



Particularity of Procedural and Penal Systems in Embezzlement Crimes: An Analytical Study in Light of Law No. 06-01 Related to the Prevention and Fight Against Corruption, and the Provisions of Law No. 25-14 Concerning the Code of Criminal Procedure.

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ABSTRACT:

Corruption crimes, embezzlement in particular, are one of the most significant challenges facing modern states due to their negative impact on the national economy, institutional stability and public trust in administration. In recognition of the severity of these crimes and the need to combat them, Algerian legislators adopted a criminal policy emphasising intensified criminalisation and punishment, accompanied by extraordinary follow-up procedures. This policy was primarily embodied in Article 119 of the Penal Code, prior to its repeal and replacement by Article 29 of Law No. 06-01 concerning the prevention and fight against corruption, as amended and supplemented. This law also makes the procedural aspects of this crime subject to the general rules set out in the Code of Criminal Procedure, particularly following the enactment of Law No. 25-14. However, despite the existence of legislation at both the international and national levels to prevent and combat corruption crimes, this crime has not been mitigated, as evidenced by the scale of embezzlement and judicial prosecutions. Therefore, it is essential that all state institutions — legislative, executive and judicial — combine their efforts in re-evaluating the provisions of the law on the prevention and fight against corruption, enacting laws that consider severity and rigour, and removing all restrictions on the Public Prosecution's freedom to initiate legal action in cases of corruption without being limited by any complaint.

Keywords: Corruption crimes, embezzlement, Law No. 06-01, Law No. 25-14, investigation and inquiry mechanisms, penalties and sanctions.

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Introduction

Financial and administrative corruption, embezzlement being its most prevalent form, is one of the most dangerous criminal phenomena, threatening the foundations of the legal state and hindering economic and social development. This is because it directly violates public funds and the principle of integrity in managing public affairs. Given the gravity of the situation and the global impact and pervasive nature of this phenomenon across national borders, countries have sought to combat this issue within the framework of the United Nations by establishing several global and regional agreements aimed at addressing it. The most significant of these is the United Nations Convention against Corruption, which was adopted by the United Nations General Assembly in Resolution 58/4 on 31 October 2003 and entered into force on 14 December 2005. To date, this convention has been signed by 123 countries, including 13 Arab states. Algeria is among the signatory countries that ratified it with reservations under Presidential Decree No. 04-128, dated 19 April 2004¹.

Following Algeria's ratification of the United Nations Convention against Corruption, the country sought to fulfil its international obligations by integrating them into its domestic legal system. This was embodied in the issuance of Law No. 06-01, dated 20 February 2006, concerning the prevention and fight against corruption², as amended and supplemented, which was the first legislative text specifically aimed at combating all forms of corruption and preventing it. The law criminalises most forms of corruption that pose a significant threat to public administration and its finances. It includes a whole chapter dedicated to substantive provisions for criminalising and combatting administrative corruption.

One of the most notable crimes addressed by this law is embezzlement, which adversely affects the public interest. This involves an employee violating the allocation of public or private funds by redirecting them from their legally designated purpose and managing them inconsistently with the public interest, often to serve their own personal interests. This undermines the public trust that individuals place in the state and its institutions. Based on this premise and the legislator's desire to protect public funds from any violations or encroachments, embezzlement was criminalised and appropriate penalties were established in accordance with its nature.

Initially defined under Article 119 of the Penal Code as an offence relating to the duties of an office, this crime was included in the first chapter of the third book, entitled 'Embezzlement and Betrayal', before being repealed and replaced by Article 29 of Law 06-01 concerning the prevention and fight against corruption following Algeria's ratification of the international convention against corruption. This had a significant impact on criminal policy relating to embezzlement. Subsequently, Law 06-01 was amended by Law No. 11-15, dated 2 August 2011, which focused solely on amending Article 29 of Law 06-01. Furthermore, the Code of Criminal Procedure, issued under Ordinance No. 15-02 on 23 July 2015 and amending and supplementing the Code of Criminal Procedure³, stipulated in Article 6 bis that the Public Prosecution's freedom to initiate legal proceedings regarding embezzlement or damages in economic public institutions wholly owned by the state or mixed enterprises was restricted, except where based on a prior complaint from the institution's social bodies as stipulated in commercial law. However, this provision was short-lived, as it was repealed under Article 3 of Law No. 19-10 dated 11 December 2019, which amended Ordinance No. 66-155 containing the Code of Criminal Procedure⁴. It was reinstated with the adoption of the new Code of Criminal Procedure under Law No. 25-14⁵.

However, despite its clear intent to combat corruption, this legislative direction raises the following issue:

To what extent has the Algerian legislator succeeded in establishing an effective procedural and penal system for embezzlement by integrating the Law on the Prevention of Corruption and the Code of Criminal Procedure No. 25-14?

To address this issue, a descriptive approach was adopted to study the conceptual framework of embezzlement, the rationale behind its criminalisation and the elements that constitute the crime. An analytical approach was also used to examine the legal framework governing embezzlement prosecution and penalties in the Penal Code, focusing on the innovations introduced by Law No. 25-14 (the Code of Criminal Procedure) to assess its effectiveness in preventing and combating this crime.

The topic will be addressed and its objectives achieved through a dual-plan structure consisting of two sections. The first section will explore the conceptual and procedural framework of embezzlement, while the second will address the penal and punitive aspects of the crime.

Section One: The Conceptual and Procedural Framework of Embezzlement

The methodological principles and foundations necessitate addressing the theoretical and conceptual frameworks of any subject before detailing its practical aspects. Therefore, we will discuss the conceptual aspects of embezzlement in the first subsection and then review the prosecution procedures in the second subsection.

Subsection One: The Nature of Embezzlement

Embezzlement is classified as a property crime, and its specificity and danger increase when it involves public funds and the participation of a public employee. Thus, it is essential to define its meaning and the rationale for its criminalization, as well as to outline its essential elements.

Branch One: The Definition of Embezzlement and the Rationale for Its Criminalisation

First: Definition of embezzlement

Legal definitions of embezzlement vary; therefore, we will address the most significant of these. Jurist Mahmoud Najib Hasni defines it as ‘an act in which a person unequivocally expresses the conversion of incomplete possession into full possession’⁶. Abdullah Sulaiman defines it as ‘a series of material acts or actions that accompany the intent of the perpetrator and are expressed in their attempt to completely seize the funds in their possession, thus converting their possession from incomplete and temporary to complete and permanent’⁷.

In one of its rulings, the Egyptian Court of Cassation defined it as ‘the act of the perpetrator regarding the property in his custody as if it were owned by him’, which is a composite meaning of a material act involving the property and a mental act associated with it: the intention to add the property to his ownership. However, in a later ruling, the Court defined embezzlement as ‘the act of adding to the ownership of the embezzler what was entrusted to him and acting upon it as if it were owned by him’⁸.

From these definitions, we can conclude that embezzlement requires the perpetrator to have incomplete possession of the object of the crime, which must exist either prior to or simultaneously with the criminal activity being committed. The possessor holds material possession without the mental element, leading to the conversion of the object of the crime from incomplete to complete possession. This is the meaning intended by the Algerian legislator in the crimes of embezzlement and breach of trust, aligning with the approach adopted by most comparative criminal legislation⁹.

Secondly, the rationale for criminalising embezzlement has been the subject of legal debate. Was the intention to protect public funds from embezzlement? Or was the intention to safeguard the public office held by the employee? Or was the intention to protect public administration as an entity? The Algerian legislator’s rationale for criminalising embezzlement encompasses all three of these goals collectively.

The aim is to protect public funds, recognising that this crime is committed against the financial interests of the state, as well as to protect private property. Furthermore, the aim is to safeguard the public office held by the employee who has betrayed the trust placed in them by the state when they were granted a position. Alongside these interests, there is a broader interest in protecting the public interest that public administration is responsible for achieving, safeguarding it against any violations that may occur in pursuit of social and economic goals¹⁰.

Branch Two: Elements of Embezzlement

The crime of embezzlement, whether in the public or private sector, is based on three elements: legal, material and mental, as well as the presumed element represented by the perpetrator’s status.

First: The Legal Element

The legal basis for embezzlement is found in Article 119 of the Penal Code¹¹. This crime is classified as either a misdemeanour or a felony based on the value of the embezzled funds. However, Article 119 was implicitly repealed by Law No. 06-01, as amended and supplemented by Ordinance No. 10-05 and Law No. 11-15, specifically in Article 29. Embezzlement is now classified as a misdemeanour rather than a felony. Article 29 of Law No. 06-01 states: ‘Any public employee who deliberately squanders, embezzles, destroys, unlawfully retains or uses for their own benefit or for the benefit of another person or entity any public or private property, funds or securities entrusted to them by virtue of their position shall be punished by imprisonment for two to ten years and a fine ranging from 200,000 to 1,000,000 DZD.’¹²

Second: the material element

Article 29 of Law No. 06-01, as amended and supplemented, stipulates that the material element of embezzlement in the public sector includes four forms: embezzlement; squandering; destruction; and unlawful retention or use for the benefit of the public servant or another person or entity. In contrast, the material element of embezzlement in the private sector is limited to the act of embezzlement alone, according to Article 41 of the same law.

Embezzlement encompasses anything of value entrusted to an employee because of their position. The Algerian legislator expresses this in Article 21 of Law No. 06-01 concerning the prevention and fight against corruption using broader terms: ‘... any properties, funds, public or private financial securities, or any other items of value entrusted to him by virtue of his duties or due to them.’ Therefore, embezzlement does not only pertain to items with economic value, such as money, securities, furniture and food, but to anything of value, regardless of its nature. Anything entrusted to an employee by virtue of their position is considered a trust that they must safeguard.

The Algerian legislator also stipulates that, for the crime of embezzlement to occur, the object of the embezzlement must have been entrusted to the employee. This entrustment must be by virtue of their position or due to it; in other words, public funds must have entered the employee’s incomplete possession. This implies that the employee has effective control over the funds, and must maintain, care for, and use them in the manner prescribed by law, regulations, or orders. It is also essential that the employee has legal authority to exercise control over the funds.

It is also noteworthy that, in the context of embezzlement in private sector entities, the Algerian legislator recognises only one causal relationship linking the perpetrator to the possession of the object of the crime: receipt of this object by virtue of their work alone. This is unlike the public sector, where it is linked to their position.

Third: the mental element

For the mental element of the crime of embezzlement to be present, whether in the public or private sector, there must be general criminal intent, consisting of knowledge and intention. The perpetrator must be aware that the funds in their possession belong to the state, one of its institutions or a private individual, and that these funds have been entrusted to them by virtue of their position or duties — depending on whether the embezzlement occurred in the public or private sector. However, they must intend to carry out the material element of the crime by embezzling, squandering, unlawfully retaining, destroying or improperly using the funds¹³.

The intent element of embezzlement requires a specific criminal intention, meaning the perpetrator intends to possess the item under their control. Those who take money for use or benefit but return it do not fulfil the definition of embezzlement, even if this constitutes the unlawful retention or illegal use of property¹⁴. Thus, embezzlement is not merely a physical act, nor is it purely an internal intention; rather, it is a compound action consisting of the material act of appearing to possess the item as an owner, supported by the internal intention to own it¹⁵.

Fourth: the presumed element

The crime of embezzlement, whether in the public or private sector, necessitates the presence of a presumed element relating to the perpetrator’s status at the time the crime was committed, specifically alluding to crimes of a specific nature. However, this status varies depending on whether the embezzlement occurs in the public or private sector.

1. The status of the perpetrator in the crime of embezzlement in the public sector

According to Law No. 06-01 pertaining to the prevention and fight against corruption, the status attributed to the perpetrator of a public sector embezzlement crime is that of a public employee. This terminology is also adopted by the United Nations Convention against Corruption, which states the following in paragraph (a) of Article 2:

'Public official' means:

1. Any person holding a legislative, executive, administrative or judicial office in a State Party, whether appointed or elected, permanent or temporary, whether receiving remuneration or not, and irrespective of seniority.

2. Any person performing a public function for a State Party, including for a public agency or public enterprise, or providing a public service, as defined by the domestic law of the State Party and applicable in the relevant legal domain.

3. Any other person defined as a 'public official' in the domestic law of the State Party. However, for the purposes of certain measures contained in Chapter II of this Convention, the term 'public official' may also refer to any person performing a public function or providing a public service, as defined by the domestic law of the State Party and applicable in the relevant legal domain.

In paragraph (b) of article 2 of law no. 06-01 concerning the prevention of corruption, it is defined as follows:

'Any person holding a legislative, executive, administrative or judicial position, or a position in one of the elected local popular councils, whether appointed or elected, permanent or temporary, and whether compensated or not, irrespective of their rank or seniority.'

'Any other person who temporarily holds a position in an agency, with or without compensation, and who contributes to serving a public body, a public institution or any other entity wholly or partially owned by the state, or any other institution that provides a public service.'

'Any other person defined as a public employee or equivalent according to applicable legislation and regulations.'

It is noteworthy that, according to the law on the prevention of corruption and the United Nations Convention against Corruption, the definition of a public employee has a broader and more inclusive meaning (agent public) than the term 'fonctionnaire public' as stipulated in Article 4 of Ordinance No. 6-3, which contains the general basic law for public employment¹⁶.

2. The status of the perpetrator in the private sector

The status of the perpetrator in cases of embezzlement in the private sector differs significantly from that in the public sector. Article 41 of Law No. 06-01, as amended and supplemented, defines the status of the perpetrator of embezzlement in the private sector as follows:

'... any person managing an entity belonging to the private sector or working therein in any capacity while engaging in any economic, financial or commercial activity...'

Furthermore, paragraph (h) of Article 2 of the Anti-Corruption Law defines 'entity' as follows:

'A collection of material or immaterial elements, or natural or legal persons, organised to achieve a specific objective.'

From this article, we can conclude the following:

The definition of an entity applies to all groups, regardless of their legal form, including commercial or civil companies, associations, cooperatives and unions.

Article 41 stipulates that the crime must be committed while engaging in economic, financial or commercial activity.

The scope of application of the crime is limited to entities engaged for profit, including commercial companies, certain civil companies, and cooperatives.

It is clear from the definition of an entity that Article 41 does not apply to individuals committing embezzlement independently, such as a trader in a commercial shop. Nor does it apply to individuals who

commit embezzlement together without belonging to any entity; such individuals are subject to general law and face the penalties for theft and breach of trust stipulated in the Penal Code.

Article 41 of the Anti-Corruption Law requires the perpetrator to manage or work for the entity in any capacity, making the text applicable to anyone associated with an entity, regardless of their role or position.

Subsection Two: Procedures for Prosecuting Embezzlement Crimes

The general principle is that criminal prosecution for embezzlement, whether in the public or private sector, is governed by the same legal procedures set out in the Criminal Procedure Code. However, due to the specific nature of embezzlement and its perpetrators, and in order to prevent and combat such crimes, the legislator has established special investigation and inquiry procedures within the Code of Criminal Procedure. Additionally, the Public Prosecutor is restricted from initiating legal proceedings in these cases without a prior complaint.

Article 3 of Ordinance No. 15-02, dated 23 July 2015 and amending Ordinance No. 66-155, dated 8 June 1966, includes a pivotal provision stating: 'No public prosecution shall be initiated against the managers of economic public institutions in which the state owns all or part of the capital for acts of management leading to the theft, embezzlement, destruction or loss of public or private funds, except based on a prior complaint from the institution's social bodies as stipulated in commercial law and applicable legislation.'

It is noteworthy that the Law on the Prevention of and Fight Against Corruption contains specific provisions regarding investigative and judicial procedures, as well as the freezing and seizure of assets, along with particular rules concerning the limitation and expiration of criminal proceedings.

However, this article was repealed under Article 3 of Law No. 19-10, dated 11 December 2019, which amended Ordinance No. 66-155, which contains the Code of Criminal Procedure. It was reinstated under Article 8 of Law No. 25-14, which also concerns the Code of Criminal Procedure and states: 'No public prosecution shall be initiated against the managers of economic public institutions in which the state owns all or part of the capital for acts of management leading to theft, squandering, embezzlement, destruction or loss of public or private funds, except based on a prior complaint from the social bodies of the institution as outlined in the articles of commercial law.'

Members of the social bodies of the institution who fail to report criminal facts that come to their knowledge during or in connection with the performance of their duties in the aforementioned institutions are subject to the penalties established in the Penal Code, the Law on the Prevention of Corruption, and related Algerian legislation.

Branch One: Special Investigation Methods for Embezzlement Crimes

To address these crimes effectively and quickly, the Algerian legislator has introduced new rules that expand the judiciary's jurisdiction and enhance the powers and competencies of judicial police officers. These changes include new investigative methods tailored to financial and economic crimes, while respecting human rights. Embezzlement crimes are at the forefront of these methods and are highlighted in Article 56 of Law No. 06-01, which concerns the prevention and fight against corruption. The legislator used the term 'special investigation methods', providing examples such as electronic surveillance and infiltration, but these are not exhaustive.

First: Controlled Delivery

This type of investigation is recognised by most legislation, particularly in relation to drug crimes, where the authorities permit controlled drugs to be brought into the country with the aim of capturing the masterminds and organised crime members when they receive the drugs. The Algerian legislator has adopted this procedure in the Prevention of Corruption and Combating it Law, as defined in Article 2, Paragraph k of Law 06-01: 'The procedure that allows illicit or suspicious shipments to leave, pass

through or enter the national territory with the knowledge of, or under the supervision of, the competent authorities, for the purpose of investigating a crime and uncovering the identities of those involved¹⁷.

This definition aligns with that in Article 40 of Ordinance No. 05-06 concerning the fight against smuggling, which stipulates that resorting to this procedure requires authorisation from the public prosecutor. Furthermore, Article 20 of the United Nations Convention against Organized Crime provides examples of controlled delivery methods in Paragraph 3: 'With the consent of the relevant States Parties, decisions to use controlled delivery at an international level may include methods such as allowing goods to continue in transit.'

However, using this method can lead to jurisdictional conflicts between states if the elements of the crime occur in more than one country. Disputes arise over which state's laws apply, such as whether it is the state where the crime was discovered or the final destination. As laws differ from one country to another, there are variations in the elements of the crime and the prescribed penalties.

To prevent the shipment from evading surveillance, the "clean controlled delivery" method can be employed as a precautionary measure. This involves replacing the illicit shipment with legally permissible materials that resemble it, or replacing part of it, while allowing the shipment's carrier to continue their journey under monitoring. This ensures that any illicit shipment remains under control, even if it attempts to evade monitoring, thereby helping to avoid potential emergencies or errors¹⁸.

In practice, this procedure has been used in exceptional cases in Egypt, France and Algeria to investigate notable crimes. The results achieved through this method have been instrumental in solving crimes¹⁹.

Second: Electronic Surveillance

The Algerian legislator has not defined electronic surveillance as explicitly as in the case of controlled delivery. However, it is possible to employ widely recognized methods characteristic of electronic surveillance. This method entails monitoring electronic messages and conducting technical analyses to identify the source of these messages, in addition to intercepting communications, recording audio, and capturing images. This procedure is outlined in Article 56 of Law No. 06-01 among the special investigation methods. Among the forms of electronic surveillance are the following:²⁰

1. Interception of communications

The Algerian legislator has granted judicial police officers the authority to intercept communications to uncover corruption crimes, as set out in the Prevention and Fight Against Corruption Law. However, this authority contradicts penal provisions designed to protect the right to privacy. According to Article 114, Paragraph 2 of Law No. 25-14, 'communications' refers to those conducted via wired or wireless means of communication, particularly electronic communications rather than ordinary written correspondence such as physical mail. Electronic communications include faxes, telexes, emails sent via the internet, text messages sent via mobile phone systems and other multimedia messages (MMS)²¹.

2. Audio Recording

As per Article 114/3 of Law No. 25-14, audio recording involves making technical arrangements, without the consent of those concerned, to capture, fix, transmit and record speech spoken privately or secretly by one or more persons in private or public spaces. Audio can be recorded by monitoring telephone calls and conversations held through them. Additionally, sensitive microphones can be used to pick up and record sounds on specialised devices, and signals can be captured wirelessly or through broadcasting.

These techniques, which are crucial for law enforcement agencies to gather necessary evidence while combating corruption, help them to navigate the delicate balance between effective crime-fighting and respecting individual privacy rights²².

3. Image capture

Image capture involves setting up technical arrangements to take photographs of one or multiple persons in a private location without the consent of the individuals involved²³. Such acts infringe the right to

privacy and are penalised under Article 303 bis of the Penal Code if carried out unlawfully. Articles 114 to 119 of Law No. 25-14, which forms part of the Code of Criminal Procedure, set out the legal controls on special investigative procedures. These can be summarised as follows:

Types of crimes eligible for special investigative procedures

Article 114 of Law No. 25-14 outlines the crimes that can warrant such investigative methods if they are necessary for uncovering a crime in progress or during a preliminary investigation. These include:

- Intentional homicide
- Drug-related offences
- Organised cross-border crime
- Crimes relating to information and communication technologies
- money laundering and terrorism.
- Violations of foreign exchange and capital movement laws
- Corruption offences

Smuggling crimes

Human trafficking

- Organ trafficking
- Migrant smuggling
- Kidnapping incidents

Requirements for authorisation

The authorisation mentioned in Article 114 must include all elements that allow the identification of the communications to be intercepted, the targeted locations (whether residential or otherwise) and the crime justifying these measures and their duration. Authorisation is issued in writing for a maximum period of four months, renewable under the same formal and temporal conditions until the investigation or judicial inquiry ends²⁴.

Access rights

The issued authorisation permits access to residential and other premises outside the specified times under Article 78 of Law No. 25-14, without the knowledge or consent of individuals with rights to those places.

- Direct supervision: The authorised operations must take place under the direct supervision of the competent public prosecutor. In cases of judicial investigation, these operations are conducted based on a directive from the investigating judge and under their direct supervision²⁵.
- Professional secrecy: Operations specified in Article 114 are carried out without infringing professional confidentiality, as stated in Article 76 of Law No. 25-14. The discovery of other crimes outside those mentioned in the court's authorisation does not invalidate the incidental procedures²⁶.
- Technical assistance: The public prosecutor or judicial police officer authorised to act can enlist qualified personnel from any public or private unit responsible for wired and wireless communications to handle the technical aspects of the aforementioned operations.

Documentation requirements

The authorised judicial police officer or their delegate must prepare a report on every interception and recording operation, as well as on technical arrangements, audio capture or audiovisual recording operations. The report must specify the start and end date and time of these operations²⁷. Any relevant

communications, images or recorded conversations that contribute to revealing the truth must be described or copied by the judicial police officer and submitted to the case file. An electronic medium should be attached if requested by the public prosecutor²⁸. Calls conducted in foreign languages must be transcribed and translated as required with the assistance of a translator appointed for this purpose.

French legislation, following amendments to its Code of Criminal Procedure on 19 December 1997, incorporated similar investigative methods. These methods involve the use of electronic devices, such as bracelets, to track the movements of suspects and the locations they frequent, in order to reveal criminal activities and collect the necessary evidence to combat corruption.

3. Infiltration

Infiltration is the third specialised investigative technique, as set out in Article 56 of Law No. 06-01 on the prevention and combating of corruption. This method is also referred to as 'infiltration' in Articles 120 to 124 of the new Code of Criminal Procedure No. 25-14. However, the more accurate term is 'infiltration' rather than 'leakage', since the concept of leakage is the opposite of infiltration.

It is noteworthy that the Law on the Prevention of Corruption cites infiltration as a means of investigation without defining it explicitly. In contrast, the Algerian legislator has defined this method in Article 121 of the Code of Criminal Procedure, referring to it as follows: 'The act whereby a police officer or judicial police officer, under the responsibility of the coordinating police officer, monitors individuals suspected of committing a felony or misdemeanour by deceiving them into believing that they are an active participant or co-conspirator.' This allows the officer to use a false identity and, when necessary, commit the acts mentioned in Article 123 below. However, these actions must not constitute incitement to commit crimes, or they will be invalidated.'

Therefore, infiltration does not necessarily require the judicial police officer to engage in criminal actions. When such actions do occur, the legislator has decriminalised them in order to gain the trust of criminals, regarding them as justified because the aim is to apprehend criminals in the act rather than to achieve a criminal result. Therefore, the legal basis for these actions is considered absent.

Article 123 outlines the following infiltration-related actions:

(1) Acquiring, possessing, transferring, handing over or providing materials, funds, products, documents or information obtained from or used in the commission of crimes;

Using or placing legal or financial resources, as well as transportation, storage, housing or communication resources, at the disposal of individuals committing these crimes²⁹.

An infiltration operation may only proceed with the permission of the judiciary, as represented by the public prosecutor or investigating judge. This is in accordance with Article 120 of the Code of Criminal Procedure and is necessary for investigating any of the crimes mentioned in Article 114 of Law No. 25-14³⁰.

The police officer coordinating the operation must prepare a preliminary report including the elements necessary for identifying the crimes, excluding those that might endanger the safety of the officer, the infiltrator or individuals involved, in accordance with Article 123 of Law No. 25-14³¹.

The written authorisation issued under Article 120 must be justified and, under penalty of nullity, must specify the crime justifying the resort to this measure, the identity of the police officer responsible for conducting the operation and the duration of the infiltration operation, which cannot exceed four months. The operation may be renewed according to the needs of the investigation, under the same formal and temporal conditions. The authorising judge may order the operation to be halted at any time before the specified duration expires, and a copy of the authorisation must be filed in the case documentation following completion of the infiltration operation³².

Section Two: Initiating Public Prosecution in Embezzlement Crimes and Its Limitations

This section addresses the procedures for initiating public prosecutions for embezzlement crimes in both the public and private sectors. It examines whether the legislator provided specific provisions for these crimes or subjected them to the general rules outlined in the Code of Criminal Procedure. We will also discuss the limitations of public prosecution in embezzlement crimes by comparing the provisions in the Code of Criminal Procedure with those in the Law on the Prevention and Fight Against Corruption.

First: Initiating Public Prosecution

Public prosecution is the legal means by which the public prosecutor demands the imposition of criminal penalties on offenders before the competent judicial authorities. The prosecutor has the discretion to initiate or refrain from initiating public prosecution based on their judgment.

Initiating public prosecution involves raising and establishing the case, marking the first step in the judicial process. While the public prosecutor holds the primary right to initiate public prosecution, the law also permits victims of the crime to do so in order to seek compensation for damages. Judges presiding over sessions in courts and judicial councils may also initiate public prosecution in cases where court order is disrupted. This may involve the prosecutor conducting the investigation themselves or assigning a judicial police officer to conduct it. Public prosecution is necessary for punishing offenders; no punishment can be applied without it, and it begins with any action taken before an investigative or judicial authority. The court does not consider a case on its own initiative.

The principle is that the public prosecutor is responsible for initiating public prosecutions and acting as the prosecuting authority. However, the law restricts the prosecutor's authority to initiate public prosecution for certain crimes, requiring a complaint, permission or request. In the case of embezzlement, Law No. 06-01 concerning the prevention and fight against corruption did not impose any specific provisions for the public or private sectors. Instead, criminal prosecution is subjected to the same procedures outlined in the Code of Criminal Procedure that apply to crimes under general law.

This is based on the premise that embezzlement is a general law crime and that the public prosecutor's authority to initiate public prosecution is not constrained by any such procedures. This differs from previous legislation, as prior to 20 February 2006, Article 119 required a complaint from the relevant corporate bodies, as stipulated in commercial law and laws governing state commercial capital management, to initiate public prosecution in cases involving economic public enterprises fully owned by the state or mixed capital.

Based on this, initiating public prosecution related to embezzlement does not require any special procedures and can be conducted through all legal means. However, the Algerian legislator, under Ordinance No. 15-02 dated July 23, 2015, specified in Article 03 that it amends Ordinance No. 66-155 concerning the Code of Criminal Procedure by inserting Article 6 bis, which states:

'No public prosecution shall be initiated against the managers of economic public institutions wholly owned by the state or with mixed ownership for management acts leading to the theft, embezzlement, destruction or loss of public or private property, except based on a prior complaint from the institution's social bodies as stipulated in commercial law and applicable legislation.³³'

This restriction on the public prosecutor's right to initiate public prosecution, which required a prior complaint from the institution's social bodies against the management acts of the managers of economic public institutions, was subsequently repealed by Article 3 of Law No. 19-10, dated 11 December 2019, which amended Ordinance No. 66-155 containing the Code of Criminal Procedure. However, it was reinstated under Article 8 of Law No. 25-14, which also concerns the Code of Criminal Procedure.

The justification for this restriction (the requirement for a prior complaint from the institution's social bodies) is to encourage honest managers, liberate economic activity and foster an environment of initiative. This prevents qualified professionals from avoiding management positions due to a fear of unintentional errors. Additionally, linking prosecution to a prior complaint from the institution's social bodies — who assess managerial decisions based on their involvement in management — broadened the

scope of criminal responsibility. This is reinforced by penalising the institution's social bodies for failing to report criminal incidents that come to their knowledge during or while performing their duties, as per Paragraph 2 of Article 8.

Second: limitation of public prosecution

Limitation is the reason why public prosecutions for crimes expire if the relevant authorities do not take action to interrupt the statute of limitations, either through investigative or trial procedures. The United Nations Convention against Corruption recognises a limitation system for the crimes specified in the convention³⁴. According to Article 29, each State Party should specify the limitation period for initiating judicial proceedings regarding any criminal act under the Convention within its legal framework. This allows for longer limitation periods or suspension of the limitation period if the alleged offender evades justice³⁵.

Furthermore, Article 54 of the Convention states that there shall be no limitation period for penalties associated with corruption crimes if the proceeds of the crime are transferred abroad. This is naturally subject to the provisions of the Code of Criminal Procedure. The second paragraph states that the Code of Criminal Procedure applies in cases not covered by the first paragraph.

It is noteworthy that, prior to its amendment, the provisions of the Law on the Prevention of Corruption and the Fight Against Corruption were not aligned with those of the Code of Criminal Procedure regarding the limitation of public prosecution. Article 8 bis of the Code of Criminal Procedure stated: 'Public prosecution shall not expire due to limitation for felonies and misdemeanours involving terrorist and destructive acts, or those related to transnational organised crime, bribery, or embezzlement of public funds.'³⁶ This contradiction was resolved in the new Code of Criminal Procedure No. 25-14, where Article 12 stipulates that: 'Public prosecution shall not expire by limitation in felonies and misdemeanours characterised as terrorist and destructive acts, and in other felonies affecting the security of the state, and those related to transnational organised crime, corruption and embezzlement of public funds, provided that the proceeds of the crime have been transferred outside the country.'

However, Article 54 of Law No. 06-01 states in its third paragraph that the limitation period for public prosecution of embezzlement in the public sector is equal to the maximum penalty prescribed for it. As the maximum penalty for embezzlement is ten years³⁷ imprisonment, as stated in Article 29, public prosecution for embezzlement in the public sector expires after ten years. However, the Law on the Prevention of Corruption and the Fight Against Corruption does not specify the starting date for the limitation period.

According to the general rules set out in the Code of Criminal Procedure No. 25-14, the limitation period begins on the day the crime is committed, unless action has been taken during that time with regard to an investigation, the initiation of public prosecution, investigative procedures or a trial. If any such actions have occurred, the limitation period will count from the date of the last action.

Limitation period for public prosecution in embezzlement crimes in the private sector

The limitation period for public prosecution in embezzlement crimes in the private sector is specified in Article 54/02 of the Code of Criminal Procedure. According to Article 11 of the Code of Criminal Procedure: 'Public prosecution for misdemeanours shall expire after a period of five years.' The limitation period shall be ten (10) years if the prescribed prison penalty exceeds five (5) years. The rules for calculating limitation periods are governed by the provisions in Article 10 above.³⁸

It is clear from this that the limitation system for public prosecutions under the Law on the Prevention of Corruption and the Fight Against Corruption distinguishes between limitation periods in the public and private sectors. Additionally, the first paragraph of Article 54 aligns with the provisions of Article 8 bis of the Code of Criminal Procedure, while the second paragraph conflicts with these stipulations, prompting the legislator to intervene in the new Code of Criminal Procedure No. 25-14 to resolve this contradiction.

It is also noteworthy that the legislator added an important provision concerning limitation periods for hidden crimes in the new Code of Criminal Procedure No. 25-14. These are crimes where the nature of the material elements prevents them from being discovered by the victim or the judicial authority. The same applies to veiled crimes, where the offender deliberately employs strategies to avoid detection. Article 15 of the new Code of Criminal Procedure No. 25-14 details the limitation periods for these two types of crime.

- Twenty-five (25) years for felonies;
- fifteen (15) years for misdemeanours where the maximum prison penalty exceeds five (5) years;
- ten years for misdemeanours where the maximum prison penalty does not exceed five years.

Registration of contracts and official documents, and/or publication according to applicable legislation, is considered to be the crime entering the public sphere.

The guidelines for calculating limitation periods follow the rules outlined in Article 10 above.

Section Two: Penalties prescribed for embezzlement crimes

Examining the provisions of Articles 29 and 41 of Law No. 06-01 reveals that the Algerian legislator prescribed different penalties for embezzlement in the public and private sectors. This deviates from the general principle that penalties should correspond to the gravity of the crime rather than the subject of the crime. This suggests that the legislator views embezzlement in the public sector as more serious than in the private sector.

Nevertheless, the penalties established by the Law on the Prevention and Fight Against Corruption are more lenient than those prescribed under Article 119 of the Penal Code prior to its repeal, which included penalties of up to life imprisonment. Notably, the legislator adopted the principle of proportionality in penalties in this article, reflecting influences from French legislation that link the classification of the crime to the value of the embezzled funds. In contrast, the Law on the Prevention of Corruption has adopted a lenient approach to this crime.

Consequently, penalties for embezzlement are lighter. Notably, the minimum penalty for embezzlement in the private sector is lower than that prescribed for simple theft. This reflects a broader legislative trend towards reducing penalties for corruption offences while balancing the need to deter them.

Subsection One: Penalties for Natural Persons

The Algerian legislator set out the penalties for natural persons in the Prevention and Fight Against Corruption Law, as set out in Articles 29 and 41. This law also addresses aggravating circumstances in Article 48, as well as provisions for exemption and mitigation of penalties in Article 49. These will be discussed in this section.

Section One: Primary and Additional Penalties for Embezzlement in the Public Sector

First: Primary penalties for natural persons

Article 29 of Law No. 06-01 on the Prevention and Fight Against Corruption, as amended by Article 2 of Law No. 11-15, states the following: 'Any public employee shall be punished by imprisonment for a period of two (2) to ten (10) years and a fine ranging from 200,000 to 1,000,000 DZD...'

Second: Complementary Penalties for Natural Persons

These penalties are consistent for embezzlement in both the public and private sectors, as stipulated in the Penal Code. Article 50 of Law No. 06-01 states that the perpetrator may be subject to one or more of the prescribed penalties, while Article 9 of the Penal Code includes the following additional penalties:

Legal incapacitation:

- Prohibition from exercising national, civil and familial rights.

- Residence restrictions:
- Prohibition of residence
- Partial seizure of assets
- Temporary prohibition from practising a profession or activity
- Closure of the establishment

Exclusion from public contracts

- Prohibition from issuing cheques and/or using payment cards
- Suspension, revocation or cancellation of a driving licence, and prohibition from obtaining a new licence.
- Revocation of a passport

Publication or posting of a verdict or condemnation order³⁹.

Law No. 06-01 also addresses additional penalties relating to freezing, seizure and confiscation in Article 51, which states: 'The illicit proceeds and assets resulting from the commission of one or more crimes specified in the Law on the Prevention of Corruption may be frozen or seized by judicial decision or order from the competent authority.'⁴⁰

1. Confiscation of illicit proceeds and assets

The second paragraph of Article 51 of Law No. 06-01 states: 'In the case of a conviction for the crimes specified in this Law, the judicial authority shall order the confiscation of illicit proceeds and assets, taking into account the circumstances of the international recovery of funds or the rights of bona fide third parties.'⁴¹

2. Original penalties for embezzlement in the private sector

The original penalties for embezzlement in the private sector were specified in Article 41 of the Law on the Prevention and Fight Against Corruption. This article states: 'Anyone managing or working for a private sector entity while engaging in economic, financial or commercial activity who intentionally embezzles any property, funds, financial securities or other valuable items entrusted to them in the course of their duties shall be punished by imprisonment for a term of six months to five years and a fine ranging from 50,000 to 500,000 DZD.' These penalties are more lenient than those prescribed for public employees committing the same act, and than the penalties for theft⁴².

3. Aggravating Circumstances in Embezzlement Crimes

Regarding the aggravation of penalties, Article 48 of the Law on the Prevention and Fight Against Corruption states: '...shall be punished with imprisonment for a period of ten (10) to twenty (20) years and the same fine prescribed for the committed crime'⁴³, indicating that the aggravation applies to the imprisonment penalty only, and not to the monetary fine, if the offender belongs to one of the following categories:

- A judge
- A senior public employee in the state.
- A public officer, such as a notary, judicial officer or auctioneer.
- A member of the National Authority for the Prevention and Fight Against Corruption.
- A judicial police officer or agent, as defined in Article 15 of the Code of Criminal Procedure.
- Anyone exercising the powers of judicial police officers
- A court registry employee

1. Additional considerations on penalties:

Complementary penalties include the mandatory confiscation of illicit proceeds and the annulment of contracts, deals and privileges obtained through the commission of crimes specified in the anti-corruption law. Article 55 of Law No. 06-01 states that any contract, deal, permit or privilege obtained through such crimes can be declared null and void by the judicial authority involved in the case, provided the rights of bona fide third parties are upheld. This is a new provision in Algerian law, as the annulment of contracts has traditionally fallen under the jurisdiction of civil courts rather than criminal courts.

Overall, the Algerian legal framework reflects a response to corruption, balancing punitive measures with the need to encourage honest conduct in public service and economic activities.

2. Exemption from Penalty and Mitigation

In order to curb the rising phenomenon of embezzlement in both the public and private sectors, the Algerian legislator has established a system of exemption from and mitigation of penalties, depending on the circumstances.

The original perpetrator of the crime, or an accomplice who reports the crime to the relevant administrative or judicial authorities and assists in uncovering the identities of the offenders before public prosecution begins, is eligible for exemption from penalty.

- The original perpetrator or an accomplice who helps to apprehend one or more individuals involved in the crime after public prosecution has begun is eligible for their penalty to be reduced by half. The period for mitigation remains open until all avenues for appeal have been exhausted.

The penalty for embezzlement does not expire if the proceeds of the crime are transferred abroad. In other cases, the limitation period for the penalty is subject to the provisions of the Code of Criminal Procedure⁴⁴.

Subsection Two: Penalties for Legal Persons

According to Article 53 of Law No. 06-01, legal persons are criminally liable for the crimes outlined in the anti-corruption law, including embezzlement, as set out in the Penal Code. Consequently, a legal person convicted of embezzlement is subject to the penalties outlined in Article 18 bis 01 of the Penal Code.

For felonies, the penalties applied to legal persons include fines ranging from one to five times the maximum fine prescribed for a natural person committing the same crime. According to Article 29 of Law No. 06-01, the fine for a legal person is set at between 1,000,000 and 5,000,000 DZD. For embezzlement in the private sector, in accordance with Article 41 of Law No. 06-01, the penalty is a fine ranging from 250,000 to 2,500,000 DZD.

Complementary penalties for legal persons are outlined in Article 18 bis of the Penal Code and include:

- Dissolution of the legal person
- closure of the establishment or any of its branches for a period not exceeding five years
- exclusion from public contracts for a period not exceeding five years
- Prohibition from engaging in one or more professional or social activities, either directly or indirectly, permanently or for a period not exceeding five years.
- Confiscation of the item used in or resulting from the commission of the crime.

Publication or posting of the conviction ruling.

- Placement under judicial supervision for a period not exceeding five years targeting the activity that led to the crime⁴⁵.

Branch Three: Attempted Embezzlement and Penalties for Participants

According to the general rules of the Penal Code, punishment for attempted crimes must be explicitly stated. The rules regarding complicity require both the principal offender and the accomplice to be penalised under certain conditions. What is the situation regarding embezzlement?

First: Attempting embezzlement

Regarding the attempt to commit embezzlement, there are two viewpoints:

1. First view: This perspective holds that attempting embezzlement is inconceivable because embezzlement is considered a material crime, falling under crimes of harm. Supporters of this view argue that, since embezzlement involves taking control of someone else's property, it is impossible to attempt the crime without completing the act.
2. Second view: Advocates of this opinion argue that the perpetrator's actions must exhibit both conduct and outcome. They contend that if the outcome depends on the perpetrator's intention to possess the item, the law does not punish intentions alone, but rather actions and behaviours by the offender that reveal or express such intentions. In this case, any act that clearly indicates an intention to transform possession into ownership could constitute an attempt.

International Perspective

At an international level, the United Nations Convention Against Corruption explicitly states in Paragraph 2 of Article 27 that each State Party may adopt the necessary legislative measures and other actions to criminalise, under its domestic law, any attempt to commit an act that is deemed criminal under this convention.

In summary, the concept of attempting to commit embezzlement is a debated issue, with legal interpretations focusing on the nature of the crime, the actions taken by the perpetrator and the specifics outlined in national and international frameworks⁴⁶.

Second: Penalty for the Accomplice in Embezzlement

Article 27 of the United Nations Convention Against Corruption states that each State Party must adopt the necessary legislative measures and other actions to ensure that participation in any form as an accomplice, assistant or instigator of a criminal act defined by this Convention is criminalised under its domestic law⁴⁷.

Additionally, Article 52, Paragraph 1 addresses criminal complicity in embezzlement and refers to the application of Article 42 of the Penal Code, which states: 'A person is considered an accomplice to the crime if they do not participate directly, but assist in any way or aid the perpetrator(s) in committing, preparing, facilitating or executing actions with their knowledge.'

The Algerian legislator has adopted a system of derivative liability for accomplices, holding them fully criminally accountable alongside the original perpetrator, while establishing a relative dependence concerning punishment. This liability is structured around three elements:

The principal perpetrator commits the crimes outlined in Articles 29 and 41 of Law No. 06-01.

The accomplice commits the material act constituting complicity as per Article 42 of the Penal Code.

The criminal intent of the accomplice involves the intention to participate⁴⁸.

Regarding the penalty for the accomplice, Article 44/01 of the Penal Code states: 'An accomplice in a felony or misdemeanour shall be punished with the same penalty prescribed for the felony or misdemeanour.' Furthermore, personal circumstances that may lead to the aggravation, mitigation or exemption of penalties only affect the principal offender or accomplice to whom these circumstances relate.

Therefore, the status of the offender in the crime of embezzlement is a fundamental element that must be present in the principal perpetrator. It is not considered a personal or objective circumstance. For example, if the accomplice is an employee but the principal perpetrator is not, the embezzlement charge would be invalid due to the absence of the assumed element that the original perpetrator must also be an employee.

Conclusion:

This study examined the Algerian legislation on embezzlement, analysing the legal framework for prosecution and penalties within the Prevention and Fight Against Corruption Law and the Criminal Procedure Code No. 25-14. This was done in light of a modern criminal policy aimed at protecting public funds and enhancing integrity in public administration.

Law No. 06-01, dated 21 February 2006, concerning the prevention and fight against corruption, introduced substantial amendments to the repression of corruption crimes in general, and of the embezzlement of public funds in particular. These amendments feature a return to general legal principles regarding prosecution procedures and the mitigation of imprisonment penalties, coupled with the intensification of financial sanctions. The Code of Criminal Procedure No. 25-14 also includes special provisions regarding investigation methods, exemptions from penalties and mitigation measures, as well as the stipulation of investigation, prosecution and limitation procedures, resolving existing contradictions related to the limitation of embezzlement crimes.

Despite the methods established by the United Nations Convention against Corruption in Chapters Four and Five regarding international cooperation and asset recovery, and the international characterisation of corruption crimes, there remains a significant failure to effectively reduce embezzlement crimes. In the Algerian legal context, this can be attributed to the leniency adopted by the legislature concerning corruption offences, which has not achieved the desired deterrent effect, as evidenced by the scale of embezzlement and judicial prosecutions. The study also revealed that the effectiveness of the penal system does not depend solely on the severity of penalties, but rather on the consistent enforcement of those penalties and the prompt recovery of embezzled funds.

Therefore, the success of criminal policy in combating embezzlement depends on striking a balance between the need for criminal deterrence and respect for human rights, thereby upholding the rule of law and enhancing citizens' trust in the justice system.

To address legislative shortcomings in prosecuting and penalising embezzlement, the following recommendations are proposed:

1. Legislative level:

Standardise and clarify references between the Law on the Prevention of Corruption and the Code of Criminal Procedure to avoid conflicts of application.

- Refine procedural provisions: Rephrase certain specific procedural provisions more precisely to ensure the clear scope and limits of exceptions are defined.

Remove restrictions on public prosecution: lift all restrictions on the public prosecution's freedom to initiate legal action without a prior complaint, as this only encourages corruption rather than limiting it.

- Involve civil society: engage civil society in anti-corruption efforts by encouraging the reporting of corrupt practices and providing legal protection for whistleblowers against all forms of pressure. Additionally, activate provisions related to exemption from penalties when a public case is initiated, as this legal privilege is an effective means of reducing embezzlement.

- Enhance financial penalties: Strengthen financial penalties and link them directly to the value of the embezzled funds to achieve effective economic deterrence.

2. Judicial Level

- Establish judicial specialisation in corruption and embezzlement cases.
- Expedite cases related to public funds: Accelerate the processing of public fund cases to fulfil the principle of inevitable punishment.
- Enhance judicial oversight of seizure and confiscation procedures.

3. Institutional Level:

- Support cooperation mechanisms between the judiciary and oversight bodies.
- Develop tracking methods to enhance the tracing of embezzled funds, particularly in transnational crimes.

4. Preventive level:

- Promote transparency: Institutionalise transparency in administrative and financial management.
- Foster a culture of integrity, honesty and responsibility within the public service.

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