



The Presumed Element in Corruption Offenses

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Abstract

Criminal law has expanded the concept of the public official beyond the scope defined in administrative law, owing to the distinct nature and objectives of each branch of law. Administrative law is regulatory in character, aiming to organize the relationship between the individual and the government, whereas criminal law is punitive, with the primary goal of protecting rights and curbing crime.

While administrative law focuses on the legal status of the public employee, establishing it on a regulatory legal basis to delineate the rights and obligations of such employees, criminal law places greater emphasis on the relationship between the public official and the state as the expression of its will.

Consequently, the objective of anti-corruption legislation in adopting an expansive approach is to encompass categories not deemed public officials under administrative law. This expansion seeks to capture all individuals who enjoy the status of public official or its equivalent, operating within a broad domain to encompass all forms of corruption and hold accountable any official who manipulates their position for financial gain and betrays the presumed trust vested in them.

Keywords: Public official, anti-corruption, protection of public funds, economic crimes.

Introduction

Corruption has emerged as a pressing issue on both the international and domestic arenas, constituting a fundamental obstacle to development across its various domains. It is intrinsically linked to reduced investment and economic growth, as corruption violates laws while simultaneously infringing upon ethical values and standards. The concept of corruption has



become closely associated with crime and is recognized as one of the influencing factors therein.

In general, corruption offenses are characterized as status-based crimes (crimes of qualification), which can only be committed by a person possessing a specific status—namely, that of an official or one equivalent thereto. This is referred to in Law No. 06-01 on the Prevention of Corruption and the Fight against It¹ as the "public official," a term adopted by the United Nations Convention against Corruption, adopted by the United Nations General Assembly in New York on 31 October 2003, and ratified with reservations by Presidential Decree No. 04-128 dated 19 April 2004².

These offenses, previously scattered in the Penal Code between Articles 119 and 134, have been singled out under a dedicated regime through the aforementioned Law of 20 February 2006, which, pursuant to its Article 71, repealed the said articles of the Penal Code and replaced them, under its Article 72, by referring the repealed provisions to their corresponding articles in the new law (Articles 25 to 35).

The Law on the Prevention of Corruption and the Fight against It was enacted primarily to eradicate manifestations of corruption in public life, principally the trafficking in public office and the manipulation of public funds. It criminalizes any breach of the duty of integrity that the public official is required to uphold, as well as any violation of the duties of honesty incumbent upon them. Therefore, it is essential to define the concept of the public official and trace its evolution through the various legislative stages enacted by the Algerian legislator, in order to address the following problem:

To what extent has the legislator succeeded in closing all gaps related to the presumed element in corruption offenses?

To answer this question, the study adopts a descriptive-analytical methodology, reviewing the various laws regulating this element and examining them in light of doctrinal opinions and judicial precedents in this field.

To comprehensively address the topic, the study is divided into three sections. The first section examines the administrative concept of the public official. The first subsection clarifies the concept of the employee in Algerian legislation regulating the public service, while the second subsection defines the concept of the public official in doctrine and administrative jurisprudence.

The second section addresses the concept of the official under Law No. 01-06 on the Prevention of Corruption and the Fight against It. The first subsection details persons holding executive and administrative positions; the second subsection clarifies persons holding judicial

¹ Law No. 06-01 dated 20 February 2006 on the Prevention of Corruption and the Fight against It, Official Gazette No. 14 dated 8 March 2006, as amended and supplemented by Ordinance No. 11-15 dated 2 August 2011, Official Gazette No. 44 dated 10 August 2011.

² Presidential Decree No. 04-128 dated 19 April 2004 ratifying, with reservations, the United Nations Convention against Corruption, adopted by the United Nations General Assembly in New York on 31 October 2003, Official Gazette No. 26 dated 25 April 2004.



positions; the third subsection addresses persons holding legislative positions and local elected officials; and the fourth subsection explains persons exercising a function or agency and those equivalent thereto.

1. The Administrative Concept of the Public Official

With the expansion of the modern state's activities—from a mere guardian state overseeing internal and external security to one assuming economic, social, and humanitarian responsibilities—the state has come to equate in value with the public official within it.³ The latter represents "the instrument through which authority exercises its dominion and activities to achieve the objectives entrusted to it".⁴ He is "the servant of the state; through him, people perceive the state; he is its devoted head and manager, its executing arm, and its mirror"⁵.

Given the significance of the public official, the state has resorted to enacting laws regulating his professional life, including his rights and duties, career progression, and related matters. Legal scholars and thinkers have likewise studied all aspects pertaining to him, including the aforementioned rules and others, to such an extent that some have termed the twentieth century the century of administrative studies, or even the century of the public service⁶.

Legal logic requires, when seeking a definition of the public official, recourse to the laws regulating the public service, as well as to doctrine and jurisprudence.

1.1. The Employee in Algerian Legislation Regulating the Public Service

The public service in Algeria has been regulated post-independence by three successive legislative instruments. The first was Decree No. 66-33 dated 2 June 1966, containing the General Basic Statute of the Public Service, which repealed all prior French basic statutes on the public service extended by Law No. 62-15 dated 31 December 1962.

The second was Law No. 85-59 dated 23 March 1985, containing the Model Basic Statute for Employees of Public Enterprises and Administrations, enacted pursuant to Article 2 of Law No. 78-12 dated 5 August 1978 on the General Basic Statute of the Worker. This law raised numerous issues at the time.

The third and final is Law No. 06-03 dated 15 July 2006, containing the General Basic Statute of the Public Service.

The concept of the public official in Law No. 06-03 dated 15 July 2006 does not differ from that in the aforementioned Law No. 66-133, as Article 4 of Law 06-03 limits the public

³ Sayyid Muhammad Yusuf al-Ma'dawi, *Study of the Public Service in Comparative Systems and Algerian Legislation*, University Publications Office, Algiers, 1984, p. 3.

⁴ Muhammad Salah Abd al-Badi' al-Sayyid, *The Legal Regime of the Public Official in Egypt*, Dar al-Nahda, 1st ed., Cairo, 1996, p. 1.

⁵ Muhammad Anas Qasim, *Notes on the Public Service*, University Publications Office, 2nd ed., Algiers, 1989, p. 2.

⁶ Said Muqaddam, *The Public Service between Evolution and Transformation from the Perspective of Professional Resource Management and Professional Ethics*, University Publications Office, Algiers, 2010, p. 73.



official to "any agent appointed to a permanent public position and registered in a rank on the administrative scale."

Article 2 of this law specifies its scope of application, stating: "This basic statute applies to employees exercising their activities in public enterprises and administrations."

Accordingly, the Algerian legislator defines the public official as any agent appointed to one of the public enterprises or administrations to exercise his activity on a permanent basis and registered in a rank on the administrative scale.

Based on this definition, the following conditions are required for a public official:

a. Exercise of activity in one of the public enterprises or administrations: These enterprises and administrations, as defined in Article 2 of Law 06-03, include public enterprises, central state administrations and their decentralized services, territorial collectivities, public enterprises of an administrative nature, public enterprises of a scientific, cultural, and professional nature, public enterprises of a scientific and technological nature, and any public enterprise whose employees may be subject to the provisions of Law 06-03.

The aforementioned article excludes from the scope of Law 06-03 judges, military and civilian personnel of national defense, and parliamentary staff.

b. Exercise of this activity on a permanent basis: This excludes persons occupying positions non-permanently, such as contractors and temporary employees.

c. Appointment: This means the issuance of a legal instrument by the competent administrative authority whereby the agent joins a permanent public position in an administrative capacity. Consequently, those occupying their position solely through election, such as the President of the Republic and members of parliamentary assemblies, are excluded from the category of employees.

d. Registration in a rank on the administrative scale: This refers to the procedure by which the employee is confirmed in his rank.

It is evident that these conditions, in their generality, do not deviate from what doctrine and jurisprudence require for an employee to be considered a public official, as will be clarified below.

The public service in Algeria was regulated after independence by three successive legislative instruments. The first was Decree No. 66-133 dated 2 June 1966, containing the General Basic Statute of the Public Service⁷, which repealed all prior French basic statutes relating to the public service⁸—statutes whose application had been extended pursuant to Law No. 62-15 dated 31 December 1962⁹.

⁷ Ordinance No. 66-133 dated 2 June 1966, containing the General Basic Statute of the Public Service, Official Gazette No. 542 dated 18 Safar 1386, repealed.

⁸ Ordinance No. 59-244 dated 4 February 1959, containing the General Basic Statute of the French Public Service, is considered the most important of these laws; see Said Muqaddam, op. cit., p. 99 et seq.

⁹ Law No. 62-15 dated 31 December 1962, concerning the extension of French legislation in Algeria after independence, except where incompatible with national sovereignty or public freedoms



The second was Law No. 85-59 dated 23 March 1985, containing the Model Basic Statute for Employees of Public Enterprises and Administrations¹⁰. This law was enacted pursuant to Article 2 of Law No. 78-12 dated 5 August 1978, containing the General Basic Statute of the Worker¹¹. This statute gave rise to numerous problems that were addressed as far as possible at the time.

The third and final instrument is Law No. 06-03 dated 15 July 2006, containing the General Basic Statute of the Public Service¹².

The concept of the public official in Law No. 06-03 dated 15 July 2006 does not differ from that set forth in the aforementioned Law No. 66-133, as Article 4 of Law 06-03 confines the public official to “any agent appointed to a permanent public position and registered in a rank on the administrative scale.”

Article 2 of this law further specifies its scope of application, stating: “This basic statute applies to employees exercising their activities in public enterprises and administrations.”

Accordingly, according to the Algerian legislator’s perspective, the public official may be defined as any agent appointed to one of the public enterprises or administrations to perform his activity on a permanent basis and registered in a rank on the administrative scale.

Based on this definition, the following conditions are required for an individual to qualify as a public official:

a. Exercise of the activity in one of the public enterprises or administrations: These enterprises and administrations, as specified in Article 2 of Law 06-03, include public enterprises, central state administrations and their decentralized services, territorial collectivities, public establishments of an administrative character, public establishments of a scientific, cultural, and professional character, public establishments of a scientific and technological character, and any public establishment whose employees may be subject to the provisions of Law 06-03.

The aforementioned article excludes from the scope of application of Law 06-03 judges, military and civilian personnel of national defense, and parliamentary staff¹³.

b. Exercise of this activity on a permanent basis: This excludes persons who occupy their positions on a non-continuous basis, such as contractors and temporary employees.

c. Appointment: This refers to the issuance of a legal instrument by the competent administrative authority, by virtue of which the agent joins a permanent public position in an

¹⁰ Decree No. 85-59 dated 23/03/1985, containing the Model Basic Statute for Employees of Public Enterprises and Administrations, Official Gazette No. 333 dated 2 Rajab 1405, repealed.

¹¹ Law No. 78-12 dated 05/08/1978, containing the General Basic Statute of the Worker, Official Gazette No. 32 dated 08/08/1978, p. 724, repealed.

¹² Law No. 06-03 dated 15 July 2006, containing the General Basic Statute of the Public Service, Official Gazette No. 46 dated 16 July 2006, as amended.

¹³ While this article did not mention the exclusion of those performing religious rites—who were excluded by Article 1 of the aforementioned Law 66-133—Article 3, paragraph 2 of Law No. 06-03 provides that special basic statutes relating to those performing religious rites (and other corps) may include exceptional provisions concerning rights and duties, professional life, and general discipline, due to the specific nature of these corps



administrative capacity¹⁴. Consequently, those who occupy their position solely by election—such as the President of the Republic and members of parliamentary assemblies—are excluded from the scope of employees.

d. Registration (confirmation) in a rank on the administrative scale: This refers to the procedure whereby the employee is definitively confirmed in his rank.

It is apparent that these conditions, in their generality, do not depart from what doctrine and administrative jurisprudence require for an employee to be considered a public official, as will become clear in the following discussion.

1.2. The Concept of the Public Official in Doctrine and Administrative Jurisprudence

Several theories have competed in doctrine and jurisprudence regarding the definition of the public official, the most prominent and earliest of which originated in French doctrine and case law. Among these theories is that of the jurist Vivien, who defined public officials as “citizens vested with authority and their assistants who administer the state and its public funds.”

This definition is criticized on the grounds that the state may employ certain persons on a permanent basis to manage its services and public funds as officials, even though they do not enjoy any authority, as is the case with minor clerical workers.

Another definition is that of Stainof, who considers public officials to be persons subject, in the performance of their duties, to public law. The principal criticism leveled against this definition is that determining the law applicable to the public official in the exercise of his functions is an entirely separate issue from defining him, and that there are persons subject to public law who are not officials, such as members of parliamentary assemblies, for example¹⁵.

It would be lengthy to review all such theories in detail; however, what has prevailed and become settled in doctrine and jurisprudence can be summarized in two main approaches: the first broadens the concept of the official (known as the old approach), while the second narrows it (known as the modern approach)¹⁶.

1.2.1. The Old Approach to Defining the Public Official

Early French doctrine attempted to define the public official by reference to several theories, the most important being the theory of the public service (service public) and the theory of public law. The former broadens the concept of the public official, while the latter narrows it. In this vein, the jurist Duguit defines the official as “any worker who contributes in a permanent and regular manner to the operation of a public service, regardless of the nature of the tasks he performs.” This definition adopts a broad and comprehensive view encompassing all administrative and economic public services¹⁷.

¹⁴ Muhammad Anas Qasim, op. cit., p. 7.

¹⁵ Sayyid Muhammad Yusuf al-Ma’dawi, op. cit., pp. 32–33.

¹⁶ Ali Abd al-Fattah Muhammad Khalil, *Freedom of Political Practice by the Public Official*, Dar al-Jami’a al-Jadida, Alexandria, 2007, p. 24.

¹⁷ Muhammad Sayyid Ahmad Muhammad, *Proportionality between Disciplinary Offense and Disciplinary Sanction*, Modern University Office, Assiut, 2008, p. 67.



Under this approach, the following conditions are required for a public official:

- Occupation of the position on a permanent basis.
- Inclusion within one of the ranks of the administrative scale.
- Participation in the management of a public service (whether administrative or economic in nature).

This definition thus encompasses every official in both administrative and economic public services. Consequently, other definitions sought to narrow the notion of the public service by requiring that the person be subject to a bond of public law.

1.2.2. The Modern Approach to Defining the Public Official

This approach narrows the concept of the public official by excluding all workers in industrial and commercial public services from the category of public officials. As a result, such workers are entirely subject to private law. This approach attaches no weight to the distinction between administrative functions and operational roles within industrial and commercial services, or between those roles and others in the same services; rather, it confines public officials to workers in administrative services alone.

In this context, Maurice Hauriou defines the public official as “any person appointed by the public authority to occupy a position in the permanent cadre of a public service managed by the state or other public administrations, whether designated as an official, employee, assistant, or worker”¹⁸.

Marcel Waline also defines him as “any person who contributes to the operation of a public service managed through direct exploitation and who occupies a permanent position within one of the ranks of the general administrative corps”¹⁹.

Marcel Pieuemal further requires, for the status of public official to be established²⁰:

- Occupation of an administrative position.
- Permanence of the position.
- Confirmation in one of the ranks of the administrative scale.

The administrative judiciary has endorsed this definition. In its decision dated 8 February 1973, it held: “For a person to be considered a public official, he must perform permanent work in the service of a public service or interest. For workers in public services to acquire the status of public official, the service must be managed through direct exploitation.”

In Egypt, Professor Tawfiq Shehata defined the public official as any person appointed by the administration by decision to perform permanent work within a public service or administrative unit²¹.

Professor Hamed Suleiman defined him as any person entrusted with permanent work for the service of a public service managed by the state or another public law entity, with an

¹⁸ Hauriou (M.), *Précis de droit administratif*, 2nd ed., Sirey, 1933, p. 729; cited in Nofan al-‘Aqil al-‘Ajarma, *Disciplinary Authority over the Public Official*, Dar al-Thaqafa, Amman (Jordan), 2007, p. 30.

¹⁹ Ali Abd al-Fattah Muhammad Khalil, *op. cit.*, p. 34.

²⁰ Nofan al-‘Aqil al-‘Ajarma, *op. cit.*, p. 31.

²¹ Al-Jamal Hamid, *The Public Official in Doctrine and Case Law*, Dar al-Fikr al-Hadith, 2nd ed., 1969, p. 39.



appointment decision issued so that he may occupy a position falling within the administrative organization of the service²².

Dr. Abdel Hamid Metwally defined the official as any person who performs a public service in a permanent position linked to the government and based on public law²³.

2. The Concept of the Official in Law No. 06-01 on the Prevention of Corruption and the Fight against It

Article 2 of Law No. 06-01 dated 20 February 2006 on the Prevention of Corruption and the Fight against It defines the term “official” in paragraph (b). This definition is derived from Article 2, paragraph (a), of the United Nations Convention against Corruption, dated 31 October 2003. It differs fundamentally from the definition of the public official in Ordinance No. 06-03²⁴ containing the General Basic Statute of the Public Service, which confines the concept to any agent appointed to a permanent public position and registered on the administrative scale.

The term “public official,” as the presumed element (*élément légal personnel*) in administrative corruption offenses under the Law on the Prevention of Corruption and the Fight against It, encompasses six categories, which are examined and analyzed as follows:

2.1. Persons Holding Executive and Administrative Positions

Persons holding executive and administrative positions are considered the most frequent perpetrators of administrative corruption acts, given that they occupy executive authority, which is among the branches of power most affected by the proliferation of this serious phenomenon.

2.1.1. Persons Holding Executive Positions

These include all individuals working within the executive authority at the central level. This concept encompasses the President of the Republic, the Prime Minister (Premier Ministre), the Deputy Prime Minister, members of the Government (Ministers of various ranks), Walis (Governors), executive directors, and representatives of the state abroad such as ambassadors and consuls.

- **The President of the Republic** He is the highest administrative authority within the executive branch under the Algerian political system. The Algerian Constitution grants the President of the Republic extensive powers in all domains, particularly on the administrative side. He is elected by the people through direct universal suffrage in force²⁵.

It should be noted that the President of the Republic cannot be held accountable for administrative corruption offenses referred to in the Law on the Prevention of Corruption and

²² Al-Tamawi Sulayman, *The Disciplinary Offense: A Comparative Study*, Institute of Arab Studies, 1975, pp. 42–48.

²³ Isma‘il Abd al-Mun‘im Suhayr, *Criminal Protection of the Integrity of Public Office*, PhD in Law, Cairo University, 1990, p. 66.

²⁴ Ordinance No. 06-03 dated 15/07/2006 containing the Basic Statute of the Public Service, Official Gazette No. 46 dated 16/07/2006.

²⁵ Article 85 of Presidential Decree No. 20-442 dated 30/12/2020 promulgating the constitutional amendment approved by referendum on 1 November 2020, Official Gazette No. 82 dated 30/12/2020.



the Fight against It, which may be committed in the course of performing his official duties. However, pursuant to Article 183 of the Constitution, he may be tried for acts that may be characterized as high treason, with accountability before the High Court of State. This Court has not yet been constituted to date, and the organic law specifying its composition, organization, functioning, and applicable procedures has not been enacted.

- **The Prime Minister or Head of Government** Article 103 of the Constitution provides: “The Government is led by a Prime Minister in the event that legislative elections result in a presidential majority. The Government is led by a Head of Government in the event that legislative elections result in a parliamentary majority.”

The Prime Minister or Head of Government, as the case may be, is appointed by presidential decree²⁶ and is entrusted with forming his Government and preparing its program.

Pursuant to Article 177 of the Constitution, the Prime Minister or Head of Government may be held criminally accountable, as appropriate, for felonies and misdemeanors committed in the performance of his duties, including administrative corruption offenses.

- **Members of the Government** Members of the Government refer to Ministers of all ranks, whether Ministers of State, ordinary Ministers, Delegated Ministers, or Secretaries of State. The legislator has permitted the prosecution of members of the Government for administrative corruption offenses before the ordinary courts, albeit subject to special procedures set forth in Article 736 of the Code of Criminal Procedure²⁷.
- **Walis (Governors)** The Wali is appointed by the President of the Republic by presidential decree²⁸. There is no provision in the law preventing the prosecution of a Wali for administrative corruption offenses that he may commit during or in connection with the performance of his duties. However, the legislator has subjected him to special follow-up procedures similar to those applicable to members of the Government, in accordance with Article 736 et seq. of the Code of Criminal Procedure.

²⁶ Articles 105 and 110 of Presidential Decree No. 20-442 dated 30/12/2020 promulgating the constitutional amendment approved by referendum on 1 November 2020.

²⁷ Ordinance No. 25-14 dated 03/08/2025 containing the Code of Criminal Procedure, Official Gazette No. 54 dated 13/08/2028.

²⁸ Article 92 of Presidential Decree No. 20-442 dated 30/12/2020 promulgating the constitutional amendment approved by referendum on 1 November 2020.



2.1.2. Persons Holding Administrative Positions

These refer to individuals working in public enterprises and administrations on a permanent or temporary basis, with or without remuneration, irrespective of their rank or seniority²⁹. Two types may be distinguished: ordinary employees and retired workers³⁰.

Ordinary employees are those working in public enterprises and administrations who occupy their positions on a permanent basis and are subject to the General Basic Statute of the Public Service—i.e., the public official in the narrow or traditional sense applied in administrative law, whereby an official is any agent appointed to a permanent public position and registered on the administrative scale.

Ordinance No. 85/59 containing the Model Basic Statute for Employees of Public Enterprises and Administrations did not provide a definition of the public official as did Ordinance No. 66/133; rather, it merely set out the rules applicable to employees of public enterprises and administrations.

Based on the general definition³¹, four essential elements must be satisfied in order to attribute the status of public official to a person under administrative law:

- **Instrument of Appointment** This refers to the appointment of the person to a public position in accordance with the prescribed legal forms and procedures by the competent authority. In other words, the person's entry into the public service must have occurred lawfully, in compliance with the conditions and formalities established by law. Mere fulfillment of appointment conditions and success in a competitive examination does not confer the status of public official; a formal appointment decision must be issued by the legally competent authority, whether in the form of a presidential decree, executive decree, ministerial decision, or administrative order.

Given that the purpose of criminalizing administrative corruption is to protect the public service, criminal doctrine has adopted the theory of the *de facto* official (*théorie du fonctionnaire de fait*) in relation to administrative corruption offenses, so that no person escapes punishment on the grounds that his appointment decision was invalid.

- **Permanence of the Position** This refers to employees who occupy their positions on a permanent basis, as defined in the General Basic Statute of the Public Service³². The public official must be established in permanent employment, devoting himself fully to the service of the state, rather than being engaged on an occasional basis, as with contracted or temporary employees. Permanence comprises two elements: the first

²⁹ Article 2 of Law No. 06-01 dated 20/02/2006 on the Prevention of Corruption and the Fight against It, Official Gazette No. 10 of 2006, as amended and supplemented by Ordinance No. 10-05 dated 26/08/2010, Official Gazette No. 50 dated 01/09/2010, and further amended and supplemented by Law No. 11-15 dated 02/08/2011, Official Gazette No. 44 of 2011.

³⁰ Hanane Malika, *Corruption Offenses: Bribery, Embezzlement, and Illicit Enrichment by the Public Official in Islamic Jurisprudence and Algerian Anti-Corruption Law, Compared with Certain Arab Legislations*, Dar al-Jami'a al-Jadida, Cairo, 2010, p. 41.

³¹ Article 4 of Ordinance No. 06-03 containing the Basic Statute of the Public Service, cited above.

³² Hanane Malika, *op. cit.*, p. 47.



concerns the position itself, which must be permanent rather than temporary; the second concerns the employee, who must perform his duties on a permanent and continuous basis, not occasionally or temporarily.

The criterion for permanence is determined by the nature and essence of the position and the relationship linking the employee to the government, whether organizational or contractual. Whenever a person performs his duties continuously and regularly, such that he only ceases them through death, resignation, or dismissal, he is considered a permanent public official.

- **Registration (Confirmation) in a Rank on the Administrative Scale** Every candidate recruited is initially appointed to a rank in the public service as a probationer (stagiaire). However, certain special basic statutes may provide for direct confirmation in the rank due to the high qualifications required for certain positions. The probationer must, depending on the nature of the duties assigned to his rank, complete a probationary period of one year. Upon expiry of this period, he may be confirmed in his rank, subjected to an additional probationary period of the same duration once only, or dismissed without prior notice or compensation.

Confirmation refers to the procedure by which the employee is definitively established in a rank on the administrative scale. Accordingly, a probationer dismissed for failure to complete probation satisfactorily, or a contracted or temporary employee, is not considered a public official under administrative law.

- **Exercise of the Function in Public Enterprises and Administrations** Article 2, paragraph 1, of the Basic Statute of the Public Service provides: “This basic statute applies to employees exercising their activities in public enterprises and administrations.”

Public services, according to paragraph 2 of the same Article 2, include public enterprises, central state administrations and their decentralized services, territorial collectivities (wilayas and communes), public establishments of an administrative character, public establishments of a scientific, cultural, and professional character, and public establishments of a scientific and technological character.

2.2. Persons Holding Judicial Positions

The first category encompassed by this description consists of judges, who are subject to the Basic Statute of the Judiciary³³. Article 2 thereof provides that the judicial corps includes the following:

- Judges of the bench and the public prosecution service of the Supreme Court, judicial councils, and courts under the ordinary judicial system.
- Judges of the bench and state commissioners of the Council of State and administrative courts.

³³ Organic Law No. 04-11 dated 06/09/2004 containing the Basic Statute of the Judiciary, Official Gazette No. 57 dated 08/09/2004.



- Judges working in the central administration of the Ministry of Justice, the secretariat of the Supreme Council of the Judiciary, the administrative services of the Supreme Court and the Council of State, and training and research institutions affiliated with the Ministry of Justice.

This category also includes lay assessors (jurors) assisting in the criminal court, assistants in the juvenile division, and assistants in the social division, by virtue of their participation in judgments issued by ordinary judicial authorities.

The second category comprises judges of the Court of Auditors, pursuant to Article 2 of Ordinance No. 95-23 containing the Basic Statute of Judges of the Court of Auditors, as amended and supplemented³⁴. A judge of the Court of Auditors is defined as the President of the Court, the Vice-President, heads of divisions, counselors, auditors, as well as the Auditor General and assistant auditors.

2.3. Persons Holding Legislative Positions and Local Elected Officials

The status of perpetrator in corruption offenses, in all their forms, is not limited to the public official in the administrative sense; it also extends to members of the legislative authority and members of elected local councils.

2.3.1. Members of the Legislative Authority

These refer to members of Parliament, which consists of two chambers: the National People's Assembly and the Council of the Nation³⁵. Members of the National People's Assembly are elected by direct universal suffrage and secret ballot, whereas two-thirds of the members of the Council of the Nation are elected by indirect and secret ballot by members of municipal and provincial people's assemblies, while the remaining third is appointed by the President of the Republic from among national figures and competencies in scientific, cultural, professional, economic, and social fields³⁶.

2.3.2. Elected Members of Local People's Assemblies

These refer to members of provincial and municipal people's assemblies, who are elected pursuant to Article 65 of Organic Law No. 12-01 on the Electoral System³⁷ for a term of five years by proportional representation on lists, by citizens of the local constituencies to which they belong—namely, the wilaya (province) or the commune (municipality).

2.4. Persons Exercising a Function or Agency and Those Equivalent to Officials

In its endeavor to encompass, to the greatest possible extent, all persons liable for committing corruption offenses—even those lacking the status of public official in the administrative sense—the Algerian legislator expanded the scope by adding another category: persons who exercise a function or agency, and those equivalent thereto. This expansion aims

³⁴ Ordinance No. 95-23 dated 26/08/1995 containing the Basic Statute of Judges of the Court of Auditors, Official Gazette No. 48 dated 03/09/1995, as amended and supplemented.

³⁵ Article 114 of the Algerian Constitution.

³⁶ Article 121 of the Algerian Constitution.

³⁷ Organic Law No. 12/01 dated 12/01/2012 on the Electoral System, Official Gazette No. 01 dated 14/01/2012.



to tighten the noose around corrupt individuals and besiege them regardless of their status, which no longer constitutes an obstacle to their criminal prosecution for corruption offenses.

2.4.1. Persons Exercising a Function or Agency

Item 2 of paragraph (b) of the Law on the Prevention of Corruption and the Fight against It adds other persons to the list of those acquiring the status of public official, who may be prosecuted for administrative corruption offenses: “any other person who, even temporarily, exercises a function or agency, with or without remuneration, and in that capacity contributes to the service of a public body or public enterprise or any other enterprise in which the state owns all or part of the capital, or any other enterprise providing a public service.”

Exercising a function means that responsibility has been assigned to the individual in the aforementioned institutions or bodies. Thus, the person must enjoy a measure of responsibility, irrespective of title—whether president, director general, head of department, or otherwise. Consequently, the simple worker is excluded from the scope of exercising a function, regardless of competence or educational and scientific level; the individual must be entrusted with managing the institution or being responsible for one of its services to be considered among those exercising a function.

Exercising an agency refers to any person elected or delegated to represent one of the aforementioned institutions or bodies—for example, a member of the board of an economic enterprise³⁸.

2.4.2. Those Equivalent to Officials

This category, under the Law on the Prevention of Corruption and the Fight against It, includes any person defined as a public official or equivalent thereto under applicable legislation and regulations. This applies to military and civilian personnel of national defense and public officers. Military and civilian personnel of national defense are excluded from the application of Ordinance No. 06-03 containing the General Basic Statute of the Public Service, and are governed instead by Ordinance No. 06-02 containing the General Basic Statute of Military Personnel³⁹, which applies to the following categories: active military personnel, military personnel serving under contract, military personnel performing national service, and reservists on active duty.

As for public officers, they are not covered by the definition of public official in Article 2, paragraphs 1 and 2, of the Law on the Prevention of Corruption and the Fight against It, nor by the definition in Ordinance No. 06-03 containing the General Basic Statute of the Public Service. However, they may be included among those equivalents to officials, as they perform tasks delegated by public authority. This concerns notaries, judicial bailiffs, and auctioneers⁴⁰.

³⁸ Ahsan Bousqiaa, Summary of General Criminal Law, 5th ed., Dar Houma, Algiers, 2007, p. 16.

³⁹ Ordinance No. 06-02 dated 28/02/2006 containing the General Basic Statute of Military Personnel, Official Gazette No. 12 dated 01/03/2006

⁴⁰ Ahsan Bousqiaa, Summary of Special Criminal Law, Vol. 2, Dar Houma, Algiers, 15th ed., 2014, p. 27.



Conclusion

To a significant extent, the Algerian legislator has succeeded in eliminating the problems and avoiding the gaps that previously afflicted the Penal Code with regard to defining the status of the perpetrator, which constitutes the presumed element (*élément personnel présumé*) in functional offenses such as bribery, embezzlement, and abuse of influence. These gaps had previously resulted in the exclusion of certain categories of persons from liability under the relevant provisions.

The Law on the Prevention of Corruption and the Fight against It addressed these shortcomings by adopting multiple criteria aimed at closing all potential loopholes in the definition of the public official that might otherwise allow certain categories to escape the scope of the law. The present study has reached the following conclusions:

- Unlike certain comparative legislations, the Algerian legislator did not provide an explicit definition of the “official” across the various statutes it enacted. Instead, it specified the qualities or attributes that, when present in an individual, confer upon him the status of official, leaving the task of precise definition to doctrinal scholarship. This approach is justified by the risk that any statutory definition might prove incomplete or that new attributes could emerge in the future, necessitating repeated legislative amendments.
- The Law on the Prevention of Corruption and the Fight against It is both more precise and broader in scope than the provisions previously found in the Basic Statute of the Public Service and the Penal Code. For instance, it includes within the concept of the official any person who exercises a temporary function or who performs such a function without remuneration. It also extends coverage to those equivalent to officials, such as members of the judiciary, military and civilian personnel of national defense, and public officers (notaries, bailiffs, auctioneers, etc.).
- The Algerian legislator has, to a large degree, succeeded in encompassing all possible attributes that may constitute the presumed element in corruption offenses—namely, the status of official—by addressing them comprehensively in Law No. 06-01 on the Prevention of Corruption and the Fight against It. Nevertheless, this statute consists merely of rigid legal rules; its mere existence is insufficient. Effective implementation and enforcement are indispensable if the law is to achieve its objective of curbing corruption and eradicating its various manifestations.

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A. Legislation

1. Presidential Decree No. 20-442 dated 30/12/2020 promulgating the constitutional amendment approved by referendum on 1 November 2020, Official Gazette No. 82 dated 30/12/2020.
2. Ordinance No. 66-133 dated 2 June 1966 containing the General Basic Statute of the Public Service, Official Gazette No. 542 dated 18 Safar 1386, repealed.



3. Ordinance No. 75-47 dated 17 June 1975 amending and supplementing the Penal Code, Official Gazette No. 53 dated 4 July 1975, p. 751, as amended and supplemented.
4. Ordinance No. 95-23 dated 26/08/1995 containing the Basic Statute of Judges of the Court of Auditors, Official Gazette No. 48 dated 3/09/1995.
5. Ordinance No. 95/25 dated 25/09/1995 on the management of state-owned capital, Official Gazette No. 55 dated 27/09/1995, repealed by Ordinance No. 01/04 on the organization of public economic enterprises, Official Gazette No. 47 dated 27/08/2001, as amended and supplemented by Ordinance No. 08-01 dated 28/02/2008, Official Gazette No. 11 dated 02/03/2008.
6. Ordinance No. 06-02 dated 28/02/2006 containing the General Basic Statute of Military Personnel, Official Gazette No. 12 dated 01/03/2006.
7. Ordinance No. 06-03 dated 15/07/2006 containing the Basic Statute of the Public Service, Official Gazette No. 46 dated 16/07/2006, as supplemented.
8. Ordinance No. 25-14 dated 03/08/2025 containing the Code of Criminal Procedure, Official Gazette No. 54 dated 13/08/2028.
9. Law No. 62-15 dated 31 December 1962 extending the application of French legislation in Algeria after independence, except where incompatible with national sovereignty or public freedoms.
10. Law No. 78-12 dated 05/08/1978 containing the General Basic Statute of the Worker, Official Gazette No. 32 dated 08/08/1978, p. 724, repealed.
11. Law No. 88-01 dated 12/01/1988 containing the Guiding Law on Public Economic Enterprises, Official Gazette No. 02 dated 13/01/1988, repealed.
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13. Organic Law No. 04-11 dated 06/09/2004 containing the Basic Statute of the Judiciary, Official Gazette No. 57 dated 08/09/2004.
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15. Organic Law No. 12/01 dated 12/01/2012 on the Electoral System, Official Gazette No. 01 dated 14/01/2012.
16. Decree No. 85-59 dated 23/03/1985 containing the Model Basic Statute for Employees of Public Enterprises and Administrations, Official Gazette No. 333 dated 2 Rajab 1405, repealed.
17. Presidential Decree No. 04-128 dated 19 April 2004 ratifying, with reservations, the United Nations Convention against Corruption, adopted by the United Nations General



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