

Restrictions to Prosecuting Suspects of Corruption in (Algerian Legislation; A Descriptive Analytic Study)

عقبات متابعة مرتكبي جرائم الفساد في التشريع الجزائري

Mohcen CHEDDADI *

Mohamed Cherif Messaadia University Souk Ahras, Algeria
m.chedadi@uni-soukahras.dz

Abdelkarime MENASSRIA

Mohamed Cherif Messaadia University Souk Ahras, Algeria
abdelkarim.menasria@univ-soukahras.dz

Date of send:27/02/2022 Date of acceptance:16./05/2023. Date of publication ;10/06/2023

Abstract: The Algerian legislator gives the Public Prosecutor's Office full freedom to begin public proceedings and start criminal prosecution proceedings, i.e. whenever a crime occurs and the order to commit it comes to the attention of the Public Prosecutor's Office, The latter automatically opens a public action against suspects. However, this general principle actually contains exceptions, i.e. there are offences in which the Public Prosecutor's Office may not file a public action unless certain conditions are met, known as the restrictions contained in the filing of a public action. Corruption offences are crimes that require certain conditions for filing a public action, which is known as follow-up restrictions.

Keywords: Restrictions, Prosecuting, Suspects, Corruption, Algerian legislation.

Introduction

As far as the origin of criminal proceedings is automatic, the Public Prosecutor's office, as a representative of the public, exercises its right to start public proceedings against the perpetrators of various types of crimes unconditionally, however, this privilege may be restricted by the legislator and limited by the fact that the order to initiate public proceedings depends on desire, will and appreciation of a person discretion of the victim to initiate public proceedings, but in fact it is only an exception, since the legislator has restricted the freedom of the public prosecutor to initiate public proceedings exclusively and for certain offences such as corruption. What are the limitations on the freedom of the Public Prosecutor's Office to initiate public prosecution for corruption offences? How does that affect the impunity of perpetrators of this type of crime?

Firstly: Functional immunity as a restriction for judicial follow-up in corruption crimes.

The performance of certain functions sometimes requires granting immunity to some employees so that they can perform their professional tasks and duties to the fullest, and this privilege - immunity - is in no way considered an impediment to the establishment of penal responsibility against the suspect, the legislator considers it one of the restrictions on the right of the Public Prosecution to initiate a public lawsuit. Since corruption crimes are often committed by public officials who enjoy job immunity, the United Nations Convention against Corruption has tried to find ways to ensure that they can be prosecuted. As it takes a middle position by limiting the privileges granted to employees or what is known as immunity without canceling it. Where it is stated in the text of Article 30, paragraph 02 of it: appropriate between any immunities or judicial privileges granted to its public officials for the performance of their functions and the possibility, when necessary, of effective investigations, prosecutions of offenses establishes in accordance with this Agreement¹.

1 .The position of the Algerian legislator on functional immunity

Job immunity and the electoral covenant are an effective guarantee to carry out administrative tasks in the best and most complete way, and despite the possibility of exploiting this privilege in order to escape punishment, especially in corruption crimes in which the perpetrator is often a public official, the Algerian legislator has never addressed the issue of functional immunity in the law on the prevention and control of corruption, or at least provide for its restriction on corruption offences, in line with the principles adopted by the UN Convention against Corruption. This is a legal vacuum in Algerian legislation because functional immunity is a barrier to prosecuting perpetrators of corruption crimes as we have already mentioned .

2 . Aspects of Functional Immunity

Since functional immunity is a restriction on the right of the public prosecutor to initiate public action in corruption crimes, we will try to address its various manifestations and the extent to which it affects the follow-up of the perpetrators of these crimes.

A- follow-up by members of Parliament on corruption offences

The Algerian legislature grants functional immunity to representatives of Parliament in its chambers, under which the competent judicial authorities cannot take any action against them unless it is carried out in accordance with the conditions and controls set out in the Constitution.

With reference to the text of article 130 of the last constitutional amendment, which states: "A Member of Parliament may be subject to judicial follow-up on acts unrelated to his or her parliamentary functions after an express waiver of immunity by the parliament.

If immunity is not waived, the notification authorities can notify the Constitutional Court of a decision on whether or not to lift immunity." The provision also stipulates the procedures followed in the event that the parliament deputy is dressed in a misdemeanour or felony, so that he can be arrested provided that the Office of the National People's Assembly or the Office of the Assembly Nation is notified immediately, whereby the notified office in this case can request the suspension of criminal follow-up and the release of the deputy or member of the Assembly Nation, in which case the deputy can only be pursued by an explicit waiver by the party concerned with follow-up or with the permission of the National People's Assembly or the Council of the Assembly Nation²

B- Follow-up of members of the executive and judicial body on corruption crimes

The Algerian Constitution sets out a number of procedures to be observed by the competent judicial authorities if they attempt to follow up on the Government's violations of the crimes that they may commit in the performance of their duties.

- Follow-up of the Prime Minister: Under the text of article 183 of the recent constitutional amendment, the Prime Minister or the Head of Government cannot be pursued criminally for crimes and misdemeanours committed in the course or occasion of his duties, except under the special rules established for that, including follow-up at the level of the Supreme Court, as planned in the follow-up of the President of the Republic.

- Follow-up of members of the government and judges: Article 573 of the Code of Criminal Procedure states: "If a member of the government, a judge of the Supreme Court, a state, the head of a judicial council or the Attorney General of the Judicial Council, The Attorney-General of the Supreme Court may be charged with a felony or misdemeanour committed in the course of his or her duties or in the course of his or her duties. The Attorney-General of the Supreme Court shall then transmit the file peacefully to the Attorney-General of the Supreme Court, who shall, in turn, submit it to the first President of this Court if she or he deems it necessary to proceed.

The judge appointed to investigate all cases referred to in this article shall conduct the investigation within the forms and conditions provided for in the Code of Criminal Procedure for the preliminary investigation of offences, subject to article 574 below.

Article 574 of the Code of Criminal Procedure also provides that: "In cases provided for in article 573 above, the jurisdiction of the Indictment Chamber shall be vested in a body of the Supreme Court established in accordance with article 176 of this Act.

The Attorney-General of the Supreme Court shall exercise the powers of the Attorney-General. "

When the investigation is completed, the judge appointed for this purpose shall either issue a non-follow-up order if there is no follow-up or send the file to the following judicial authorities:

- If the facts constitute a misdemeanour: the accused is referred to the competent judicial body except for the party where the accused exercised his normal duties within its jurisdiction.

- If the facts attributed to the accused constitute a felony: in this case the investigating judge appointed for this purpose transfers the file to the Attorney General of the Supreme Court, who brings the matter to the composition of the Supreme Court for the purpose of completing the investigation procedures, and when the investigation is completed, the latter issues either a non-follow-up order, or refers the accused to the competent judicial authority located outside the jurisdiction of the judicial body in which the accused was exercising his normal duties³.

- Follow-up of members of the Judicial Council, heads of courts and agents of the Republic

If a member of the Judicial Council, the President of the Court or the Attorney General of the Republic is accused of a crime of corruption, the judicial file is sent through gradual dependence by the Attorney General of the Republic, who has been notified to the Attorney General of the Supreme Court, who in turn submits the matter to the first president of the Supreme Court if he considers that there is a place of follow-up, the latter

- The first of the Supreme Court - assigns a judge to investigate outside the jurisdiction of the judicial council in which the accused takes office.

Upon completion of the investigation, the assigned judge refers the accused to the competent judicial body at the headquarters of the investigating judge if a misdemeanour is involved, but if the facts attributed to him constitute a felony, he will be referred to the indictment chamber of the Judicial Council⁴

-Follow-up of court judges

If a judge of the court is accused of corruption offences, it must be followed up in accordance with the procedures specified under article 576 of the Code of Criminal Procedure, which states: "If the accusation is directed at a court judge, the attorney general of the Republic shall simply notify him of the case by sending the file to the Attorney General of the Council. The accused takes up his job.

If the investigation is completed, the accused will be referred if necessary before the competent judicial body at the headquarters of the investigating judge, or before the indictment chamber of the Judicial Council Chamber.

-Follow-up of judicial police officers

This category, according to article 15 of the Code of Criminal Procedure, includes the heads of municipal people's councils, national gendarmerie officers, rank-and-file national gendarmes who have spent at least three years in the national gendarmerie and who have been appointed by a joint decision of the Minister of Justice and the Minister of Defence after the approval of a special committee, Staff of the special corps of inspectors, The police officers of national security who have spent at least three years in this capacity, They were appointed by a joint decision issued by the Minister of Justice and the Minister of Interior after the approval of a special committee, officers and non-commissioned officers of the military interests of security, who were specially appointed by a joint decision issued by the Minister of National Defense and the Minister of Justice. These categories specified in the text of the above-mentioned article are followed up in accordance with its own rules⁵. The investigating judge can hear them as witnesses in the court where they exercise their normal duties, but he may not charge them⁶. If the judicial police officer is accused outside the immediate function of his or her job or while conducting it in the district where he is concerned locally, the Attorney General, once he has been notified of the case, will send the file to the Attorney General of the Judicial Council, and if he sees a follow-up place, he shall present the matter to the President of the Judicial Council, who orders an investigation into the case by a judge of the investigation, who is chosen outside the jurisdiction of the judicial body in which the accused proceeds⁷. Failure to comply with the procedure established by the Algerian legislature concerning the rules for follow-up against officers of the judicial police results in the invalidity of all proceedings⁸.

It should be noted here that the procedures relating to the investigation and trial for all the above-mentioned categories apply to the original perpetrator and the partners of the person who followed, in the sense that these procedures apply to the accused concerned and his shareholders, whether they are genuine actors or partners, and in this context article 578 of the Code of Criminal Procedure states that: The investigation and trial include the original co-perpetrator and the accomplices of the person followed in all the cases referred to in this section."

The prosecution also accepts the civil right to these crimes at any stage where the proceedings were taken, whether before the investigating body or the judge of the judicial body before which the accused was referred, and extends the local jurisdiction of the investigating judge assigned for this purpose to the entire national territory in accordance with the text of article 580 of the Code of Criminal Procedure, which states: "The jurisdiction of the investigating judge assigned in cases provided for in articles 575, 576 and 577 extends to all the scope of national territory."

Finally, we conclude that the Algerian legislator has put a set of procedural restrictions in the follow-up of corruption crimes, and these restrictions and immunities granted to some employees are a major obstacle in dealing with corruption crimes, and limit their accounting or criminal prosecution, and granting

some groups immunity or privilege is not in line with the principle of equality before the law and does not serve the necessities of combating corruption crimes, Therefore, the Algerian legislator should has reduce these privileges and immunities when it concerns the crimes of corruption and related crimes.

Secondly: Bank secrecy as a restriction on judicial follow-up in corruption offences

Bank secrecy is one of the principles governing the work of financial and banking institutions, so the latter may not disclose secrets related to the bank accounts of its clients⁹. This was approved by various comparative legislation by adding legal protection to this principle, as the disclosure of secrets relating to bank secrecy was considered a form of professional secret disclosure. Considering the duty of bank secrecy, it is obligatory that third parties cannot access the accounts and balances of customers of financial institutions. It is thus one of the biggest obstacles to tracking and combating corruption crimes. This makes banking secrecy a safe haven for the whistle-blowers of funds derived from corruption offences. Because of the gravity of this situation, many pieces of legislation deviate from this principle by allowing access to bank accounts and deposits when there is suspicion of corruption and money-laundering.

1. Concept of banking secrecy

Pure confidentiality is one of the most important principles governing the relationship between financial institutions and their clients. The customer has the right not to inform third parties about the deposits and accounts he puts in financial institutions, and it is the duty of the latter to maintain the confidentiality of the accounts of their customers.

A- definition of bank secrecy

There are some who define bank secrecy as "the obligation of bank employees to preserve and not to communicate the secrets of their customers, since the bank is trusted by virtue of its profession, especially since the bank's relationship with its customers is based on trust, the basis of which is the bank's confidentiality of their financial secrets¹⁰".

Some also define bank secrecy as "an implicit obligation on banks and financial institutions in their relationship with customers not to disclose information relating to them, either intentionally or negligently, given the mutual trust required by the nature of the banking relationship between the parties.¹¹ "

Accordingly, bank secrecy can be defined as an obligation on financial and banking institutions not to disclose secrets relating to the accounts and deposits of their clients, either intentionally or inadvertently.

B-The legal basis for bank secrecy

The Monetary and Loan Act imposes on all financial institutions the obligation to maintain the bank secrecy of their clients under the penalty of criminal prosecution. It provides that: "The following shall be subject to professional secrecy, subject to the penalties provided for in the Penal Code:

- Every member of the Board of Directors, each account governor and every person who participates in any way in the management of a bank or financial institution or one of its employees.
- Everyone who participated in the supervision of banks and financial institutions in accordance with the conditions set out in this book.

You are committed to the secret, taking into account the explicit provisions of the laws of all authorities except:

- The public authority authorized to appoint the administrators of banks and financial institutions.

The judiciary, which operates as part of a criminal procedure.

-Public authorities are obliged to report information to qualified international institutions, particularly in the fight against bribery, money laundering and terrorist financing.

- The Banking Committee or the Bank of Algeria, which works for the latter in accordance with the provisions of article 108 above.

The Bank of Algeria and the Banking Committee can communicate information to the authorities in charge of guarding banks and financial institutions in other countries, subject to reciprocity, provided that these authorities themselves are subject to the same professional secret guarantees as those in Algeria or the financial institution to receive the necessary information for their activity¹²."

Through the aforementioned legal text, the legislation's care for the principle of banking secrecy, which is the essence of the professional duties of banks and financial institutions, is reflected in the violation of it, resulting in criminal follow-up to the concept of the Penal Code and the laws that complement it.

In reference to legislative decree No. 93/10 of May 23, 1993 concerning the Exchange of Transferred Values, the legislator obliged the regulatory committees of the stock exchange process, its observers, intermediaries in the stock exchange process, its administrators, their administrators, registered agents and their account administrators to abide by bank secret¹³.

The Algerian legislator also considered the violation of the principle of bank secrecy of the customer to be a crime of disclosure of professional confidentiality. Article 301 of the Penal Code states: "Doctors, surgeons, pharmacists, midwives and all persons who are de facto believers, profession or permanent or temporary employment shall be punished by imprisonment and fined from 500,000 Algerian dinars to 5,000 Algerian dinars, for secrets he has made to them and disclosed in other cases that the law requires them to disclose and authorize."

The Penal Code also increased the penalty if the disclosure of professional confidentiality in favour of a foreign state or Algerians residing in a foreign country, as stated in article 302 of it reads:

"Anyone who works in any capacity in an institution who has made or proceeded to give to foreigners or Algerians residing in foreign countries the secrets of the institution in which he works without being authorized to do so shall be

sentenced to two to five years' imprisonment and a fine of five hundred Algerian dinars to ten thousand Algerian dinars.

If he makes these secrets to Algerians residing in Algeria, the penalty is imprisonment of three months to two years and a fine to five hundred Algerian dinars to one thousand fifteen Algerian dinars. "

2.Deviating from the principle of bank secrecy

The application of the principle of banking secrecy to its release would lead to restraining the hand of the judiciary to investigate the true source of the balances and accounts deposited at the level of various financial institutions under the pretext of banking secrecy, which would make banks a safe haven for money launderers in order to hide the the proceedings generated corruption crimes,

Therefore, various comparative legislations, in light of the principles established by the aforementioned United Nations Convention against Corruption, sought to find ways to overcome these obstacles, allowing them to address various forms of corruption crimes such as bribery, embezzlement, receiving gifts and laundering money obtained from them¹⁴.

A- The Algerian legislator's position on breaking the principle of bank secrecy

Although it is important to restrict the principle of bank secrecy in facilitating criminal investigations into corruption crimes and tracking and punishing the perpetrators, the Algerian legislator did not mention the possibility of breaking this principle in the Corruption Prevention and Control Act.

Separate legal provisions such as Law No. 05/02 of 06 February 2005 on prevention of money laundering, terrorist financing and combating are referred to. So is Order 03/11 relating to cash and loan amended and completed under Law 10/10 dated October 27, 2010.

Since the principle of bank secrecy is one of the recognized rights of every dealing with banks and financial institutions, which imposes on the latter the secrecy of the professional secret that requires the disclosure of the balances and accounts of its customers to others under punishment, but in the other side the necessities required by the interest of society in confronting various financial crimes affecting the national economy, such as various corruption crimes, various legislations have allowed departure from this principle, This was also taken by the Algerian legislator. However, the study of the legal provisions governing therefore stands on the fact that there are no real and effective guarantees in the event of such an exception.

B- The position of the United Nations Convention against Corruption with regard to deviating from the principle of bank secrecy

The United Nations Convention against Corruption authorized its states parties to break the principle of bank secrecy under the provisions of articles 31 and 40 of them, and by reference to article 31, paragraph 07 of the Convention, the latter contained an explicit provision on the need to break the principle of bank secrecy by saying: For the purposes of this article on freezing, seizure, confiscation and article

55 of the Convention on International Cooperation for confiscation purposes, each state party shall authorize its courts or other competent authorities to order the availability or seizure of bank, financial or commercial records, and the State party may not refuse to comply with the provisions of this paragraph under the pretext of bank secrecy. Article 40 also called on States parties to introduce some flexibility into laws on the principle of bank secrecy in response to the requirements of criminal investigation of corruption offences by saying:” In the event of criminal investigations into criminal acts in accordance with this Convention, each State party ensures that appropriate mechanisms are in place in its legal system to overcome obstacles that may arise from the application of bank secrecy laws.”

It is noted in the text of the above articles that the Convention provided for the departure of the principle of bank secrecy without specifying sufficient conditions, restrictions and controls to justify the departure of this principle, as it merely provided for the existence of internal criminal investigations¹⁵.

It should be noted that the United Nations Convention against Corruption elsewhere authorized the departure of the principle of bank secrecy, in that it obliged States parties to provide mutual legal assistance, and that it had no right to reject this on the grounds of bank secrecy without restricting this exception by any condition or restriction, stating: "States parties may not refuse to provide mutual legal assistance under this article under the pretext of bank secrecy"¹⁶

Thirdly :Complaint as a restriction for judicial follow-up in corruption offences

Since the public action was originally acted automatically, it is permissible for prosecutors, once they have learned of the news of a crime, to initiate follow-up proceedings against the suspect unconditionally, but there are cases identified exclusively by the Code of Criminal Procedure in which the Public Prosecutor's Office may move the public action only under the complaint of the victim or the injured party or the permission of competent authorities. And since corruption crimes are among the most serious types of crimes affecting the national economy, we will try in this presentation whether the public action is automatically initiated by the public prosecutor, or is it restricted to move it and threaten, and in this context it can be questioned whether corruption crimes are subject to this restriction, in the sense that corruption crimes are subject to these exceptions specified by the Algerian legislator or not?

1. The concept of complaint

Under the Penal Procedure Act, the Algerian legislator did not address the evidence of the complaint, merely referring to it in article 17 of the article: Judicial police officers ... They receive complaints and communications, as well as article 36 of the same law, which states: "The Attorney General receives records, complaints and communications and decides what to do about them."

The complaint is defined as: "Crime notices provided by the victim or victim of the crime¹⁷." It is also seen as "a notification issued by the victim of the crime that occurred¹⁸".

It can therefore be said that the complaint is intended to be made by the person of the victim or the victim of the crime, which can be submitted to the interests of judicial control or before the Attorney-General.

2. The extent to which complaints of corruption offences are required

First of all, we point out that the Algerian legislator did not settle on the requirement to complain in criminal follow-up or not in corruption crimes in particular, and on this basis this issue has gone through several stages starting with law 01/09 amended and complementary to the penal code, under which the Algerian legislator acknowledged the need to provide a prior complaint as a condition for criminal follow-up in corruption crimes, With the passage of Law No. 06/01 on the prevention and control of corruption, which repealed article 119 of the Penal Code, the Algerian legislator abandoned the complaint as a precondition for initiating the public action, and under the recent amendments to the Code of Criminal Procedure under order 15/02 amended and complementary to the Code of Criminal Procedure, it again required a prior complaint of corruption offences. So, we will try to review the stations that Algerian legislation has gone through in requiring a complaint.

- Issuance of law 01/09 (repealed) amended and complementary to the Penal Code:

Article 119 stipulates in its third paragraph (03) of the repealed Law No. 09/01 that crimes that harm public and economic institutions in which the state owns all of its capital, or those with mixed capital, shall not initiate a public action in respect of them except on the basis of a prior complaint, It is submitted by the bodies of the concerned company specified in accordance with the legal texts stipulated in the commercial law or in the law relating to the management of commercial capital. Referring to the text of the aforementioned article, the Algerian legislator determined through it the nature of the crimes that are committed against public institutions,*- in which the public action must be brought on the basis of a prior complaint and identified in the crime of embezzlement, unjustified privileges and bribery in the field of public transactions stipulated in Article 128 bis 1 of Law No. 01/09 (repealed). On this basis, crimes related to embezzlement and bribery in public transactions and unjustified privileges according to this law do not move the public action in this regard automatically. Rather, this depends on the filing of a complaint by the company's members, according to which - the complaint - the restriction is lifted on the Public Prosecution in exercising its right to follow up.

- Issuance of Law 06/01:

With the promulgation of Law 06/01 on prevention and control of corruption, law No. 09/01 amended and complementary to the Penal Code was repealed, thereby lifting the restriction on the Public Prosecutor's Office in initiating public action for corruption crimes without exception, regardless of the status of the perpetrator and the interest affected by these crimes.

3. Corruption offences that need to be complained about

Under Order 15/02 amended and complementary to the Penal Procedure Act, the Algerian legislator set a set of conditions for the prosecution to comply with the prosecution's filing of public action for certain corruption offences, which are as follows:

-The offence of embezzlement committed by the marketers of economic public enterprises

With the issuance of order 15/02 referred to above, the Algerian legislator again stipulated the need to file a prior complaint to initiate public action, as article 03 of it states: The public action against the facilitators of public economic institutions whose capital or mixed capital is owned by the State shall not be initiated by the state, which leads to theft, embezzlement, damage or loss of public or private funds except on the basis of a prior complaint from the social bodies of the institution provided for by law. commercial and in the legislation in force.

Members of the social bodies of the institution who do not report the facts of a criminal nature are subject to the penalties established in the legislation in force."

Through the above legal text, the Algerian legislator restricted the authority of the Public Prosecutor's Office to initiate a public action, according to the following data:

A- The crime pursued should be a crime of embezzlement:

Embezzlement is punishable by unlawful use of funds and property¹⁹, and in reference to the text of article 29 of The Aforementioned Law 06/01, which states: "A fine of 200,000 Algerian dinars to 1 million Algerian dinars shall be punishable by imprisonment for two to ten years, any property, funds or public or private securities, which is embezzled, destroyed, deliberately or unjustly detained or used illegally for his or her benefit or for the benefit of a person or other entity. Or any other things of value entrusted to him by virtue of his functions or because of them."

Through the legal text above it is found that criminal conduct in the crime of embezzlement takes several pictures:

- The public official's destruction or waste of money: it is intended to destroy and execute the object, and the behavior of destruction is achieved by tearing, burning, dismantling or otherwise if it reaches a certain degree where the money loses its value and validity²⁰.

- The detention of a public official for money without right: in order to protect deposits, the Algerian legislator criminalized all acts that disrupt the interest to which the money was allocated, and the act of detention unjustly is considered an act that disrupts public interests. Detention means that the public official refrains from arbitrarily returning public and private funds to their owners, as the crime of embezzlement is carried out as soon as the accused acts on the money entrusted to him on the grounds that he belongs to him²¹.

- The employee's illegal use of money in his or her own interests or for the benefit of a person or other entity: this conduct means that the employee deliberately exploits money and property for his or her personal interests or that of any other person²².

It should be noted that the Algerian legislator has expanded the scope of the crime of embezzlement, even to protect public funds from manipulation or use for personal interests²³, the Algerian legislator criminalized embezzlement, which is replaced by public funds, but has expanded the area of protection to include even private property, Article 41 of Law No. 06/01 states: "A fine of 50,000 Algerian dinars to 5,000 Algerian dinars shall be punishable by imprisonment for any person who manages or operates in any capacity during economic, financial or commercial activity, deliberately embezzling any property, money, private securities or other matters of value entrusted to him by virtue of his duties."

B. Crime should harm public economic institutions

The Algerian legislator defined public economic institutions under Article 02 of Order No. 01/04 of 20 August 2001 on the regulation, conduct and privatization of public economic institutions²⁴ as: "Public economic institutions are commercial companies in which the State or any moral person subject to public law holds the majority of social capital directly and is subject to public law."

Article 05 of the same order states: "The establishment, regulation and conduct of public economic institutions are subject to the forms to which capital companies under commercial law are subject."

Through the text of the above article, public economic institutions are commercial money companies, among which are known in commercial law as the joint stock company, whose capital is divided into shares of partners who bear the loss only as much as their shares²⁵, Because most public economic institutions appear in the form of a joint stock company regulated under article 592 of the Commercial Act, which states: "A joint stock company whose capital is divided into shares, consists of partners that bear losses only as much as their share and cannot be less than seven partners, and does not apply in section 02 above to companies with public capital."

C- The public action against the facilitators of public economic institutions

The march of public economic institutions is intended as members of the board of directors that manages the joint stock company, which consists of at least twelve members, the president or general manager is selected from among the board members²⁶. In this regard, it is noted that the establishment of criminal responsibility against corporate facilitators does not mean that they do not do so against the moral person, Liability can be carried out in parallel when the requirements of the natural person's responsibility are met, and the necessary conditions for the criminal liability of the moral person are met, and the follow-up of the latter - the moral person - is based on the same act committed by the natural person, whether he is an original actor or accomplice in the crime²⁷.

D- Complaint by the social bodies of the Public Economic Corporation

Since the complaint is an exception to the general rule, it must be expressly provided for by law, as taken by the Algerian legislator under article 03 of Order No. 15/02, which is complementary to article 6 bis of the Code of Criminal Procedure, which states: "The public action against the directors of public economic institutions whose capital or mixed capital is owned by the State does not result in theft, embezzlement, damage or loss of public or private funds, except on the basis of a prior complaint from the social bodies of the institution provided for in commercial law and in the legislation in force²⁸." On this basis, the Public Prosecutor's Office cannot initiate a public action against the facilitators of these institutions in the crime of embezzlement except on the basis of a complaint, where original or supplementary penalties may be applied to the moral person in line with his legal nature, such as dissolution and prohibition from carrying out certain activities or closing the institution²⁹.

From the above, we conclude that the prosecution of public institutions of an economic nature, for the offence of misappropriation of public funds, requires a complaint by the social bodies of the institution. But the problem that presents itself strongly in this regard, if the members of the social bodies did not file a complaint against the managers of the institutions, as a result of a conflict of interests, as if one of its members was accused, then the Algerian legislator decided to impose penal penalties on the members of the board of directors who do not report these facts³⁰.

Considering that waiving the complaint before the issuance of the judgment leads to the expiration of the public lawsuit in accordance with the text of Article 06 of the Code of Criminal Procedure, this explicit waiver requires that the holder of the right to file the complaint himself or his representatives, and thus raise the problem of the possibility of withdrawing the complaint in accordance with the general principles of the law from The party of the members of the social body who presented it against the managers of the economic public institutions or not, Which is what the Algerian legislator did not address in the last amendment to the Code of Criminal Procedure, but we say that the complaint may not be waived after its submission, given that the law criminalizes the failure of members of the social body to submit a report on this crime, so how can it be allowed to withdraw it after its submission.

- Crimes committed by Algerians abroad:

The Code of Criminal Procedure addressed this issue, stating: "Every incident described as a misdemeanour, whether in the eyes of Algerian law or in the eyes of the country in which it was committed, may be pursued and sentenced in Algeria if the perpetrator is Algerian.

The trial may be conducted or sentenced only on the terms of article 582, paragraph 2.

Furthermore, follow-up may not take place in the event that the misdemeanour was committed against an individual only at the request of the Public Prosecutor's Office after being notified of a complaint from the injured person or a communication from the authorities of the country in which it was committed³¹.

Through the text of the above-mentioned article, the Public Prosecutor's Office is not entitled to follow-up unless the following conditions are met:

- The accused must hold Algerian nationality and if he acquires it after committing the crime.
- The perpetrator returned to Algerian territory.
- If the offender does not prove that he was sentenced permanently abroad and served his sentence, fell out of statute of limitations or received amnesty.
- The crime pursued should be a misdemeanour against persons³².
- The Public Prosecutor's Office obtains a complaint from the injured person or the authorities of the country where the crime took place, once the previous conditions have been met, the Public Prosecutor's Office may only initiate public action on the basis of a complaint, and in accordance with the text of article 583 above of the Code of Criminal Procedure. These conditions can apply to corruption offences, particularly those provided for in article 28 of the Corruption Prevention and Control Act, which punishes bribery committed by foreign public officials and officials of international public organizations. Article 2, Section C of Law No. 06/01 defined a foreign public official as: "Any person who holds legislative, executive, administrative or judicial office in a foreign country, whether appointed or elected, and any person who exercises a public function for a foreign country, including for a public body or institution." "Any international employee or person authorized by such an institution to act on its behalf. "Through the text of the aforementioned articles, foreign public officials and officials of public international organizations are considered national officials in the eyes of the State of which they are nationals³³. Thus, if they meet the conditions set forth in articles 582 and 583 of the Code of Criminal Procedure, the Public Prosecutor's Office may not bring public proceedings against them except on the basis of a complaint from the person affected by the crime or a communication from the authorities of the country in which the crime took place.

Fourthly: Permission as a restriction for procedural follow-up in corruption crimes

Authorization is one of the limitations on the right of the Department of Public Prosecutions to initiate public proceedings for all offences in general and for corruption offences in particular?

1 . The Meaning of "Authorization"

Authorization means such a written licence issued by a public body to which the person belongs, in order to ensure the seriousness of the proceedings, including the waiver of the immunity enjoyed by the person in order to bring public proceedings against him or her, especially since parliamentary immunity is one of the most important impediments to the public prosecutor's right to initiate public proceedings.

2. Algerian legislator's position on authorization

Article 109 of the 1996 Constitution states: "Parliamentary immunity is recognized to the deputies and members of the Council of the Nation for the duration of their office and parliamentary function. "Accordingly, any deputy or member of the Council of the Nation may not be prosecuted for a crime or misdemeanour except with an express waiver or authorization, as the case may be, from the National People's Assembly or the Council of the Nation, which decides to waive immunity by a majority of its members,Article 111 of the Constitution also sets forth the provisions concerning the criminal prosecution of members of Parliament in the event of the crime in question, in which case a member of the Assembly of the Nation or the People's Assembly may be arrested on condition that the Bureau of the National People's Assembly or the Bureau of the Council of the Nation is notified.In this case,the Office may request the suspension of criminal proceedings and the release of the deputy or member of the Council of the Nation. In the event of a suspension of criminal proceedings, further follow-up may be granted only through an express waiver by the party concerned or with the authorization of the National People's Assembly or the Council of the Nation³⁴.

Conclusion:

Since criminal proceedings generally take place automatically, there are cases in which exceptions are made, in particular the provisions of the law concerning the immunities of certain officials in order to perform their duties and obligations in the best possible manner, freely and independently.

In fact, the immunity enjoyed by them is not an impediment to the establishment of criminal responsibility. It is merely a restriction on the right of the Public Prosecutor's Office to initiate public proceedings. Since corruption offences are often criminal conduct committed by high public officials with some sort of immunity,this restriction may indirectly constitute an obstacle to penal follow-up. It is therefore necessary to waive immunity in respect of corruption and related offences in order to ensure the effectiveness of the procedural aspect in the pursuit of such crimes.

Bank secrecy is also one of the principles governing the operation of financial and banking institutions and may not disclose secrets relating to the bank accounts of their clients. Various legislation has given legal protection to this principle, Disclosure of secrets relating to bank secrecy is a form of occupational disclosure, considering that the duty of bank secrecy is one of the greatest obstacles to combating corruption offences,The Algerian legislature departed from this principle in order to overcome obstacles and difficulties in pursuing those involved in corruption offences, which often result in the transfer of their proceeds of crime within banks and financial institutions in order to cover up the illicit source of property and funds derived from corruption offences.

Since the origin of a public action is that it automatically moves unconditionally, when the offence occurs, the Public Prosecutor's Office shall initiate public proceedings on behalf of the community, however, there are offences specifically defined by the Algerian legislature in which the Office of the Public

Prosecutor may bring public proceedings only on the basis of a complaint or authorization from the bodies specified by law.

Margins:

¹Abir Fouad Ibrahim Al-Gobari, Criminal Response to Corruption under the United Nations Convention against Corruption - Comparative Study - Doctoral thesis - Faculty of Law University of Mansoura, p. 285.

²Article 31 of Presidential Decree 2000/442 of 30 December 2020 on the issuance of the Constitutional Amendment, Official Gazette No. 82 of 30 December 2020. Parliamentary immunity differs from diplomatic immunity, which means granting a privilege to protect diplomatic missions with a view to protecting them from prosecution - Walid Khalid Spring - diplomatic immunities and privileges in jurisprudence and international law - comparative study - Journal of Jurisprudence and Law - published on the website www.majalah.new.ma.

³Article 574 of Order 66/155 of 08/06/1966 of the Official Gazette No. 48 of 10/06/1966, containing the amended and complementary Code of Criminal Procedure.

⁴Article 575 of Ordinance No. 66/155, containing the amended and complementary Code of Criminal Procedure.

⁵One of the judicial applications relating to the follow-up procedures for officers of the Judicial Police was issued by the Criminal Chamber of the Supreme Court in decision No. 184584 of 26 June 1999, Judicial Journal 2002, No. 02 p. 118.

⁶Mohamed Hizit - Investigating Judge of the Algerian Judicial System, Homma Publishing House, Algeria, 2014, fourth edition, p. 63.

⁷Articles 576-577 of Order 66/155 of the Amended and Complementary Code of Criminal Procedure.

⁸Decision of the Criminal Chamber of the Supreme Court No. 321560 of 29 August 2004, Judicial Journal 2004, No. 02, p. 339.

⁹Abdul Majid Mahmoud Abdul Majid - Criminal Confrontation of Corruption in the Light of International Conventions and Egyptian Legislation - Comparative Study - Doctoral Thesis - Faculty of Law of the University of Ein Shams - Y 452.

¹⁰Abdul Kader Al-Atir - The Secret of Banking in Jordanian Legislation - Comparative Study - Culture Publishing and Distribution House Oman 1996 p. 140.

¹¹Bakhoya Idriss, Crime of Money Laundering and Combating Money Laundering in Algerian Law - Comparative study - doctoral thesis, Faculty of Law and Political Science, University of Tlemcen, 2012, p. 317.

¹²Article 117 of Order No. 03/11 of 26/08/2003 on cash and loan, Official Gazette No. 52 of 27/08/2003, amended and supplemented.

¹³Article 39 of Legislative Decree No. 93/10 of 23 May 1993 on the devolved value exchange - Official Gazette No. 34.

¹⁴Ali Siddiqui Mohamed Ahmed, International Responsibility in the Fight against Corruption, Study under the United Nations Convention against Corruption, doctoral thesis, Faculty of Law, University of Asiote, 2015, p. 266.

¹⁵Nabil Habi, The Compatibility of Algerian Legislation with the United Nations Convention against Corruption, Master's Note, Arab Research and Studies Institute, Cairo, 2009, p. 88.

¹⁶As stipulated in article 46, paragraph 08, of the United Nations Convention against Corruption, adopted by General Assembly resolution 58/04 of 31 December 2003.

¹⁷Adel Abdel Hayat Kharashi, Investigation and Evidence of Crimes in Islamic Jurisprudence and Positive Law, New University Publishing House, Alexandria, 2006, p.46.

¹⁸Ali Mohamed Ja'far, Principles of Criminal Proceedings, University Institute for Studies, Publication and Distribution, Beirut, 1994, p 206

¹⁹ Michèle-laure Rassat, special criminal law, offenses by and against individuals, 4th edition, Dalloz, 2004, p 123.

²⁰ Abdel Aziz Saad, Offences against Public and Private Funds, Homma Publishing House, Algeria, art. 02, 2006, p 52.

²¹ Hamad Abu Russians, Crimes of Counterfeiting, Forgery, Bribery and Embezzlement of Public Property in Legal and Technical Terms, Modern University Library, Alexandria, 1997, p. 881

²² Hakati jamila, Penal Responsibility of the Master of Economic Public Institutions, Master's Degree, Faculty of Law, University of Constantine, 2013, p. 140.

²³ Nawfel Ali Abdallah Safw Al-Dlimi, Penal Protection of Public Money - Comparative Study, Second Edition, Dar Homme Algeria, 2006, p. 215.

²⁴ Order No. 01/04 of 2000 OT 2001 on the Organization, Operation and Privatization of Public Economic Institutions, Official Gazette No. 11, amended and supplemented by Act No. 08/01 of 08 February 2008, Official Gazette No 11.

²⁵ Salim Haageh Abu Quresh, Guide to the Establishment of Commercial Enterprises in Algerian Law, Dar Homma, Algeria, 2014, p. 51.

²⁶ Article 610 of the Commercial Code.

²⁷ Bouazam Aisha, Representative of the Commercial Company in Criminal Cases, Academic Journal of Legal Research, Abdul Rahman Meera University, Bejaia, Volume 05, Issue 01, 2012, Year 3, p. 264.

²⁸ See Order 15/02 of 23/07/2015, published in The Official Gazette No. 28, dated 23/07/2015, amended and completed by Order 66/155 containing the Code of Criminal Procedure.

²⁹ Jean Paul Antona - Philippe Colin - François Lenglard, the criminal liability of executives and managers in the business world, Dalloz, 1996, page 33.

³⁰ Article 6 bis paragraph 02 of Order 66/155, containing the amended and complementary Code of Criminal Procedure.

³¹ Article 583 of Ordinance No. 66/155, containing the amended and complementary Code of Criminal Procedure.

³² Under the authority of the Attorney-General's Office to initiate public proceedings in Algerian law, Master's Degree, Faculty of Law, Ben Aknon, Algeria, 2002, p.74.

³³ Nadia Tayeb, Mechanisms for Countering Administrative Corruption in Public Transactions, Doctoral thesis, Faculty of Law and Political Science, University of Ould Mamari, Tizi and Zu, 2013-p366.

³⁴ See articles 17 of the Constitutional Amendment of 1996, published in Official Gazette No. 76 of 07 August 1996 P 148.