention and combat of corruption.
- International Coordination: It coordinates with various bodies and organizations at the international and regional levels to reinforce its objectives in combating corruption, whether through preventive or reactive measures, particularly through information exchange.

After outlining the concept of the Supreme Authority and its powers, we turn to its structure.

## **2- STRUCTURE OF THE SUPREME AUTHORITY**

The Algerian legislator established the structure of the Supreme Authority in Articles 21 to 38 of Law No. 22-08 in the form of a collective structure. This principle was emphasized by the French Council of State in a report issued in 2001, which highlighted the importance of collective formation for independent regulatory authorities<sup>7</sup>. The Algerian legislator improved upon this, as a collective structure enhances the effectiveness of the authority by avoiding individual opinions and enriching its work.

<sup>6</sup>- Refer to: Hltali Ahmed, "Law Establishing the High Authority for Transparency, Prevention, and Fight Against Corruption 22-08—What Change and What Benefit?" *Journal of Legal Studies and Research*, Faculty of Law and Political Science, University of M'sila, Volume 8, Issue 1, 2023, p. 356.

<sup>7</sup>- French Council of State, Public Report (Independent Administrative Authorities), Studies and Documents, No. 52, 2001, p. 291.

[Link](<https://www.vie-publique.fr/rapport/24697-rapport-public-2001-conseil-etat-autorites-administratives-independantes>), Date of visit: 15/02/2025.



## **2-1 President of the Supreme Authority**

The legislator organized the role and powers of the President of the Supreme Authority through Articles 21 and 22 of Law No. 22-08.

### **2-1-1 Appointment of the President**

Article 21 of Law No. 22-08 states that the President of the Supreme Authority is appointed by the President of the Republic. It is important to note that although the legislator established the Supreme Authority as a body enshrined in the Constitution, and its legal organizational text is subject to legislative issuance rules, the appointment power rests solely with the President of the Republic. This partially undermines the independence of the authority, particularly concerning the power to refer cases to the public prosecutor, which is exclusively reserved for the President, not the authority's council. This raises the question: Why is the President not elected by the authority's council?<sup>8</sup>

### **2-1-2 Powers of the President of the Supreme Authority**

The Algerian legislator, through Article 22 of Law No. 22-08, granted the President of the Supreme Authority eleven powers. These powers appear to be illustrative rather than exhaustive, as the legislator established the president as the legal representative of the authority, thereby providing a dynamic space for action that extends even beyond the powers of the council, of which he is also a member. The following outlines these powers:

#### **2-1-2-1 Foundational Powers:**

- Preparation of the National Strategy: The president is responsible for preparing the national strategy for transparency and the prevention and combating of corruption, as well as for implementing and monitoring it.
- Drafting Internal Plans: He prepares a project plan that the authority will work on, supported by an internal system that delineates the authority's peaceful exercise over all employees.
- Preparation of Regulations: The president prepares the basic law for the employees.

#### **2-1-2-2 Management Powers**

- Managing Council Activities: He oversees the work of the authority's council.
- Budget Preparation: The president prepares a project that outlines the annual budget necessary for the authority's operations.
- Annual Reporting: He prepares the annual informational report, which is then presented to the council for approval and subsequently submitted to the President of the Republic for review.
- Supporting Coordination: The president works to enhance coordination and cooperation among international oversight bodies regarding corruption and its combat, facilitating information exchange according to international cooperation mechanisms.
- Notification of the Public Prosecutor: He informs the public prosecutor of any incidents that may potentially constitute crimes, regardless of their nature. Additionally, he notifies the Court of Auditors of any violations that fall within its jurisdiction, most of which pertain to management issues.

These roles and responsibilities are designed to ensure that the President of the Supreme Authority can operate effectively and independently, contributing to the overall mission of combating corruption and promoting transparency.

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<sup>8</sup>- Content by Jalal Massad, "The Independence and Neutrality of the Competition Council," *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, University of Tizi Ouzou, Issue 1, 2009, p. 239.



## 2-2 The Council of the Supreme Authority

This section will be discussed in two points: the first pertains to the composition of the council, and the second addresses its powers and meetings.

### 2-2-1 Composition of the Council

The legislator, through Article 23 of Law No. 22-08, established a diverse composition for the Council of the Supreme Authority. It is chaired by the President of the Authority and consists of 12 members, three of whom are chosen by the President of the Republic from among independent national figures with no party affiliation. Additionally, three judges are included: one from the Supreme Court, another from the Council of State, and the third from the Court of Auditors, all selected by the Supreme Judicial Council and the Court of Auditors.

Furthermore, three independent figures with expertise in financial and/or legal matters and experience in the prevention and combating of corruption are chosen by the President of the Council of the Nation, the President of the National People's Assembly, and the Prime Minister.

It is noteworthy that despite the independence of the authority and its council, the members are appointed from specific entities without the legislator providing justification for this method. The remaining three members are selected from among civil society figures known for their interest in issues related to the prevention and combating of corruption, appointed by the President of the National Observatory for Civil Society.

All council members are appointed by presidential decree for a non-renewable term of 5 years. This is a positive approach that supports the idea of independence<sup>9</sup>. However, the ability of the President to appoint council members may indicate a potential lack of independence.

As for the loss of membership, Article 26 of Law No. 22-08 outlines seven specific cases:

- Termination of duties
- Resignation
- Loss of the status under which the member was appointed
- Conviction for a felony or intentional misdemeanor
- Death
- Expulsion due to absence from three consecutive meetings without justification
- Engaging in serious actions or behaviors that contradict the member's obligations

The Algerian legislator has listed these cases exhaustively, which may provide a sense of security for council members, contributing to stability in their positions. This stability is likely to enhance their roles within the council and enable them to perform their duties comfortably, free from external influences<sup>10</sup>.

### 2-2-2 Powers of the Council and Its Meetings

The Council of the Supreme Authority is entrusted with several powers granted by the legislator under Article 29 of Law No. 22-08. These powers include theoretical, approval, and advisory functions.

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<sup>9</sup>- The specification of the term of office supports the independence of the regulatory authority. For more details, refer to:

Rachid Khelloufi, "Regulatory Institutions in Algerian Law," IDARA Review, No. 28, National School of Administration, Algeria, 2004, p. 100.

<sup>10</sup>- See: Akou Fatima Zahra, "The Effectiveness of the Role of the High Authority for Transparency, Prevention, and Fight Against Corruption After the Issuance of Law 22-08," Algerian and Comparative Public Law Journal, University of Sidi Bel Abbes, Volume 08, Issue 02, December 2, 2022, p. 507.





### **Theoretical Powers**

The Council has the authority to propose and study the national strategy for transparency and the prevention and combating of corruption, as well as to review the action plan of the Supreme Authority presented by its President.

### **Approval Powers**

In terms of approval, the Council is responsible for ratifying the aforementioned projects. Additionally, it must approve the budget proposal for the Supreme Authority, the annual report of the authority's activities, and its internal regulations.

### **Advisory Powers**

Regarding its advisory roles, the Council provides opinions on international cooperation projects and on any matters presented by the government, parliament, or any other body or authority related to the Supreme Authority's mission in combating and preventing corruption.

### **Meetings and Proceedings**

The Council meets once every three months in regular sessions and may convene extraordinary sessions when necessary, either at the request of the President or upon the request of at least half of its members (i.e., at least 6 members). If the President cannot attend, they may designate someone to represent them, as stipulated in Article 31 of the law.

For deliberations, a quorum of at least half of the council members must be present, and discussions are conducted in complete confidentiality. It is essential to observe the incompatibility of any member who has had a connection to a case in any form during the five years preceding the deliberation, in accordance with Article 33 of the law. In the event of a tie, the President's vote prevails, as per Article 34.

The incompatibility system is a commendable measure implemented by the legislator as a functional obligation that applies only to the President. However, it is noteworthy that the legislator has overlooked the application of the incompatibility system concerning the appointment of council members. This omission may weaken their neutrality and increase the likelihood of them engaging in other tasks that could detract from their council duties. In all cases, members must adhere to professional confidentiality, which remains in effect even after their term ends, subject to criminal law penalties<sup>11</sup>.

### **CONCLUSION:**

In conclusion, it is evident that the legislator, through the examination of the provisions of Law No. 22-08, genuinely intended to embody transparency for the purpose of preventing and combating corruption. The effort to facilitate the role of the Supreme Authority in achieving this noble goal is commendable, as it distinguishes the authority constitutionally from the National Authority for the Prevention and Combat of Corruption that existed previously. Despite the administrative and financial independence granted to the authority,

we believe that complete sovereignty has not been achieved due to its subtle dependency on the President of the Republic. True independence cannot exist in the absence of absolute autonomy. It would be beneficial if the legislator addresses this issue by at least establishing an electoral mechanism for the President of the Supreme Authority and its council members, ensuring genuine independence within a democratic Algeria.

### **Reference:**

- 1- Jalal Massad, "The Independence and Neutrality of the Competition Council," *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, University of Tizi Ouzou, Issue 1, 2009, p. 239.
- 2- Presidential Decree 20-442, issued on December 30, 2020, concerning the amendment of the constitution ratified in the referendum of November 1, 2020, Official Gazette No. 82, dated December 20, 2020

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<sup>11</sup>- Refer to Article 27 of Law 22-08.



- 3-Ijabi Elias, "The Legal Framework of the High Authority for Transparency and Prevention of Corruption Under Law 22-08," *Journal of Judicial Efforts, Faculty of Law and Political Science, University of Biskra*, Volume 15, Issue 1, March 2023, p. 151.
- 4-Hltali Ahmed, "Law Establishing the High Authority for Transparency, Prevention, and Fight Against Corruption 22-08—What Change and What Benefit?" *Journal of Legal Studies and Research, Faculty of Law and Political Science, University of M'sila*, Volume 8, Issue 1, 2023, p. 356.
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- 7- Law 22-08, issued on May 5, 2022, defining the organization, formation, and powers of the High Authority for Transparency, Prevention, and Fight Against Corruption, *Official Gazette* No. 32, issued on May 14, 2022, p. 6.
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