

The Specificity of Justice System in Countering Corruption Crimes in Algerian Legislation

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Abstract:

The present study aims to identify the role of the judicial system in the fight against corruption crimes in the Algerian legislation, with new

mechanisms that the legislator has created that are compatible with the progress that have touched various fields, especially since this crime is witnessing a perceptible and alarming spread at the international and national levels. This study was mainly based on analytical approach to analyze the various legal texts related to this matter.

Keywords: Confrontation; Corruption; Judicial; Economic Penal and Financial Pole; Privacy.

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Introduction:

Public money is rightly considered the main engine for the survival and development of any system. In fact, protecting it from being compromised constitutes a big challenge for most countries and international organizations by different means and various ways. The most important criminal phenomena that threatens the entire world is corruption, which is considered an international barrier that any country faces in building its future and sustainable development of its sectors.

The state alone has failed to develop a strategic policy to confront corruption, which has become an international reality and a social fact that is meeting unprecedented growth. That is why, the international community was obliged to do research and study on this phenomenon in order to draw up the foundations and landmarks that constitute ways to fight it, which were mainly represented in the international agreements in this regard it made unremitting efforts according to the United Nations General Assembly Resolution No. 55/61 of 04 December, 2000. Its efforts intensified until they culminated on

October 31, 2003 by another General Assembly Resolution No. 58/4 stipulating the adoption of The United Nations Convention against Corruption⁽¹⁾, which relating to many provisions to fight this phenomenon, which was ratified by Algeria with reservation under Presidential Decree No. 04-128⁽²⁾ of April 19, 2004, and promulgated Law No. 06/01⁽³⁾ relating to the prevention and fight against corruption.

Given the seriousness and specificity of corruption crimes, the Algerian legislator has used to face them a set of specialized judicial mechanisms different from other traditional methods⁽⁴⁾, in order to keep pace with the technological revolution taking place coinciding with the era of globalization, and the novelty of the crimes committed, in terms of their seriousness or the quality of their perpetrators.

In the light of the above, and in view of the importance of this topic, the features of its problem are defined for us and focus on the judicial mechanisms monitored by the Algerian legislator to confront corruption crimes and their efficacy.

To answer the aforementioned problem, we will determine the competent jurisdiction created by the Algerian legislator to deal with corruption files consisting of the economic, financial and penal pole (Chapter I), then we will discuss the specificity of these jurisdictions to demand corruption files (Chapter II).

Chapter I: Establishment of the Economic, Penal and Financial Pole:

The Algerian judiciary witnessed important economic and financial cases that attracted the attention of public opinion, especially after the popular movement of February 22, 2019, and the subsequent events, mainly the popular demand to fight corruption. In fact, many of these cases were opened and presented before the Supreme Court within the framework of the litigation privilege that was established under Article 573 of the Code of Criminal Procedure.

The majority of the files that were presented to the judiciary, especially between the years 2019 and 2020, were characterized by pure technical nature, where the majority of them were related to favoritism in granting public deals and industrial real estate under investment cover, favoritism in granting major loans without

guarantees or insufficient guarantees., transferring foreign currency abroad, money laundering, covert funding of political, providing benefits to public officials and agents of the state, inflating import bills for the purpose of money trafficking and so on.

All of these cases required focus and professional handling, and activation of various legally available procedures, especially international cooperation, for the inventory and seizure of criminal earnings for to recover them. In that respect, the Algerian legislator supported the judiciary with an economic and financial penal pole as specialized judiciaries to fight organized crime, especially those related to the economic and financial field, including the crime of corruption (First), that pole with certain characteristics (Second), also it is concerned with exclusively specific crimes with certain characteristics (Third).

1. The Legal Regulation of the Penal, Economic and Financial Pole:

When the Algerian legislator amended the Code of Criminal Procedure by Law No. 04-14⁽⁵⁾ of November 10, 2004, he allowed the extension of the territorial competence of some Public Prosecutors, Investigative Judges, and ruling bodies to the competence of other courts by organizing determined crimes consisting of “drug crimes, transnational organized crime, crimes related to automated data processing systems, money laundering crime, terrorism crimes and crimes of exchange. Then he added corruption crimes under Article 24 bis 1 of the Law on Prevention and fight against Corruption when it was amended by Order No. 10-05⁽⁶⁾ of August 26, 2010.

Also, under Executive Decree No. 06-348⁽⁷⁾ of October 05, 2006, the territorial jurisdiction of the Public Prosecutors, Investigative Judges, and ruling bodies was extended to four (04) jurisdictions, "Ouargla, Algiers, Oran and Constantine" and began its work starting in 2008.

Afterwards, under Order No. 20-04⁽⁸⁾ of August 30, 2020, amending and supplementing the Code of Criminal Procedure, a penal, economic and financial pole was created as a specialized jurisdiction to fight corruption crimes, and its powers and area of intervention was adjusted according to Articles 211 bis to 211 bis 15.

2. The Characteristics of the Penal, Economic and Financial Pole:

The new penal, economic and financial pole has a set of characteristics comprises:

✓ This pole was created at the court of first instance of the Court of Algiers Judicial (court of first instance of Sidi M'hamed-Algiers),

✓ This pole is specialized, that is its area of intervention is narrow and limited only to the most complex economic and financial crimes restrictively mentioned by the legislator and the related crimes,

✓ It is a national territorial national jurisdiction, that is that the Public Prosecutor, the President of the Court, and Investigative Judges at this specialized jurisdiction, exercise their powers over the whole country, Which means that there are no branches at the level of all the courts of the Republic, but the original jurisdiction enjoyed by the pole of the Algerian Judicial Council only⁽⁹⁾,

✓ The Public Prosecutor at this pole, is hierarchically acts under the command of the Attorney General at the Court of Algiers, and the head of the pole and the Investigative Judges at his administrative level are under the command of the Attorney General at the Court of Algiers, as well as the President of the Court of First Instance of Sidi M'hamed, the Public Prosecutor ttorney and the Investigative Judges of this Court of First Instance,

✓ It is independent from Court of First Instance of Sidi M'hamed in its status as an ordinary court like the rest of the courts of first instance of the country, and in its role as a court of first instance with expanded competence, even if it was established by the legislator at the level of the same court of first instance, which means that the composition of this pole "the President, the Public Prosecutor and the Investigative Judges" is not the same composition of the court of first instance of Sidi M'hamed which has the aforementioned two roles, rather it is a different composition "a different Public Prosecutor, a different chief President and different Investigative Judges".

3. Crimes Related to the Penal, Economic and Financial Pole and their Characteristics:

The Algerian legislator, in Article 211 bis 2 of Ordinance No. 20-04, defined the competence of the penal, economic and financial pole in crimes mentioned exclusively, as well as the related crimes, which are as follows:

✓ The misdemeanor of apparent negligence leading to theft, embezzlement, damage or loss of public or private funds or similar



things, documents, bonds, deeds or movable funds placed under the hands of the employee, judge, public officer or any person referred to by the Law on Prevention and Fight of Corruption, either pursuant to his occupation or because of it. This misdemeanour is stipulated and punished under Article 119 bis of Law No. 11-14⁽¹⁰⁾ of August 02, 2011 amending the Penal Code, and the misdemeanor of money laundering, stipulated and punished under Articles 389 bis and bis 1, 2 and 3 of Law No. 04-15⁽¹¹⁾ of November 10, 2004, amending and supplementing the Penal Code. For this purpose, we note that the legislator did not mention in Article 211 bis 2 the crimes stipulated in Law No. 05-01⁽¹²⁾ of February 06, 2005, related to the prevention and fight of money laundering and terrorism financing, and merely stated the money laundering crimes stipulated in the Penal Code. This, in our opinion, is due to the fact that the crimes stipulated in Law 01-05 are punishable by fines only, and therefore they are usually complicated,

✓ All corruption crimes stipulated and punished in the aforementioned law on Prevention and Combating of Corruption Law,

✓ All exchange crimes stipulated and punished under Ordinance No. 96-22⁽¹³⁾ of July 09, 1996, relating to the repression of violations of the legislation and regulation of exchange and the movement of capital from and to abroad,

✓ The misdemeanour of possessing a warehouse used for trafficking or a means of transport specially intended for trafficking within the customs territory, Article 11 of Ordinance No. 05-06⁽¹⁴⁾ of August 23, 2005, relating to combating trafficking, trafficking committed using a means of transport, Article 12, trafficking committed with carrying a firearm, Article 13, The felony of arms trafficking Article 14 and the felony of serious trafficking that threatens national security, national economy or public health Article 15 of the same law.

Hence, we conclude that the trafficking acts stipulated under Article 10 of the Anti-Trafficking Law do not fall within the powers of the penal, economic and financial pole. We also note that the legislator merely stated these crimes, without other economic and financial crimes that did not make it within the competence of this pole, namely the tax evasion stipulated in Article 303 of the Direct Taxes and Assimilated Taxes⁽¹⁵⁾ Law, and Articles 117 and 119 of the Turnover



Tax⁽¹⁶⁾ Law, as well as different transgressions in the trade such as fraudulent bankruptcy, crimes stipulated in the Money and Loan Law, and crimes related to the stock exchange etc, unless they are related to one of the crimes that fall within the competence of the pole stipulated in Article 211 bis 2 aforementioned.

In our opinion, the legislator should have added these crimes, especially since many of them are characterized by their complexity, especially in the field of tax fraud, which is sometimes in exorbitant amounts and in complex fraudulent methods, for instance identity theft and forgery of documents, in order to carry out commercial operations with theft identities in order to evade of taxes.

That is why, in order to avoid overcrowding the pole with cases, the legislator stipulated that the nature of the aforementioned crimes that grants him competence should be of the “most complex” nature, as not to waste his efforts in simple cases, but rather focus only on cases of great complexity and on which necessary measures are taken all, especially resorting to international cooperation. The Algerian legislator has defined the meaning of the most complex in Article 211 bis 03 of the Code of Criminal Procedure, which stipulated: “Crimes that require the use of special means of investigation, specialized technical expertise or international judicial cooperation, because of the multiplicity of actors, partners, victims, or due to the wide area geographical location of the place of its perpetration, or because of the seriousness of the damage resulting of it, because of its organized or transnational nature, or because of the use of information and communication technologies”.

The assessment of the “more complex” nature of any of the aforementioned crimes is subject to the Public Prosecutor at the Penal, Economic and Financial Pole, that gave him the power to claim the file from the original judiciary that was notified of it, as we will see in the second chapter.

Chapter II: Claiming of the Penal, Economic and Financial Pole for Corruption Files:

As the jurisdiction was supported by a jurisdiction specialized in combating corruption crimes, represented by the penal, economic and financial pole, as mentioned previously; law granted it the authority to take certain procedures to claim corruption files (first), that claim is characterized by a kind of privacy characterized by its priority and



privilege in it (second), after the jurisdiction claim of corruption files according to their priority as we mentioned, the original jurisdiction abandons those files in its favor (i.e. in favor of the penal, economic and financial pole), which gives that claim the devolutive effect of the procedures taken by the original jurisdiction that was notified of the corruption files (third).

1. Procedures for Claiming Corruption Files by the Penal, Economic and Financial Pole:

The principle of the claim relating to jurisdictions with extended competence shall apply on the penal, economic and financial pole as well. It means that the Public Prosecutors at the all courts of first instance of the country, as soon as they receive news reports and investigative procedures related to combating economic and financial crime, which they consider to be of great complexity, shall immediately send copies of them to the Public Prosecutor at the Penal, Economic and Financial Pole. Yet, if the latter deems it necessary that the file shall be referred to him, he claims it after seeking the opinion of the Attorney General of the Court of Algiers.

Consequently, the original Public Prosecutors- to whom the file was presented according to the usual territorial jurisdiction rules- relinquishes the file pursuant to a decision of relinquishment if the procedures are at the level of preliminary investigation or judicial proceeding.

Nevertheless, if the investigative judge at the same jurisdiction is notified of the file, he shall as soon as the request for relinquishment arrives from the Public Prosecutor at the penal, economic and financial pole, case an order of relinquishment in favor of the investigative judge of the Criminal, Economic and Financial Pole.

2. The Specificity of the Claim of the Penal Economic and Financial Pole for Corruption Files:

The competent ordinary court share treating of corruption case files in accordance with the general rules of territorial competence, as well as the competent penal, economic and financial pole in accordance with the exceptional rules according to which the law has granted priority and privilege.

The establishment of the Economic and Financial Criminal Pole as a new judicial body, with jurisdiction over corruption offenses and other related offenses, exemplifies the procedural link that exists

between this jurisdiction and the courts with expanded regional jurisdiction, which also have jurisdiction to adjudicate cases related to corruption offences. In this regard, the legislator provides that the jurisdiction of a new judicial body corresponds to the jurisdiction granted to courts with expanded territorial jurisdiction, but by recognizing procedural mechanisms that ensure the priority of the jurisdiction of the former over the latter⁽¹⁷⁾.

Therefore, if the Public Prosecutor at the Penal, Economic and Financial Pole claims corruption files, this jurisdiction has priority and privilege in following up and treating them, but the pole does not claim them, it will be treated at the competent court of first instance, with territorial competence in an ordinary way.

Given the above, the specificity of the claim of the penal, economic and financial pole for corruption files is apparent in the priority and privilege that is not allow the Public Prosecutor or the Investigative Judge at the original jurisdiction to which the file was referred according to the usual territorial jurisdiction rules, to refuses to relinquish the file to the penal, economic and financial pole if he claims it, but they must accept the claim.

Moreover, if the Public Prosecutor at the jurisdiction with expanded territorial competence claims and receives the file, and then it was claimed by the economic and financial pole, the file shall also abandoned to the latter, provided that the file is still at preliminary investigations and follow-up or judicial investigation, which reflects the intensity of the priority accorded by the legislator to the penal, economic and financial pole, which shows the great importance given to corruption crimes, to which the legislator granted a specialized jurisdiction with large powers in the face of the usual territorial jurisdiction, and the judiciary bodies with territorial expanded jurisdiction.

3. The Effects of Relinquishment of Corruption Files in Favor of the Penal, Economic and Financial Pole:

Most of the legislation, including the Algerian legislation, have adopted the idea of criminal poles that are based on the specialization of the judiciary in order to combat newly created crimes, limit their spread, and confront the development in the methods of committing them and the disastrous effects caused by them⁽¹⁸⁾.

As the penal, economic and financial pole has the distinctive



competence to claim and examine corruption cases, the judicial authorities with original territorial jurisdiction shall accept its claim and relinquish those files in its favour. This relinquishment has a devolutive effect of the procedures taken by the aforementioned original jurisdiction.

In fact, all the measures taken by the original jurisdiction that sent the file, especially the arrest warrants or the detention warrants, are subject to confinement remain applicable until a contrary order is issued by the penal, economic and financial pole.

Furthermore, the original jurisdiction that sent the file is restricted, and all powers and attributions are transferred to the judges of the penal, economic and financial pole, especially the management and control of judicial police work, as well as ensuring the legitimacy and validity of preventive detention and other procedures.

the new amendment granted the agent of the Republic of Economic and Financial, Pole the authority to request any file at the level of any other court, as investigating judges, will have to automatically abandon the file in favor of the Pole Court, which will deal with important and qualitative corruption files of considerable economic and financial risk, and which have an extension Even outside the borders of the homeland and across its borders⁽¹⁹⁾.

It becomes clear from the above, the importance that the Algerian legislator assigned to the economic and financial penal pole, through the privacy that he granted him, and represented in the total privileges he enjoys in this regard, which indicates the upgrading of the Algerian legal system to a large extent in keeping with the development he witnessed the world recently.

Conclusion:

The Algerian legislator's endeavor to introduce a law to fight and prevent the phenomenon of corruption, to support the judicial system for this purpose, by a specialized jurisdiction to combat these crimes; came as a response to Algeria's ratification of the United Nations Convention against Corruption, comprising a set of provisions related to the prevention of corruption in the public and private sectors, as well as the criminalization of various acts and behaviors that involve it, and the determination of their punishments, in order to fill the loopholes of the Penal Code that dealt with Classic crimes. This

specialized judicial body, represented by the economic and financial penal pole, was distinguished by a specificity that made it the priority for examining corruption files.

Thus, we achieved the following set of results:

1. The Algerian legislator promulgated Law No. 06-01 of February 20, 2006, relating to the prevention and fight against corruption, supplemented by Ordinance No. 05-10 of August 26, 2010,
2. The Algerian legislator created the penal, economic and financial pole to follow up on corruption crimes under Ordinance No. 20-04 of August 30, 2020, amending and supplementing the Code of Criminal Procedure,
3. The penal, economic and financial pole was characterized by numerous specific characteristics, as it was assigned the powers to examine specific crimes exclusively, characterized by certain characteristics such as great complexity,
4. The assessment of the “more complex” nature of the crime of corruption is subject to the Public Prosecutor at the penal, economic and financial pole, who is granted by law the authority to claim the file from the original judicial authority that was notified of it.
5. The Algerian legislator defined the legal procedures to be carried out by the penal, economic and financial pole to claim corruption files,
6. The claim of the penal, economic and financial pole for corruption files was characterized by the specificity of its priority and privilege in that matter,
7. the non- claim of the file case does not prevent the original territorial jurisdiction from exercising its jurisdiction over the corruption offenses in question,
8. Relinquishment of corruption files to the pole, economic and financial penal has a procedures devolutive effect taken by the original jurisdiction,
9. The new penal, economic and financial pole is one of the guarantees introduced by the Algerian legislator in his desire to strengthen the foundations and mechanisms of combating corruption crimes that he has enshrined in the Algerian legislation, given the grave danger that these crimes have imposed,
10. Talking about the effectiveness and ineffectiveness of the penal, economic and financial pole at the present time, it is very difficult



because the experience is recent and the stage of its evaluation is still premature,

11. Finally, despite the recentness of the penal, economic and financial pole, and our inability to assess it at the present time; It is considered one of the most important new legal mechanisms established by the Algerian legislator in order to cope with the developments of crime, which has spread quickly and easily.

As a conclusion of the reached results, we have tried to give the following recommendations:

- ✓ Continuous training of judges on corruption crimes and the Public Procurement Law,
- ✓ Strengthening the judiciary with the latest technologies that make it easier for judges to work in the context of combating corruption crimes due to their seriousness,
- ✓ Follow up on the continuous updating of the Algerian legal system whenever developments occur in this regard to keep pace with it,
- ✓ Focusing on the awareness-raising aspect of preventing these crimes,
- ✓ Strengthening international judicial and security cooperation to confront these crimes and return their proceeds from abroad.

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