
The Role of National Legislation in Activating International Mechanisms to Recover the Assets of Corruption Crimes in Accordance with The United Nations Convention Against Corruption (Algeria Case Study)

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Abstract:

This study aims to identify the importance of the role of various national legislations in activating and strengthening the mechanism for recovering assets of administrative corruption crimes, as it is one of the most important legal mechanisms to combat this phenomenon and track its effects. It is also considered one of the most important areas of international judicial cooperation, and the cornerstone of combating corruption in its various forms and forms. The extraction and recovery of the proceeds of crimes of administrative corruption from the hands of the perpetrators and returning them to their real owners is one of the most deterrent and effective means against the perpetrators of corruption crimes in various forms because of the deprivation of the fruits. Their criminal acts, it also contributes to fighting another crime that is no less dangerous than it is money laundering that has become largely linked to corruption crimes (Suleiman Abdel Moneim, p. 160).

The research revolves around the problematic effect, how effective are the legal mechanisms monitored by the Algerian legislator to recover the assets of corruption crimes? What are the obstacles and obstacles facing the Algerian legislator while applying mechanisms to recover the assets of administrative corruption crimes? The research also seeks to achieve a major goal, which is to reveal the provisions contained in the Prevention and Control of Corruption Law, especially related to the recovery of assets of administrative corruption crimes.

Keywords: administrative corruption, mechanisms to recover the assets of administrative corruption crimes, the Prevention and Control of Corruption Law, the United Nations Convention against Corruption.

Introduction

The phenomenon of corruption in its various forms is considered one of the dilemmas of the current era that many countries of the world, especially the third world countries suffer from, due to the multiple negative effects that stand in the forefront of the imbalance, obstruction of reform efforts, undermining the formal rules and systems of work, and the spread of disguised unemployment, and against for work culture and ethics, loss of reason and wisdom in making decisions, absence of justice between people, and

a waste of citizens' rights.

In view of the pervasive phenomenon in various circles of society, we find that many countries are working hard to eliminate corruption in its various forms, through the great efforts made by governments, international organizations and civil society institutions to combat this phenomenon and reduce its effects.

It is noticed that the problem of administrative corruption as a type of corruption has received great attention from researchers and those interested in recent times, as this interest resulted in setting and establishing an institutional

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framework aimed at eliminating crimes of administrative corruption and treating them through specific serious steps, whether at the national or international level.

The importance of research, the importance of the study can be determined in the light of the following considerations:

- The importance and seriousness of the study is determined by the fact that the crime of corruption has a close link between corruption and crime in general and organized crime and money laundering in particular, as it does not recognize time limits or spatial limits, because its existence is not limited to a society or a country without another, it is a widespread phenomenon in developed countries And developing countries.
- Administrative corruption is the most dangerous type of corruption ever, because it paralyzes the administration and makes it unable to carry out the tasks required of it.
- Corruption has negative and harmful effects, as it hinders development programs, as it violates the principles of justice, integrity and equality within society itself.
- Administrative corruption crimes are often covert crimes.
- The practical importance of the issue also highlights the obstacles and obstacles facing the efforts to combat administrative corruption in Algeria from a practical point of view, and this will not come without reviewing the reasons for the failure of the national strategy to combat administrative corruption, which requires extensive study in this regard, despite the huge arsenal of laws and regulations Designated to confront the phenomenon of administrative corruption, however, Algeria still ranks seriously in the list of the most corrupt countries.
- The practical significance of the topic also appears through the results and recommendations of this study and documented theories and opinions of researchers that may benefit specialists and workers in this field, as well as specialized agencies in this field similar to the National Authority for Prevention and Control of Corruption and the Central Bureau for the Suppression of Corruption, as well as the judicial organs And administrative concerned with control, including helping them to direct and evaluate their actions and rebuilding a comprehensive strategy to reduce and combat

administrative corruption.

Objectives of the study

The research seeks to achieve a basic goal that is to shed light on the role of Algerian legislation in activating and strengthening the mechanism for recovering assets of administrative corruption crimes, through the following:

- 1- Study the legal mechanisms introduced by the Algerian legislator to confront corruption and activate its role in the process of recovering the assets of administrative corruption crimes, after the ratification of the United Nations Convention against Corruption in 2004 and the issuance of the Law on Preventing and Combating Corruption in 2006 AD amended and completed according to Ordinance No. 05/10 of 08/26/2010 (Official Journal of the Algerian Republic, No. 50, 2010).
- 2- Disclosing the dimensions of the Algerian legislator's use of mechanisms to recover the assets of administrative corruption crimes.
- 3- Disclosure of the provisions in the Prevention and Control of Corruption Law related to the recovery of assets of administrative corruption crimes.

Research problem

Therefore, and based on the aforementioned, we find ourselves faced with a major problem: how effective are the legal mechanisms monitored by the Algerian legislator to recover the assets of crimes of administrative corruption? Because, despite the legal efforts made by the official authorities in Algeria, to enact legislative and organizational systems that work to combat corruption in its various forms, foremost of which is administrative corruption, as well as the establishment of bodies and agencies specialized in preventing and combating it, the problem remains, there is a big gap between the theory and practice, so there is no big gap between the theory and practice. Various media and international bodies specializing in fighting corruption, such as Transparency International, continue to regard Algeria as one of the most corrupt countries, in addition to the judicial and disciplinary bodies that keep constantly telling us news about the increasing cases of administrative corruption in Algeria.

The study methodology

As we are in the process of collecting information to identify the role of the Algerian legislation in activating and strengthening

international mechanisms to recover the assets of administrative corruption crimes, it can be said that this study falls within descriptive research, which requires us to use the analytical descriptive approach, and this is to analyze the phenomenon of administrative corruption and explain its causes and its various effects, as well as studying the international legal mechanisms adopted to recover the assets of crimes of administrative corruption, through reviewing the law on preventing and combating corruption and using other relevant sources and references as well.

The first topic: The concept of administrative corruption

Corruption means that every abuse or violation that entails corrupting the thing or removing it from its origin and the practice of using the right without its owner, which appears in the field of study in the form of exercising power other than what was assigned to it from the goals and realization of the unlawful gain from the exploitation of influence and violation of job duties Preserving the public interest by managers and subordinates to achieve personal interests (Abdel-Fadil, Mahmoud, 2004, p. 80).

The first requirement: the definition of administrative corruption

- **World Bank definition of corruption**

The World Bank defined administrative corruption as "the abuse of public office, which may be by requesting bribery, taking it, or accepting a promise to it after the end of the transaction, and it may be by exploiting influence, or misappropriating public money" (Al-Kubaisi, Amer, Riyadh, 2005, p. 8).

The World Bank has developed several definitions of corruption, the most recent of which is the following: "Corruption is the abuse of public office for private gain (Sam vaknin, 2003, p.18). Corruption usually occurs:

- 1- When an employee accepts, requests a bribe, to facilitate a public tender procedure and procedures (Lauris Begovich, 2016, p. 13).
- 2- It also occurs when agents or intermediaries of companies or private businesses offer to bribe to take advantage of general policies or procedures to beat competitors and to make profits outside the framework of the laws in force.
- 3- Corruption can also happen by exploiting the public office without resorting to bribery by appointing relatives or stealing state funds directly" (Abdul Qadir Al-Sheikhly, 2006, p.

349).

As for jurisprudence, it was defined as "informal administrative behavior, an alternative to formal administrative behavior, necessitated by realistic conditions and required by the conditions of social and economic transformation to which societies are subjected" (Abdel Rahman Ahmed, 2003, p. 544).

- **The United Nations definition of corruption crimes**

Corruption was pointed out by the United Nations Convention against Transnational Crime of 2000, but its meaning was completely synonymous with bribery, according to Article 08 (Mahmoud Mohamed Maabreh, 2011, p. 73). As for the United Nations Convention against Corruption of 2003, corruption has been defined as: "To perform acts that represent an improper performance of duty, or abuse of a site or authority, including acts of omission in anticipation of a privilege, or seeking to obtain a feature promised, offered, demanded directly or otherwise." Direct or after. Accepting a benefit granted directly or indirectly, either to the same person or to the benefit of another person" (Sami Al-Toukhi, 2006, p. 162).

However, this definition was not agreed upon and was retracted in the final draft of the agreement, which did not know corruption but referred to its images (Ahmad Al-Faris, 2008, p. 30), which is bribery, embezzlement of property, trafficking in influence, abuse of position, and illicit enrichment.

- **Transparency International's definition of corruption**

Transparency International at the beginning of its reign defined corruption as: "Misuse of public authority to gain a private benefit" or that it: "Acted against a public office that is public trust" (Parwez Farsan, 2007, p....)

- **The position of Algerian legislation on corruption crimes**

After Algeria ratified the United Nations Convention Against Corruption in 128 of April 19, 2004, it was obligated upon it / 2004 according to Presidential Decree No. 04 to adapt its internal legislation to fit this agreement. So, the Prevention and Control of Corruption Law No. 01/06 of February 20 was issued. 2006 modified and completed, which criminalized corruption in its various

manifestations, Article 02 of the Prevention and Control of Corruption Law states: "Corruption is all the crimes stipulated in Chapter Four of this law." And by reference to Chapter Four of the same law, corruption crimes can be classified into four types: embezzlement and damage to property, Bribery and the like, crimes related to public deals, covering up corruption crimes (Ahsan Bu-Saqqqa, 2007, p. 5).

The second requirement: the causes of corruption

- **Economic reasons:**

The weaker the country's economy, the more corruption appears, and the weaker the economy, the lower the salaries of employees, and the emergence of financial and administrative corruption led to the perpetration of many crimes of embezzlement and theft, whether in the public sector or the private sector (Bilal Amin, 2009, p. 60).

- **Political reasons:**

Developing countries are also fertile ground for political problems and internal and external crises that directly affect the citizen's sense of instability and anxiety over the future, which may push some of the weak souls to exploit their positions within the limits of his work and the powers of his job, the first of which is the embezzlement of public money (Gopal J. Yadav, 2005).

- **Legislative reasons:**

Legislative weakness appears in the regulations arranged for the controls and limitations of the exercise of the job, as well as weakness in application and lack of commitment to the controls and restrictions contained in the regulations. Also, the lack of seriousness of the executive authority in performing its duties, whether executive or oversight, and providing the proper application of the regulations and regulations that lead to the proper functioning of the facilities, public and private institutions, will result in a weakness in the application of legal accountability rules, whether administrative or criminal accountability, both of which Arrange a feeling of administrative leniency and fear of punishment.

In sum, with regard to the concept of administrative corruption, we find that the United Nations Convention against Corruption in Chapter Two of it is titled Preventive Measures to Prevent Corruption and according

to the text of Article Six that:

1- Each State Party shall guarantee, in accordance with the fundamental principles of its legal system, the existence of one or more bodies, as appropriate, that shall prevent corruption, by means such as:

(A) To implement the policies referred to in Article 5 of this Convention, and to supervise and coordinate the implementation of those policies, as appropriate;

(B) Increased knowledge of and prevention of corruption.

2- Each State Party shall, in accordance with the basic principles of its legal system, grant the necessary independence or authority referred to in paragraph 1 of this article, to enable that body or bodies to carry out its functions in a manner that is not directly or indirectly responsible for their functions. Necessary material resources and specialized staff, as well as such training that they may require in the performance of their functions.

The second topic: the position of Algerian law regarding the recovery of assets of administrative corruption crimes

The recovery of the proceeds of administrative corruption crimes is one of the most important legal mechanisms to combat this phenomenon and track its effects, as it is considered one of the most important areas of international judicial cooperation, and the cornerstone for fighting corruption in its various forms and forms.

The extraction of the proceeds of administrative corruption crimes from the hands of the perpetrators and returning them to their real owners is one of the most deterrent and effective means against the perpetrators of corruption crimes in all its forms, as it deprives the fruits of their criminal actions, and it also contributes to combating another crime not less dangerous than it, which is money laundering that has become linked to crimes To a large extent corruption (Suleiman Abdel Moneim, p. 160).

The Algerian legislator has attached great importance to this mechanism by allocating Chapter Five of the Law on Preventing and Combating Corruption and Recovering Assets, and this is what was stipulated in Articles 57 to 70 of the same law, which included many provisions related to recovering assets of administrative corruption crimes, which can be mentioned In

some detail, as follows:

The first requirement: preventive measures to facilitate tracking and recovering the proceeds of administrative corruption crimes

In order to activate the system for tracking the proceeds of administrative corruption crimes and recovering them, the legislator stipulated a set of preventive measures and mechanisms that would prevent and expose the transfer of criminal proceeds and include recovering them in the event of their smuggling abroad. The most important of these measures stipulated by the Algerian legislator are the following:

First / applying banking transparency to expose financial transactions related to administrative corruption

For the perpetrators of crimes of administrative corruption, banking and financial institutions are the safe haven for the proceeds of their criminal activities, and therefore these institutions must be obliged with a degree of transparency that allows the disclosure of unclean bank accounts (Suleiman Abdel Moneim, p. 162), This requires taking some procedures and measures for the purpose of uncovering financial operations related to corruption, and in accordance with Article 58 of the Prevention and Control of Corruption Law, banks and non-bank financial institutions must comply with the following:

- 1- It adheres to the data received regarding natural or legal persons to whom financial institutions must apply close examination of their accounts, as well as the types of accounts and operations that require special follow-up, in addition to the measures that must be taken to open and maintain these accounts and record transactions.
- 2- It takes into account the information that is communicated to it in the context of dealing with foreign authorities, especially those related to the identity of natural or legal persons whose accounts must be closely monitored.
- 3- Adequate statements of the accounts and operations related to the persons mentioned in the first and second paragraphs of this article shall be maintained for a period of five (5) years as a minimum from the date of the last written operation, provided that these statements include information on the identity of the customer and, as far as possible, information on the identity of the beneficial owner, Article 16 of

the Prevention and Control

of Corruption Law stipulated, in this context, the need to subject banks and non-bank financial institutions, including natural or legal persons, to an internal control system that would prevent and expose all forms of money laundering derived from corruption crimes.

Second / prohibiting the establishment of mock and uncensored banks

The phenomenon of pictorial banks is closely related to the laundering of funds of illicit origin, and the Algerian legislator has been keen, according to the Prevention of Corruption and Anti-Corruption Law, to stipulate it in Article 59 of the following: Banks that do not have a physical presence and are not affiliated with a regulated financial group, and banks and financial institutions established in Algeria are not authorized to establish relationships with foreign financial institutions that allow the use of their accounts by banks that do not have a physical presence and do not belong to a regulated financial group.

Third / providing information related to the proceeds of administrative corruption

The Algerian legislator has authorized, under Article 60 of the Prevention and Control of Corruption Law, to the national authorities to provide the competent foreign authorities with the useful financial information available to them on the occasion of the investigations taking place on its territory and within the framework of the measures taken with a view to claiming and recovering the proceeds of administrative corruption crimes.

Within the framework of international cooperation, information related to criminal proceeds can be communicated in accordance with the Prevention and Control of Corruption Law to any state party to the agreement without a prior request from it when it becomes apparent that this information may help the concerned country to conduct investigations, prosecutions or judicial procedures, or allow that country to submit an application aimed at To confiscation (Article 69 of the Law on Preventing and Combating Corruption, entitled Judicial Cooperation).

Fourth / Obligation of public officials to declare their financial accounts located abroad

In the context of combating administrative corruption, the Algerian legislator obligated public officials to disclose their financial account located

abroad, and this is confirmed by Article 61 of the Law on Preventing and Combating Corruption (this article corresponds to Article 52 of the Law on Preventing and Combating Corruption: "Public officials who have an interest in a financial account in a foreign country, right, signature authority or other authority on that account, are obligated to inform the relevant authorities of that relationship, and to maintain appropriate records related to those accounts, under penalty of disciplinary sanctions and without prejudice to penal sanctions Prescribed").

According to Article 04 of the Law on Preventing and Combating Corruption, the Algerian legislator obligated the employee to declare his property, money, and financial accounts in foreign countries, and this is to ensure that the employee does not commit the crime of illicit enrichment on the one hand, and for the purpose of investigation, inquiries, and investigations regarding the proceeds of administrative corruption crimes and facilitating their recovery if they run into the outside is on the other hand.

The second requirement: measures to directly recover the proceeds of administrative corruption

It is recognized that administrative corruption crimes have serious implications and the matter becomes more dangerous when illicit money is smuggled abroad. Therefore, effectively combating administrative corruption requires enabling the affected countries to recover their money, but the recovery of these returns may sometimes collide with several obstacles. Some of them are due to issues related to jurisdiction and others to immunities, as well as the difficulty of knowing its original owner, in addition to not activating international judicial cooperation in this field (Hilal Murad, p. 130).

The Law on Preventing and Combating Corruption included several mechanisms and measures to recover the proceeds of administrative corruption, the most important of which are: measures for direct recovery of property referred to in Article 62 AD of the Law on Prevention and Control of Corruption, which included three mechanisms and means for recovering the proceeds of administrative corruption directly and are arranged according to their receipt in The text is as follows:

First / The injured country filed a civil lawsuit in order to recognize its ownership of the proceeds of administrative corruption

This case assumes that the property or assets

of administrative corruption crimes are smuggled from the original country in which they were committed to the safe haven country for bleaching by depositing them in banks or investing in one of the projects. In order to recover these illicit funds, the Algerian legislator allowed to take measures to recover the property directly by raising Civil action in the country receiving the proceeds of corruption.

The law also allowed filing a lawsuit in Algeria if the proceeds of corruption were smuggled to it, and this was confirmed by the first paragraph of Article 62 of the Prevention and Control of Corruption Law stating: "The Algerian judicial authorities are competent to accept civil suits filed by the member states of the agreement, in order to recognize Ownership of property obtained from acts of corruption".

It is understood from the above that any state that is a member of the United Nations Convention against Corruption and in order to track and recover the proceeds of administrative corruption crimes committed in its territory has the right to file a civil lawsuit with the competent judicial authorities in Algeria in order to recognize the ownership of the illicit funds obtained from criminal administrative corruption. However, the thing that is noticed is that the legislator did not specify the competent Algerian judicial authority to accept such cases. Is it the civil judiciary or the criminal judiciary?

Second / Issue a judgment for compensation in favor of the state affected by the crimes of administrative corruption

One of the measures for direct recovery of property approved by the Algerian legislator under Article 62/02 of the Prevention and Control of Corruption Law stipulates: "Judicial authorities that consider cases can Filed in accordance with the first paragraph of this article, to compel persons sentenced for corruption acts to pay civil compensation to the requesting state for the damage done to it".

The noticeable thing is that the ruling to pay civil compensation in favor of the affected country is a passport and not mandatory, and the legislator did not specify the authority competent to consider this lawsuit. The civil department cannot convict corruption crimes until the person convicted of corruption crimes is obligated to pay compensation for the damages resulting from it. Thus, the appropriate lawsuit is the civil subordinate lawsuit, which is considered by the criminal judge who adjudicates the misdemeanor

of administrative corruption (Hilal Murad, p. 132).

Third / Issue measures to preserve the rights of the state affected by crimes of administrative corruption

It is also considered a means of direct recovery of property by the receiving state for the occasion of issuing an order of confiscation by the receiving state.

This is referred to in the third paragraph of Article 62 of the Prevention and Control of Corruption Law, because in all cases where the decision to confiscate can be taken, the court that examines the case must order the necessary measures to preserve the legitimate property rights that may be claimed by another country A party to the agreement, and this image assumes that the competent authorities in the state expropriate themselves from the funds and property of foreign origin, in accordance with a judicial decision regarding one of the crimes of administrative corruption.

It is also committed to take the necessary precautionary measures, such as seizing, freezing and managing property, and this is to preserve the legitimate property rights of the foreign country that you may claim at any moment.

The third requirement: property recovery through international cooperation in the area of confiscation

International cooperation in the area of confiscation is one of the most important mechanisms and indirect measures to recover the proceeds of administrative corruption crimes. The Algerian legislator has dedicated articles 63 to 70 of the Prevention and Control of Corruption Law to regulate and control this mechanism.

The reason for allocating this amount of material is the importance of these measures and their role in combating administrative corruption, because by seizing the perpetrators are stripped of the proceeds of corruption crimes and confiscated this on the one hand and on the other hand it is linked to a mechanism no less important than it in deterring spoilers which is international judicial cooperation) Francois badie 2011, P. 2(.

A detailed explanation of the mechanisms and procedures for the indirect recovery of criminal proceeds can be provided as follows:

First / measures to recover the proceeds of administrative corruption within the framework of international cooperation (recovery mechanisms)

Legal methods for recovering property of administrative corruption through international cooperation in the area of confiscation can be listed

as follows:

1- The seizure of corruption proceeds of foreign origin by the competent Algerian judicial authorities, on the occasion of the consideration of one of the crimes:

This is evidenced by the second paragraph of Article 63 of the Prevention and Control of Corruption Law, as judicial authorities can, during their consideration of crimes that launder funds or any other crime of their competence in accordance with the legislation in force, to order the confiscation of property of foreign origin acquired through a corruption crime Or the one used to commit it.

2- Execution of confiscation rulings issued by foreign judicial authorities in the Algerian region:

This is what is decided by the first paragraph of Article 63 of the Law on Preventing and Combating Corruption, as foreign judicial rulings that ordered the confiscation of property acquired through one of the crimes of administrative corruption or the means used to commit it are considered effective in the Algerian region in accordance with the established rules and procedures.

This case assumes the commission of a crime of administrative corruption in a foreign country, and the smuggling of its unlawful proceeds to the Algerian region, in which case the Algerian judiciary does not have the authority to consider this crime.

However, in order to seize these illegal properties and funds, the Algerian legislator allowed the enforcement of foreign judicial rulings that ordered the confiscation. (Hilal Mourad, p. 133).

It is worth noting in this field that the commitment of the competent authorities in Algeria to implement foreign judicial rulings in accordance with established rules and procedures is, in fact, a dedication to the idea of international (transnational) authenticity of foreign criminal provisions.

(It is noted that in the area of confiscation, many comparative legislations do not recognize the possibility of implementing a foreign criminal ruling on its territory similar to the Egyptian legislator, who does not recognize foreign criminal provisions, unless they are within the framework of international

agreements, for example the Agreement on Mutual Assistance and Judicial Cooperation between Egypt and Algeria in March 1964,

which stipulates in its article 39 that: "Judicial rulings may be executed with a penalty restricting freedom in the country in which the convict is located at the request of the country that issued the judgment if the country to which the execution is requested agreed and its legislation provided for the type of sentence imposed". This is confirmed by the first paragraph (A) of Article 54 of the United Nations Convention against Corruption.

4- Confiscation by the competent national authorities, even in the absence of conviction

This is stated in the last paragraph of Article 63 of the Prevention and Control of Corruption Law. Where it is required to confiscate the proceeds of corruption of foreign source even in the absence of conviction due to the expiry of the public lawsuit or for any other reason (Article 63, Paragraph Three of the Prevention and Control of Corruption Law), Where the proceeds of criminal corruption resulting from administrative corruption is confiscated without the need for a criminal ruling for conviction in the event that the perpetrator cannot be pursued due to death, flight, absence, expiry of the public suit or any other reason (Suleiman Abdel Moneim, p. 168), and the competent authority in this case is the authority Judicial as the public prosecution.

And based on the foregoing, there are two basic mechanisms for recovering property through confiscation, namely: either the state refers the confiscation request submitted to it by a foreign country to its competent authorities to obtain the order of confiscation, or the implementation of the provisions of confiscation submitted to it by a foreign country to be implemented, and the following is a detail of the procedures to be observed in both methods:

Second / recovery procedures in the event that the national authorities confiscate in response to foreign requests

The Algerian legislator stipulated a set of procedures that must be followed by the foreign country that seeks to recover the money and property derived from corruption crimes by issuing an order for their confiscation by the Algerian authorities. These measures can be mentioned as follows:

1- Submit an application to seize or freeze the proceeds of administrative corruption

It may take a long time to process applications for confiscation of the proceeds and property of

crimes of administrative corruption, and this of its international nature may waste the opportunity on the affected country to recover even a portion of its money smuggled into a foreign country (Suleiman Abdel Moneim, p. 169).

For this reason, the Algerian legislator allowed to take some temporary precautionary measures in order to avoid transferring or hiding the proceeds and funds resulting from corruption crimes, and this is until the final decision of the request for confiscation. These measures consist of freezing and seizure.

This is confirmed by Article 64 of the Law on Preventing and Combating Corruption by stipulating: "According to the established procedures, the judicial authorities or the competent authorities may, at the request of one of the state's parties to the agreement whose courts or competent authorities have ordered the freezing or seizure of the proceeds of one of the crimes stipulated in this law, or the property, equipment or tools that have been used or were intended for use in committing these crimes, to rule the freezing or seizure of such property provided that there are sufficient reasons to justify these procedures and that there is evidence that the property of that property is confiscated".

It should be noted here that the competent judicial authority can take the precautionary measures mentioned in the previous paragraph on the basis of fixed data, especially suspending or accusing one of the persons involved in the case abroad. The requests mentioned in the first paragraph of this article are received according to the methods stipulated in Article 67.

The Public Prosecution shall present it to the competent court that adjudicates it in accordance with the procedures established in the matter of the urgent court.

It is understood from this article that the judicial authorities or the competent Algerian authorities cannot rule on the freezing or seizure of the proceeds, property or tools used in committing administrative corruption crimes in one of the signatory states of the agreement unless the following conditions are met:

A - Submission of a request for freezing or

seizure by a state party to the agreement: This is stipulated in the first paragraph of Article 64 of the Prevention and Control of Corruption Law, which allowed only international cooperation in the framework of recovering the

proceeds of administrative corruption by confiscation with the states parties to the agreement the United Nations To fight corruption, unlike other countries. These countries are also obligated to submit a request for freezing or seizure to the competent Algerian authorities in accordance with the methods stipulated in Article 67 of the Law on Preventing and Combating Corruption, and by referring to Article 67 of the Law on Preventing and Combating Corruption, we have found for us the authority to which the request is directed and the procedures for adjudicating it accurately, Within the framework of the so-called "international cooperation procedures for confiscation".

In this way, a request to freeze or withhold the proceeds of administrative corruption present in the national territory is directed directly to the Ministry of Justice, which transfers it to the Attorney General at the competent judicial authority, and the Public Prosecution sends this request along with its requests to the competent court, which adjudicates it according to the procedures established in the matter of the urgent judiciary.

B - Issuing an order for freezing or seizure from a court or a competent authority in the requesting country:

The Algerian legislator stipulated, under Article 64 of the Prevention and Control of Corruption Law that the request for a freeze or seizure order issued by a court or a competent authority 3 of the requesting state be included, and thus the request not attached to the freeze or seizure order mentioned above is rejected.

This is in contrast to the United Nations Convention against Corruption in its Article 54, which indicated the possibility of freezing the proceeds of corruption and seizing it based on a freeze or seizure order issued by another state in the first case, and the possibility of freezing or seizing property based on an application submitted by another country even if it was not Supported by a freeze or seizure order issued by one of its competent authorities.

C - The request for freezing and seizure relates

to the proceeds, property or equipment presented in the crimes of administrative corruption:

This is what is explicitly stipulated in the first paragraph of Article 64 of the Prevention and Control of Corruption Law, as it stipulated that

the request for freezing or seizure relates to the proceeds, property, equipment or tools that were used or were intended for use in committing a corruption crime, including administrative corruption crimes.

D- There are sufficient reasons to justify seizure or freezing:

This is confirmed by Article 64/1 of the Law on Preventing and Combating Corruption, which stipulated for the ruling to freeze or seize property or proceeds from administrative corruption crimes, the need for sufficient reasons to justify these precautionary measures, as well as evidence that the fate of those properties is confiscation, Because seizure and freezing are only temporary procedures and mechanisms whose ultimate goal is confiscation.

However, the Algerian legislator referred to a situation in which precautionary measures (seizures and freezes) can be taken, namely: the presence of fixed data: as accusations of a person involved in crimes of corruption abroad (Article 64/2 of the Prevention and Control of Corruption Law).

Proceeding from this, if all the above conditions are met, the judicial authority or the competent Algerian authorities may rule the freezing or seizure of proceeds and criminal property on the national territory derived from corruption crimes committed abroad in preparation for their confiscation.

It must be noted here that the Algerian legislator stipulated in Article 65 (of the Prevention and Control of Corruption Law) that the competent national authorities may refuse international judicial cooperation aimed at confiscation or the removal of provisional measures in two cases:

- If the requesting country does not send sufficient evidence in a reasonable time.
- If the property to be confiscated is of little value.

2- The data to be taken into account in the request for confiscation

The Algerian legislator stipulated in Article 66 of the Law on Preventing and Combating

Corruption the necessity of attaching requests for international cooperation in order to confiscate criminal proceeds and property with a set of data and documents, in addition to the necessary documents and information required by bilateral and multilateral agreements and the law, and thus requests from the One of the

state's parties to the agreement to order the confiscation or implementation of the following data:

- A statement of the facts on which the requesting state relied, and a description of the required procedures, in addition to a copy authenticated and conforming to the original of the order on which the request was based, wherever available, if it is suspended ordering to take measures to freeze, seize, or preventive measures.
- Description of the property to be confiscated and determine its location and value whenever possible, along with an indication of the facts on which the requesting state relied, which is detailed to the extent that the national judicial authorities are allowed to take the decision of confiscation in accordance with the established procedures, in the case of a request to obtain a ruling on confiscation.
- A statement that includes the facts and information that define the scope of implementation of the confiscation order received from the requesting country, in addition to submitting the latter a statement specifying the measures it has taken to inform the bona fide parties, in an appropriate manner, as well as ensuring that due process is taken into account and the statement that the ruling of confiscation is final, if the matter relates to Execution of confiscation.
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3- Procedures for the conduct of the confiscation request

Article 67 of the Prevention and Control of Corruption Law stipulated the procedures for submitting the application for confiscation and seizure to the competent authority to adjudicate precisely it, and it is generally the same as the one prescribed for requests for seizure or freezing and referred to above in the element related to requests for freezing and seizure, and accordingly the request for the confiscation of criminal proceeds or property shall be directed to Or the equipment used in it and located on the national territory directly to

the Ministry of Justice, the latter that transmits the file to the Attorney General at the competent judicial authority, and the Attorney General in turn sends the request to the competent court attached to his requests and the court ruling is subject to appeal Cassation appeal.

4- Executing the provisions pertaining to national confiscation:

Pursuant to Article 67, Paragraph 3 of the Prevention and Control of Corruption Law, the provisions of confiscation taken in accordance with requests submitted by foreign states members of the United Nations Convention against Corruption are implemented with the knowledge of the Public Prosecution in all legal ways.

Third / recovery procedures in the event that the national authorities implement the provisions of foreign confiscation

With reference to Articles 63 and 68 of the Law on Preventing and Combating Corruption, the most important measures to be observed by a state party to the agreement that issued a ruling to confiscate the funds derived from corruption crimes that were smuggled into Algeria can be listed as follows:

● Submit an application for forfeiture and conditions:

Article 68 of the Prevention and Control of Corruption Law stipulates that the confiscation decisions ordered by the judicial authorities of one of the state's parties to the agreement are presented through the methods outlined in Article 67 of the Prevention and Control of Corruption Law, which we have already explained above on the occasion of examining requests for seizure, freezing, and confiscation requests issued by the authorities We are referring to the Algerian national specialist, and in this respect, we refer to the conditions and procedures for submitting the application for confiscation ordered by the national authorities.

● Implementation of foreign confiscation provisions:

According to the provisions of Article 68 of the Law on Preventing and Combating Corruption, the implementation of the confiscation provisions issued by foreign judicial authorities in Algeria shall be in accordance with the rules and procedures in force (in accordance with

the bilateral agreements concluded in this field) within the limits of the request, and this is as long as it focuses on the proceeds or property or Materiel or any method used to commit administrative corruption crimes.

Fourth / returning the confiscated property and disposing of it

The issue of the disposal of the confiscated

proceeds of corruption poses a problem regarding the fate of these funds' ownership under expropriation to the countries to which you have fled, or remains property of the affected victim state, that it seeks to recover, as well as if the affected country's right and ownership of these funds is confirmed, is that true? Is it returned in kind or is it transferred in a corresponding way? (Nikos Basas et al, P. 276).

It must be said here that the position of the Algerian legislator is almost ambiguous because it did not specify precisely the fate of the property and proceeds of administrative corruption crimes that were confiscated by the Algerian judicial authorities or how to dispose of them, nor did it regulate the provisions for returning them to their original owners, as the text of Article 70 of the law came Preventing and combating corruption is brief and referred to the relevant international treaties and the legislation in force to determine options available to the state to dispose of confiscated property.

Article 70 of the Law on Preventing and Combating Corruption states the following: "When the confiscation decision is issued in accordance with the provisions of this section, the confiscated property shall be disposed of in accordance with the relevant international treaties and applicable legislation".

And by referring to the relevant international treaties, especially the United Nations Convention against Corruption, we have detailed the issue of returning the proceeds of administrative corruption crimes and how to dispose of them, and this according to Article 57 of them under the title: "Returning and disposing of assets", which included several provisions that we mention in the following:

- **The principle of returning confiscated administrative corruption revenue**

Article 70 of the Law on Preventing and Combating Corruption states the following: "When the confiscation decision is issued in accordance with the provisions of this section, the confiscated property shall be disposed of in accordance with

relevant international treaties and applicable legislation".

Also, disposing of the proceeds and property of administrative corruption and returning it is the last action taken by the confiscating country in the process of recovering the property, and it is considered one of the issues that have caused widespread controversy during the preparatory work and negotiations that preceded the adoption of the United Nations Convention against

Corruption (Suleiman Abdel Moneim, p. 174).

Although the criminal text came free of the idea of sharing the assets of corruption, a problem remains for the party that has the right to recover the proceeds of these crimes, and this is confirmed by the fifth paragraph of Article 57 of the United Nations Convention against Corruption, which states that: "States may Parties shall also, when necessary, consider, in particular, the conclusion of agreements or agreed arrangements, as appropriate, in order to permanently dispose of the confiscated property.

From this text, we conclude that the state in which the proceeds of corruption are located can stipulate that the affected state agree to share these assets before they are returned to them (Amir Yusuf, 2009, p. 98).

What confirms the weakening of the principle of the right of the affected state in which the crimes of corruption were committed to recover the funds that were looted from them, is what was stated in the first paragraph of Article 57, which clearly states that the confiscated property is disposed of in ways that include returning it to its former legitimate owners (Clara Delavallade , 2007, p. 45).

It is noted on the foregoing that the legislator tried to circumvent the principle of returning confiscated administrative corruption revenues to the countries from which they were taken away, when this money was allowed to be disposed of in various ways, which means that the disposal of confiscated property in administrative corruption crimes is not necessarily done by returning it to The affected state, and the term "former owners" used by the legislator was flexible and broad, to include the affected country, as well as absorbing companies, entities and other moral and natural persons that could be established as a civil party affected in cases of confiscation in administrative corruption crimes (Michael Johnson) 2009, p. 65).

In sum, we find that the legislator came up with a new principle in the agreement that includes the idea of returning criminal proceeds to their countries of origin or lawfulness, and this is in

contrast to previous agreements that are dominated by the principle that the expropriating State party has exclusive ownership of criminal proceeds and it is up to them to estimate whether or not those property will be returned (Article 14 of the Organized Crime Convention).

- **Conditions for returning confiscated property:**
The third paragraph of Article 57 of the United Nations Convention against Corruption has identified three cases, in which the funds and

confiscated property obtained from crimes of administrative corruption are returned at the request of the affected state (the victim) party to the agreement, The conditions that are required in each case for returning the confiscated funds differ according to the type of corruption crime concerned, but they agree on the necessity to activate mutual legal assistance and international cooperation for the purposes of the confiscation, and the resulting conditions, procedures and data that must be met in requests for assistance and confiscation, which have already been mentioned above, The following is a breakdown of cases of returns to administrative corruption and confiscation:

A- Conditions for returning confiscated property in the event of embezzlement of public funds or the embezzlement of public funds:

In this case, to return the confiscated proceeds of corruption, two conditions must be met:

- that the confiscation be carried out in accordance with Article 55 of the United Nations Convention against Corruption, which is matched by Articles 66 and 67 of the Law on Prevention and Control of Corruption with data on the request for international cooperation for the purpose and conditions of confiscation.
- That a final ruling for confiscation be issued by the requesting country and this condition means that the confiscation ruling must have been issued by a judicial authority on the one hand, and on the other hand, it must be final, meaning that it cannot be appealed until the ruling is made to return these funds.

It is noted that the legislator has allowed the state party to the agreement to exclude this condition and govern return or Confiscation to the requesting country, despite the existence of a final ruling on confiscation, such as the failure to prosecute the perpetrator due to death or

flight.

B- Conditions for returning confiscated property in case of committing any other crime covered by this agreement:

Other administrative corruption crimes such as bribery and influence exploitation, and public procurement crimes, in this case also, the confiscated property and funds are returned to the requesting country whenever the two conditions mentioned in the first case are met and they are in observance of terms and

procedures for international cooperation for purposes of expropriation as well as a final ruling for confiscation from the requesting state (Issam Mattar, 2011 CE, p. 126).

C- Conditions for returning confiscated property in other cases:

In accordance with Article 57, paragraph 3 / c, of the United Nations Convention against Corruption, a State that has confiscated criminal proceeds from crimes other than the corruption crimes covered by the Convention has to give priority consideration to taking one of the two actions:

- Either return the confiscated property to the requesting State Party, or return that property to its former legal owners.
- Or compensation for crime victims as an alternative to returning criminal proceeds (Abdullah Hamouda, 2011, p. 54).

Although the basic principle enshrined in the Convention, which is to return confiscated property to the requesting affected State Party, it nonetheless authorized a number of actions received on such confiscated property, including: Compensation to the requesting State Parties and other victims for the damage caused to them as a result of these crimes It recognizes the claims of other former legitimate owners (Abedi Shafei, 2008, p. 70).

Paragraph 02 of Article 57 of the United Nations Convention against Corruption stipulated that the rights of bona fide third parties should be taken into consideration when the confiscated property is returned, and we also note in this regard that the explanatory note to the United Nations Convention against Corruption shows that the return of property may mean in some cases the return of the right to their ownership or value.

- **Deducting the costs of conducting the confiscation and returning the property incurred by the state:**

In view of the costly efforts undertaken by the expropriating country, the United Nations Convention against Corruption allows for the deduction of proceeds or other assets from reasonable expenses incurred before they are returned (Khaled al-Shaarawi, 2011, p. 157).

Reasonable expenses mean costs and expenses incurred, not the fees of those who find property or other unspecified fees, and

the requesting and recipient countries should consult on potential expenditures.

It must be noted in this regard that the obligation to return the assets after deducting the reasonable expenses from them differs from the arrangements for sharing property, and for this reason it will not be possible to rely on provisions stipulating the sharing of assets to fulfill this obligation.

Conclusion:

I have sought through this modest research to try to shed light on the importance of the role of the Algerian legislation in activating and strengthening the mechanism for recovering the assets of administrative corruption crimes, as the research reached many results, especially with regard to aspects of international cooperation in this field, including mutual legal assistance and recognition of the authenticity of criminal provisions International as well as extradition, **and we can summarize the results as follows:**

- Despite the importance of mutual legal assistance in the strategy to combat administrative corruption at the international level, the Algerian legislator has referred to it briefly in Article 60 of the Law on Preventing and Combating Corruption, unlike the United Nations Convention against Corruption, which it organized in some detail.
- The legislator has recognized the authority of foreign criminal provisions, especially those related to the confiscation, freezing, and seizure of proceeds of crimes of administrative corruption or the means used to commit them.
- The extradition of proceeds of administrative corruption crimes in Algeria finds its legal source in both the United Nations Convention against Corruption as well as in the Code of Criminal Procedure.
- The proceeds of administrative corruption crimes are taken from the hands of their perpetrators and returned to their true owner's one of the most deterrent and effective means against the perpetrators of these crimes, because it leads to depriving them of the fruits of their criminal acts.
- The mechanism for recovering administrative corruption revenue contributes to combating another equally serious crime, money laundering, which has become closely linked to corruption crimes.
- The Law on Preventing and Combating Corruption includes several mechanisms and

measures to recover the proceeds of administrative corruption, the most important of which are: measures for direct recovery of property and measures to recover property through international cooperation in the area of confiscation.

- The Algerian legislator did not specify precisely the property and proceeds of the crimes of administrative corruption that were confiscated by the Algerian judicial authorities or how to dispose of them, nor did it regulate the provisions for returning them to their original owners, even though the United Nations Convention against Corruption has responded accurately.
- The International Convention against Corruption has tolerated the conditions for the return of criminal and confiscated proceeds resulting from the crimes of embezzlement and the laundering of embezzled public funds without the rest of the other administrative corruption crimes.
- There are some obstacles that hinder money-back procedures, some of which are due to issues related to jurisdiction and others to immunities, as well as the difficulty of knowing their original owners in addition to the lack of activation of the international judicial cooperation mechanism at times.

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