

Anti-corruption measures in the field of public procurements in Algeria

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Summary:

The expansion of the functions of the state in all countries of the world resulted in an increase in the disbursement of expenditures through the mechanism of public procurement, which in turn led to an increase in practices that fall within the scope of corruption crimes, and Algeria, like the rest of the flag countries, knew the same phenomenon, so I tried in this study to address the various measures that the Algerian legislator was keen to introduce in the national laws of public procurements in an attempt to reduce these illegal practices.

This was evident through the adoption by the Algerian legislator of several measures, including the most important elements involved in public procurement, starting with the human element and working to digitize all public procurement procedures, all within the framework of the principles of transparency known in public procurement.

Keywords: expenditure, corruption, anti-measures, disbursement.

Introduction:

The expansion of the state's functions in all countries around the world has resulted in an increase in public spending through the mechanism of public procurement. This, in turn, has led to an increase in practices that fall within the scope of corruption crimes. Algeria, like many other countries, has faced this phenomenon. Therefore, this study aims to address the various measures that the Algerian legislator has been keen to introduce in the national public procurement laws in an attempt to reduce these illegal practices.

This is evident through the adoption of several measures by the Algerian legislator, which include key elements involved in public procurement, starting with the human element and working towards digitizing all public procurement procedures, all within the framework of the transparency principles commonly known in public procurement.

The state's recent transformation from a guardian state to an intervening state resulted in the expansion of its tasks to include multiple fields, which required the provision of huge sums of money in order to cover the various expenses of those areas.

But the main problem was the scarcity of sources of funding, which are known as "revenues", but even if these funds are available, there is another problem that is considered a dilemma for the state, no less important than the first problem, which is related to how to adopt the correct way that enables it to spend money without losing it, as it is public funds belonging to all citizens.

For this it was necessary to develop a clear and accurate legal system for the management and disbursement of those funds and at the same time to develop a special system that enables continuous and effective control, especially if it is related to huge sums of money in order to cover projects of national and even local importance, they usually require a significant amount of funds, for this a set of legal legislation regulating the disbursement of public funds known as "public procurements" emerged as an integrated system, as the main reason for its existence is the desire to control public expenditures on the one hand and from On the other hand, prevent or limit certain practices aimed at the illegal appropriation of those funds originally allocated for the public interest.

These practices mentioned above were adapted and criminalized by law because of their seriousness and considered to fall within the scope of what is known as financial corruption, this phenomenon, despite its existence for a long time, but with reference to statistics, it has known a wide spread at the international level for many reasons.

Algeria did not depart from this rule, as it in turn knew a serious spread of the phenomenon of corruption in general, so it was necessary for the Algerian legislator to adapt to this situation, and work at all levels to combat this phenomenon, and it cannot be disputed that the fertile field that has known the spread and expansion of this phenomenon in Algeria we find in the field of public procurements specifically, considering that public procurements are the main tool for the state to spend its expenses.

This is why the Algerian legislator has worked in various successive legislations to continuously improve the legal provisions governing this field since independence to the present day in an attempt to remedy the shortcomings contained in successive legal provisions and texts.

The legislation on public procurements has known different stages according to the nature of the political and economic system prevailing in the state, but the great interest in public procurement legislation in Algeria is after 1990, specifically after Algeria's entry into the market economy, this was accompanied by the scarcity of financial resources of the state, which made it try to spend its funds in a careful and cautious manner.

The common thing between all these laws and regulations on public procurements is the Algerian legislator's continuous attempt to reduce the phenomenon of corruption in the process of spending public funds through improved procedures, provisions and measures that have had a direct or indirect impact in the fight against corruption, so Presidential Decree No. 15/247 on public procurements and the mandates of the canceled public utility, as well as Law 23/12 on public procurements in force, did not depart from this matter, on this basis I posed the following problem: **What are the most important measures adopted by the Algerian legislator aimed at reducing the phenomenon of corruption in public procurement?**

To answer this problem, I have adopted the comparative analytical approach by analyzing the legal texts and provisions of the various Algerian legislations, especially what was stated in the content of the previous presidential decree 15/247 compared to the content of the new law 23/12

current in force, and therefore I divided this study into two parts according to the measures contained in the various laws of public procurement, whether these measures fall within the scope of fighting corruption directly or indirectly.

In the first section, the provisions related to the fight against corruption at the level of the human element involved in the field of public procurement, both for employees, and this interest also included economic operators, while in the second section, it dealt with the new procedures, in which the legislator focused on confirming the digitization of all procedures related to public procurement, but within the framework of the well-known principles of public procurement, which the Algerian legislator previously emphasized in all successive laws because of their important role in combating corruption.

01- Measures relating to the human element involved in public procurements:

The previous legislation related to procurements was not concerned with the human element involved in public procurements as much as its interest and keenness on the legal procedural aspect, but the reality proved the important role of this element in combating the phenomenon of corruption as it is the one who performs and practices this phenomenon, so it was necessary for the legislator to try to include provisions related to this element that included two main parties, i.e. employees, economic dealers or contractors.

01-01-Public servants involved in public procurements:

Since the first human element that has a direct relationship with public procurements is the employee, who is in fact heavily concerned with the phenomenon of corruption, which made it the focus of attention of the Algerian legislator through the development of important procedures and measures related to this element, starting with the development of a code of professional ethics that all employees adhere to its provisions while working to combat some cases in which these employees fall, which may push them in some cases to carry out some illegal practices for several considerations, and from these cases we find the phenomenon of conflict The interests of employees and the state of incompatibility in the deals, but these measures included provisions related to preventing the exploitation of the position even after resignation for a certain period of time, and since all these provisions can not have meaning on the part of employees except in one case, which is that these employees are qualified, it is natural that this is done through continuous training, so the legislator confirmed all of the above in accordance with the following provisions:

A- Respect for the Code of Ethics:

Due to the sensitivity of the procurements sector, it was necessary to draw up a code specifying the general rules of professional ethics that public agents involved in the preparation, conclusion, control, negotiation or implementation of public procurements must abide by and work within the framework of them.¹

Knowing that this code was approved by the previous laws of public procurement, but with some differences between them in terms of determining the body in charge of preparing it, the previous law No. 10/236 stipulated this matter, but it did not specify the authority in charge of preparing this code, only mentioned that it is approved by executive decree.²

On the contrary, article 88 of the former Presidential Decree No. 15/247 explicitly and clearly defined the body responsible for the preparation of this special code³.

This amendment came after the expansion of bribery in granting public procurements and squandering public money under the cover of additional works, which made Presidential Decree No. 15/247 confirm that public agents, after reviewing it, approve the Code, with the mandatory Signing another statement from them confirming the conflict of interest.⁴

On the contrary, the new law on public procurements 23/12 in force, in turn, reaffirmed the need for employees to abide by this code, but it moved in its provisions in the same direction as the previous law 10/236, in the sense that it retracted the definition of the body in charge of preparing this code explicitly and clearly, this raises the question of considering that the determination of the body in charge of developing the code makes that body at the same time charged with monitoring compliance with its ethical rules.

B- In case of conflict of interest of the agents involved in the procurements:

In order to avoid any bias on the part of the agents involved in the preparation, conclusion, control, negotiation or implementation of public procurements, the new Law on Public Procurements No. 23/12 obliges them in the event that there is a conflict of their private interests with public interests directly, and even in the event of indirect conflict in any way with their mission, they are obliged to inform their peaceful authority of this with the condition that this notification be in writing and not only oral, with their legal obligation to immediately step down from their assigned mission. out.

C. Cases of incompatibility with public officials:

According to the well-known saying that absolute power leads to arbitrariness and thus corruption, the legislator was keen in Law 23/12 to prevent the assistant intervening in the public procurement from being one of the members of the Public Procurements Commission, whether this membership is in the capacity of an ordinary member or as a rapporteur in that committee, and at the same time this member himself is a member of one of the other committees in charge of opening envelopes and evaluating the offers that the law stipulates exist, but only if the matter concerns the same file⁵.

In other words, it is forbidden to be dual membership, whatever they may be, in any way in the main committees in charge of preparing and the committees to monitor the procurements of any aid involved in this field.

This prohibition is due to the legislator's desire to enshrine the principle of neutrality by distributing competencies among several members and preventing them from being combined in one person to prevent the emergence of a personal tendency to exploit dual competence, which entails wide authority in the event that one member participates in several committees, and thus as a result this helps and facilitates the resort to corruption.

D- Preventing the abuse of the position even after resignation:

It is known that employees who work in administrative bodies charged with the implementation of public procurements in a particular field usually or several fields for long periods of time have time

to gain professional experience in addition to personal relations within the bodies in which they work, but these relations may extend even with some other bodies related to the work of their professional body, whether the regulatory bodies in charge of auditing the field of public procurements or the custodian bodies affiliated with those bodies, which allows them to obtain some privileges. Preferential treatment in good faith or bad faith by some of their former co-workers in the event that they leave the workplace and go to private work in the field of public procurement, this opens a wide door for some practices and dealings that fall within the scope of corruption, fraud and exploitation of personal relationships.

Therefore, in order to ensure that this situation is not exploited by these employees in accordance with field experiences on the ground and to avoid preferential treatments, the legislator has stipulated as a general rule to work on the non-exploitation of the position by the agents involved in the field of public procurements in particular and employees in general working in some administrative bodies and institutions that are charged with supervising the implementation of procurements from obtaining or granting a deal in their favor even after they stop practicing their job within those bodies and institutions for a temporary period of time.

This temporary period of time was estimated by the Algerian legislator in the Public Procurements Law 23/12 in force at 05 full years after the official termination of the employment relationship that binds them to their former form, i.e. their place of work.

The law did not specify the method of termination of this relationship, and therefore it can be said on this basis that it means all known ways to end the employment relationship mentioned in the laws of the public service and the labor law, whether by resignation, dismissal or declaration throughout the aforementioned period of time that follows the severance of their employment relationship, but exceptionally this was allowed only within the limits specified in some legislation or regulation in force⁶.

This rather long period makes the employee gradually lose the previous personal relationships acquired within the bodies in which he worked, even relatively, as it is known with time there is a renewal of the administrative staff through resignations, retirement, dismissal, administrative transfers and other cases, which loses the employee concerned in this case the privileges that he might have obtained from his colleagues if he had been allowed to participate in requests for public procurement immediately after the interruption of his professional relationship. with his management.

Continuous training of intervening public officials:

Training is those efforts aimed at providing the employee with information and knowledge that he acquires skill in performing work or developing his skills, knowledge and experience, which increases his efficiency in performing current work or to perform work of higher levels in the future.

The formation is not random, but a planned activity aimed at bringing about changes in the individual and the group in terms of experiences, information, skills, performance rates, methods of work, behavior and trends, making this individual or that group master the work efficiently and productively, it deals with the individual in its entirety and seeks to develop the three dimensions of the human being, namely information, skills and trends.⁷

Therefore, if the employee joins a certain job in a certain period and with qualifications imposed by the work position, he has the right to work to improve his qualifications and abilities, and this right to training is indicated by Article 104 of Ordinance 06/03 on the public service, so it is

undeniable that the public authorities in Algeria have allocated huge sums entitled to embody the right to training⁸.

In terms of legal procedures, the field of public procurements is more complex and sometimes difficult due to the employee's lack of knowledge of the legal boundaries between what is allowed within his competences and the abuses that he may fall into during the performance of his professional duties deliberately or unintentionally, which also sometimes fall within the scope of corruption and looting of public funds.

Whenever the employee is well trained and well qualified, this allows him to perform his work within the scope of respect for the law, for this reason the previous presidential decree No. 15/247⁹ confirmed within the new procedures for the first time that it came up with compared to what was mentioned in the previous laws on qualified, continuous and specialized training in public procurements and public utility mandates.

It stipulates that the public officials and agents in charge of preparing, concluding, executing and monitoring public procurements and public utility mandates shall receive qualified training in this field, and that the public officials and agents in charge of preparing, concluding and executing and monitoring public procurements and public utility mandates shall benefit from training, upgrading and renewal of knowledge courses guaranteed by the employing body, in contact with the authority for the regulation of public procurements and public utility mandates, in order to continuously improve their qualifications and competence.¹⁰

Article 08 of the new Law on Public Procurements No. 23/12 in force is also in force and is keen again on this principle because of its importance in the fight against corruption¹¹.

In addition to making them more competent and efficient in the management and control of all stages of the procurement from the stage of announcement to the stage of actual implementation, this training is also supposed to include in its main part the penal aspect, which is considered a deterrent for employees who think of violating the legislation in force in the field of public procurement, who commit crimes of corruption and squandering public funds.

Through these trainings, employees can therefore view the penalties contained in various public and private laws such as the Penal Code and Law 06/01 on combating corruption, especially the penalties depriving freedom, which the legislator was keen to punish the perpetrators with penalties in prison for long periods of time, in addition to the fact that these penalties do not benefit the perpetrator from the statute of limitations and amnesty, all this makes the intervening employees and agents think a lot before making the decision to try to commit corruption crimes in the event of their knowledge and study of the content of these laws. Deterrence, continuous and permanent training allows them to be constantly informed of these deterrent penalties through various different training programs, whether academic or professional, which the administration is keen to implement for its employees annually in coordination with some competent bodies, led by the High Authority for Transparency, Prevention and Combating Corruption.

Perhaps the introduction of a master's degree in transparency and anti-corruption at the University of Continuing Training under the auspices of the High Authority for Transparency, Prevention and Combating Corruption falls within this scope, which is a good thing, especially since this specialization has opened up many disciplines that fall within the scope of its work in the field of public procurement.

The legislation of public procurements also paid attention to this point with regard to the stage of examining offers and bids, which we mean the Committee for Opening Envelopes and Evaluating Proposals, ¹²where the legislator stipulated that candidates for membership are a basic characteristic, which is that they are selected from qualified employees affiliated with the contracting authority, so that they are selected for their competence, and this condition plays a major role in achieving it. ¹³

01-02 - Economic operators:

Considering that the second human element related to public procurements, which is directly related to corrupt practices in addition to the employee, is the "contractor or economic dealer", this in turn received the attention of the Algerian legislator and worked to include measures and provisions related to this category specifically, starting by preventing these dealers and contractors from exploiting the information they can obtain from employees in the public administrations that own the procurement, in addition to preventing them from participating in public procurements, as is the case with the ratio. For employees in case of conflict of interest:

A- Preventing the exploitation of information by economic operators:

The new law on public procurements 23/12, in force on employees and agents involved in public procurements, as we mentioned earlier, is prohibited from exploiting the position in any way with the aim of obtaining any kind of funds or benefits in the field of public procurement.

It has been customary that one of the most important methods used in exploiting the job to obtain advantages indirectly is to exploit the information that is in the possession of the employee by virtue of his work, competencies and powers that enable him to see some secrets and data of high value, and then try to exploit them to obtain money by offering them for sale to one of the parties or economic dealers in public procurements, this leaked information becomes in this case a precious thing because it makes the customer who obtains it Superior steps in presenting an excellent offer compared to his peers from other dealers, thus enabling him to win and obtain the deal unjustly, which leads to a violation of the principle of equality, justice and transparency in obtaining the deal, and this results in losses for other dealers and at the same time losses to the state itself by depriving it of obtaining the best offer in terms of financial and technical value if the procedures are carried out normally.

Therefore, in order to combat these practices, the Algerian legislator has tried, through various legislations related to public procurement, to prevent and punish anyone who carries out these actions on the part of employees, as well as at the same time to fight this also by the other party, represented by economic operators who try to benefit from this confidential information and data, as these in turn are prevented by law to benefit from this information and data that are in the possession of employees, whether all or some of them, which may make them in the position of (excellence) against the rest of the competitors. others.

This prohibition is due, as we have said, because the information in the possession of the economic operator affects the principle of fair competition with the rest of the other dealers with whom they submit their competitive offers, and in the event that these acts are proven, here the Algerian legislator recognized the punishment of the economic operator concerned by exclusion from the transaction.

However, exceptionally, in the event that it is proven that these information does not affect the principle of competition with fellow economic operators, in this case it is not excluded, but the law carries the burden of proving that this leaked information in relation to the term sheet does not affect the principle of equality between the dealers competing for the contracting interest that owns the public procurement.

This is difficult to imagine on the ground, because in many cases the contracting authority will not do so for the simple reason that this will harm its reputation and credibility, so it in fact tends not to give importance to this situation and even tries to limit it if it occurs.¹⁴

Knowing that these aforementioned acts and other acts of corruption that may be proven before, during or after the conclusion of the transaction or the appendix are among the prescribed legal reasons that enable the contracting authority to annul or cancel the transaction in question or the annex concerned, and this penalty is not satisfied only, but the law and further tightening the administrative penalties, the economic operator who was the subject of acts of corruption or achievement is placed in the list of economic dealers prohibited from participating in the procurements. Generality, that list maintained by the competent departments of the Ministry of Finance, in addition to other follow-ups contained in the legislation in force that classifies them as crimes with a penal dimension. In order to ensure the integrity of economic operators, the law approved that the economic operator should write a declaration of integrity¹⁵.

-B- Preventing a conflict of interest for the economic operator in a transaction:

As is the case with the employees and agents involved in the public procurement, who are prevented from being present in the event of a conflict of interest in any procurement, the legislator in turn has taken care of the second party to the procurement, which is the economic operator or the contractor in the public procurement, who, in turn, as is the case with the employees, the law prohibits his presence in the event of a conflict of interest in the public procurement that he wins after the grant procedures.

Rather, because of the seriousness of this situation and the increase in care, the law stipulates that even in the event that the economic operator was not in a state of conflict of interest at the beginning of the procedures for granting the procurement, but then the circumstances changed and led him to become in this case, here he must also inform the contracting authority of this change and transformation immediately.

Although the text of Article 70 of Law 23/12 in force, which spoke about these facts, did not speak explicitly about the outcome of the transaction, it expressly prevented the existence of this case, which may be implicitly understood in this case by removing the transaction from this economic operator, considering that the law prevented this situation and tightened its prevention.¹⁶

02- Measures relating to the procedural aspects of public procurements:

Within the framework of the Algerian legislator's continuous attempts to improve the procedures for granting procurements in order to avoid the occurrence of corrupt practices by filling the previous loopholes that were used in these practices, the Algerian legislator stipulated a set of measures that affected the procedures of the procurement, the most important of which is the integration of modern means of digitization of programs and applications in the actual stages of those procedures, while at the same time ensuring that this process takes place within the well-known principles of public procurement, while preserving some legal guarantees for contractors or economic operators represented in the right of appeal. This is in accordance with the following measures.

02-01-Digitization of contractual procedures for procurements:

. The Algerian legislator tried to take advantage of technological progress and the emergence of modern technologies represented in the various means of digitization, which allowed through their techniques to reduce the duration of procedures in all fields, including the field of public procurement, but more importantly, these techniques help reduce corrupt practices for which procurement procedures were a fertile field due to their effectiveness, efficiency and impartiality.

Starting with carrying out electronic advertising compulsorily and replacing the paper file that was previously in force, while working to make electronic statistics because of its effectiveness in giving information closer to reality compared to traditional statistics.

-A- Mandatory electronic publicity of the transaction:

The dematerialization of public procurements was confirmed for the first time in the previous Presidential Decree 15/247 through Article 203 thereof, which stipulates the establishment of an electronic portal for public procurements managed by the Ministry in charge of Finance and the Ministry in charge of Information and Communication Technologies, each in its own right. This approach was followed by the new Public Procurements Law 23/12 in force, which reaffirms the establishment of this portal in its article 105¹⁷.

However, compared to the previous presidential decree, its management was limited to the ministry in charge of finance without the Ministry of Information and Communication, due to the development and ability of most ministries to modern technologies for digitization and their possession of human expertise and professional specialists in the field of informatics, which enables them to manage this electronic portal now without the use of the Ministry of Information and Communication compared to what was the case previously at the time of the issuance of the previous decree for procurements No. 15/247 in 2015.

Knowing that digitization, as it is known, one of its most important obvious advantages is its fight against corruption in the various sectors in which it is introduced due to its reliance on automated media, programs and electronic applications that work impartially and impartially compared to the human element, which sometimes lacks these features.

This justifies the interest of the legislator and the state in expanding the use of digitization in the field of public procurements at all stages because of its advantages.

The proof of this trend is that the electronic publicity of the procurement in the previous presidential decree 15/247 at the level of the electronic portal was not binding on the contracting interests, unlike the press announcement and the announcement in the official bulletin of the public operator, and this is evidenced by the legislator's use of the word "may" in Article 204 of Decree 15/247 in the third paragraph.

In comparison, the electronic publicity of the procurement at the portal level has become mandatory according to conditions determined by the Minister in charge of Finance, in addition to the traditional publicity in the official bulletin of public dealer's procurements and through the approved written and electronic press.¹⁸

- B- Replacing the paper file with the electronic file:

In confirmation of the legislator's desire to digitize the sector of the field of public procurement, the legislator reaffirmed the adoption of electronic dealing in the field of public procurement, and this

through all the procedures that precede the award of the procurement, as well as during the implementation of the procurement and even after its completion, so that this law stipulated the replacement of all procedures and files to become digital instead of the traditional paper transactions that were previously prevalent.

The traditional method, i.e. paper, is a fertile field for corrupt practices, unlike the electronic exchange of information, in addition to the facilitation, speed and simplicity of procedures.

Therefore, when making a comparison with regard to this matter, it is interesting to note that both the previous presidential decree and the current law on public procurements talked about the need to exchange information between the administration and the economic operator electronically,¹⁹ and this is only through an affirmation that the contracting interests of all the documents calling for competition are placed at the disposal of contractors or candidates for public procurements electronically.

This electronic exchange between contracting interests and economic operators is supposed to include all transaction documents through all stages of the term sheets, subscription authorization forms, grants or cancellation for contracting interests and technical and financial offers for economic operators.

The response of these contractors or candidates for public procurements to the invitation to competition shall be by electronic method only, taking care to adapt each process of procedures on a paper support subject to adaptation to electronic procedures.

However, unlike the previous decree, the new law on public procurements 23/12 did not talk at all about the existence of a paper file as a precaution for the offers submitted by candidates or contractors, which is resorted to only in the event of a problem in the electronic file, and this indicates the desire of the legislator to get rid of paper transactions permanently in the field of public procurements through all its stages.

This is why the legislator stipulates in Article 106 of the new Law on Public Procurements 23/12 in force the use of documents and information that are included in the electronic portal by candidates to form a database about them for use in subsequent procedures.²⁰

C- Digitization of the economic census of public procurements:

In order to benefit as much as possible from the use of technology and digitization, the new law 23/12 in force stipulates that the census of all the transactions concluded at the national level shall be carried out to be carried out by the competent services of the Ministry of Finance, while obliging all contracting departments to provide the necessary information for this important census, which was not stipulated in the previous presidential decree 15/247.²¹

Although it is assumed that the digitization process provides all the necessary data needed by the competent financial services to collect statistical information, and if digitization does not provide these data and information, here we are facing shortcomings in digitization that require a review of information at the level of the electronic portal that must be corrected in the future by updating the data and the way this portal works.

Recourse to statistics, as is known, has many benefits, perhaps the most important of which is knowing the weaknesses in the field of actual application of public procurements, whether in terms of their initial procedures or the time of their implementation and even after their completion.

In many cases, the weaknesses are in fact the result of corrupt practices and lack of respect for the law, which leads to problems and the lack of actual implementation of public procurements or delayed deadlines due to the bias of some employees in favor of dealers who did not complete the works according to the deadline approved in the terms of the transaction concluded with them by not applying the supposed penalties in this case, the most important of which are financial delay fines.

02-02: Emphasis on contractual protective measures within public procurements.

The introduction of digitization means and modern technology in transactions and procedures of public procurements must be within the same principles previously known as those that were applied because they are important in maintaining fair competition among candidates, even in the case of digital dealings, because the presence of the latter does not negate the possibility of abuses or violations.

A- Emphasizing the principles of procurements:

Due to the importance of administrative contracts in general, and public procurements in particular from various economic and social aspects, the law has surrounded the process of concluding them with many restrictions and procedures, in order to preserve public money on the one hand and respect the basic principles in the governance of the conduct of public affairs, equality, competition, and transparency.... Article 09 of Order No. 06/01 of 20/02/2006 on the prevention and fight against corruption stipulates the need to prevent and prevent corruption by adhering to a set of general principles in concluding public procurements, namely equality, transparency, competition..... etc.²²

These principles are referred to in article 05 of former Presidential Decree No. 15/247²³, when it stipulates that the principles of free access to public applications, equal treatment of candidates and transparency of procedures must be observed in the field of public procurement.²⁴

These are the same principles that the new law 23/12 in force mentioned and stipulated verbatim in article 05 thereof, which indicates the desire of the Algerian legislator and his keenness not to be absent or amended because of the importance of any of these principles in the integrity of the procedures for selecting the contracting dealer or contractor in the field of public procurements and thus prevent the occurrence of corruption.

However, despite these aforementioned principles, which impose on the contracting administration or interest impartiality in the evaluation of offers, the Algerian legislator has given the contracting authority a margin to act for the public benefit, considering it to represent and defend the public interest, but within the framework of those aforementioned principles.

This is why Law 23/12 in force stipulates the need for the contracting interest to be careful and committed to contracting with the best and best of the contractors using the aforementioned principles, in order to ensure the public interest, as Article 44 of it stipulates that ²⁵ "the contracting authority shall inquire, during the evaluation of nominations, when necessary, about the capabilities of the contractors so that their choice for them is a sound choice, using every legal means, especially for the Other contracting services, administrations and bodies entrusted with the task of public utilities, and Algerian banks and representations abroad"²⁶

Also, with regard to improving the system of criteria for the selection of economic dealers, according to Article 54 of Law 23/12 in force, the criteria for selecting the contracting customer and the weight of each of them must be related to the subject of the procurement and non-discriminatory and are compulsorily mentioned in the term sheet for the invitation to compete, and the same article also stressed respect for competition, as no negotiation with contractors should be allowed in conducting the request for tenders except as permitted by law.

However, the contracting authority to allow it to compare the offers can ask the contractors in writing to clarify and detail the content of their offers, but in no case can the contractor's response allow to modify his offer or influence competition, all of which are part of the embodiment of the principles mentioned in the Anti-Corruption Law.

In order to preserve these principles and their application on the ground, the legislator also prohibited in this law the same person from representing more than one contractor or candidate for the same transaction.

It is also not possible to submit more than one offer, either individually or in the framework of a pool in the same transaction, in order to prevent fraud in the submission of those offers.

-B- Appeal is a guarantee to protect the rights of economic operators:

Judicial appeal and administrative appeal are considered one of the most important mechanisms that give the victim of corruption a new opportunity to reclaim his right and rehabilitate him by requesting a re-review of a decision issued against him if he feels that his rights, whether financial, material or other, have been violated or derogated from, and this may be the result of corrupt practices that occurred against him, so the Algerian legislator was keen in the laws of public procurements to include the right of administrative appeal in addition to the right of judicial appeal.

The previous presidential decree No. 15/247, which includes public procurements and public utility mandates, came to improve the regulation of public procurements by consolidating the values of transparency and strengthening competition mechanisms and methods of appeal as pillars of the state of right and law, especially in Article 82 thereof, which stipulated that the contracting authority must allow contractors to exercise their right to appeal to the competent public procurements commission²⁷.

In the same vein, the new Public Procurements Law 23/12, in force on the right of appeal, was approved in article 56 thereof, which stipulates in its provisions two options that the contractor can resort to in relation to an appeal, the first option is to guarantee the right of judicial appeal guaranteed by the Constitution and the various legislation in force.

The second option is also possible for the contractor who has not consented to or accepted the results, whether by the provisional grant of the public procurement, the cancellation of such grants, the declaration of futility or the cancellation of the procedure, within the framework of the request for proposals or the negotiation procedure after consultation, may file an appeal, and this appeal shall be submitted to the Public Procurements Commission, which is competent to consider these appeals if the procurement does not have national importance.²⁸

It should also be noted, and contrary to the previous presidential decree, this law deals with the issue of appeal in a comprehensive manner and does not detail its cases, modalities and deadlines.

The Algerian legislator is also keen to resolve disputes that arise in the field of public procurements to try to resolve amicably between the contracting interest and the contractor in a way that allows and achieves the public interest, of course, and therefore it is possible to resort to this solution only if it leads to:²⁹

- Finding a balance for the costs incurred by each of the parties.
- Reaching the fastest achievement of the subject of the transaction.
- Get a final settlement faster and at the lowest cost.
- The contracting authority must include in the term sheet the recourse to the procedure of amicable settlement of disputes.

While this law gives the competence to decide on the procedures for concluding and granting procurements of national importance, whether for the books of conditions, the public procurement or annexes, as well as to decide on appeals submitted for this type of public procurement, i.e. of national importance, as well as to decide on disputes resulting from the implementation of public procurements concluded with foreign dealers to the new National Council of Public Procurements established under the text of Article 104 of this law³⁰.

Conclusion:

From the above, it is clear to us the keenness of the Algerian legislator to combat corruption through his repeated attempt and continuous work to fill the shortcomings and gaps that were found in the various successive previous legislation governing the field of public procurements in Algeria, these gaps were exploited by some interveners in the field of procurements, whether employees or contractors and economic dealers with the aim of carrying out illegal acts that enable them to obtain privileges in their various forms, whether money, money or benefits, which results in the loss of public funds and thus the public interest that Public procurements are supposed to maintain and rationalize them.

This work by the Algerian legislator, who is relentless in the fight against corruption, was manifested through various new measures, especially in the last two legislations, represented in the previous Presidential Decree 15/247 and then the current law in force 23/12, which defined new texts that included several parties involved in public procurements, after previously focusing only on improving the procedural aspect of public procurement.

Accordingly, and through what we mentioned in our study, the serious areas addressed by the legislator in order to combat the phenomenon of corruption, in addition to the procedures governing the process of granting public procurements, included new and important aspects in combating this phenomenon, namely the parties involved in the transaction, i.e. the human element, who are the intervening employees, as well as procedures that included contractors and dealers who the legislator was keen to set limits and consequences for their practice of corruption.

The Algerian legislator's keenness to combat corrupt practices in public procurements has also been evident by his affirmation, especially in the legislation in force 23/12, to introduce digitization in the field of public procurements because of its importance in limiting the practices involved in financial corruption, with the need to emphasize that these measures and procedures and the extent

of their contribution to the fight against corruption can only be judged through their actual results after their field practice on the ground. However, we can give a set of suggestions in order to improve the effectiveness of those measures aimed at combating corruption contained in public procurement legislation, according to what we have dealt with in our studies, the most important of which are:

- As for employees, we note that the legislator talked about the continuous training of employees involved in the field of public procurement, but it would have been better if the legislator had accurately specified some of the qualities that must be available in these public employees and agents, such as the job rank that must be available to them, as well as the scientific level with their appropriate scientific specialization. They exercise their duties correctly or they have a university degree, but it is far from the field of public procurement.
- The legislator paid attention to the formation of employees, and this is a good thing, but he neglected a very important aspect of financial incentives for workers in this difficult field by virtue of the fatigue that afflicts them and the pressures exerted on them, whether psychological, especially financial, so it can be stipulated that a certain percentage of delay fines are provided and distributed to employees working in public procurements, which may constitute an incentive for them to work with dedication and honesty in their job. With the need to raise the wages of employees working in this field by excluding them with additional special grants for their work in the services related to public procurements.
- The provisions of the last law on public procurements did not pay attention to annexes, but field practice gives us indications that corruption in public procurements is mainly through the mechanism of annexes, so they must be scrutinized more than is the case and the administration must not resort to annexes except in case of extreme necessity, by pressuring the study offices to carry out studies properly to avoid resorting to them, especially in public works.
- With regard to the point regarding the leakage of some data in favor of one of the contractors, the current law in force stipulates that in the event that such information does not affect the principle of competition, the contractor is not subject to punishment, so that the law leaves the proof of this matter to the contracting interest, here it is better to leave this to the private trustees to which the contracting interest is affiliated in order to achieve the principle of impartiality.

¹ - See Article 65 of Law 23/12 establishing the General Rules on Public Procurements, Official Gazette No. 51 of August 6, 2023.

² - See Article 60 of Presidential Decree No. 10/236 of 07/October 2010, regulating public procurements, C No. 58 issued on 07/10/2010.

³ - See Article 88 of Presidential Decree No. 15/247 of September 2015 on public procurements and public utility mandates, Official Gazette No. 50 of September 20, 2015.

⁴ - Mounia Jalil, *New Measures for the Regulation of Public Procurements and Public Utility Mandates*, Belkis Publishing House, Algeria 2017, p. 48.

⁵ - Article 68 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.

⁶ - Article 69 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.

⁷ - Mounia Jalil, *ibid.*, p. 94.

⁸ - Ammar Boudiaf, *Public Service in Algerian Legislation*, Jusoor Publishing, First Edition, Algeria 2015, p. 129.

⁹ - See article 211 of the aforementioned Presidential Decree No. 15/247.

¹⁰ - See article 212 of the aforementioned Presidential Decree No. 15/247.

¹¹ - See article 08 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.

¹² - See article 96 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.

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- ¹³ - Mohamed Saghir Baali, *Administrative Decisions and Contracts*, Dar Al-Uloom for Publishing and Distribution, Dar Al-Uloom for Publishing and Distribution, Annaba, Algeria, 2017, p. 236.
- ¹⁴ - See article 71 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ¹⁵ - See article 66 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ¹⁶ - See article 70 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ¹⁷ - See article 105 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ¹⁸ - See article 46 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ¹⁹ - See Article 204 of Presidential Decree No. 15/247 of September 2015 on public procurements and the authorizations of the aforementioned public utility, and Article 107 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ²⁰ - See article 106 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ²¹ - See Article 108 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ²² - See Article 09 of Ordinance 06/01 on the Prevention and Fight against Corruption of March 6, 2016 amending the Constitution No. 14 of 07/03/2016.
- ²³ - See article 05 of the aforementioned Presidential Decree No. 15/247.
- ²⁴ - Muhammad Al-Saghir Baali, *Administrative Decisions and Contracts*, previous reference, p. 217
- ²⁵ - See article 44 of the aforementioned Law 23/12.
- ²⁶ - Muhammad Al-Saghir Baali, *Administrative Decisions and Contracts*, previous reference, p. 218.
- ²⁷ - Mounia Jalil, previous reference, p. 76
- ²⁸ - See article 56 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ²⁹ - See article 87 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.
- ³⁰ - See article 104 of Law 23/12 establishing the general rules relating to public procurements, mentioned above.

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- 07- Law 16/01 of 06 March 2016 amending the Constitution, JR No. 14 of 07/03/2016.