



THE SUPREME AUTHORITY FOR TRANSPARENCY, PREVENTION AND COMBATING CORRUPTION - AN INSTITUTIONAL MECHANISM FOR CURBING CORRUPTION (A CRITICAL ANALYTICAL STUDY)

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Received: 01/2024

Published: 07/2024

Abstract:

In order to strengthen efforts to combat corruption, protect the sanctity of public funds and safeguard the national economy, the constitutional legislator has worked to rehabilitate and revitalise oversight bodies through the 2020 Constitutional Amendment by establishing the Supreme Authority for Transparency, Prevention and Combating Corruption. This authority has been elevated to the rank of a supervisory authority, strengthening trust and transparency in institutions and bodies, improving their performance and maintaining their credibility in order to revive the role of the supervisory bodies and strengthen their role as a key actor in curbing forms of financial corruption. This represents a real cornerstone in the oversight structure, based on the institutional diversity of the oversight bodies in the state.

Keywords: *Transparency, regulations, anti-corruption, public funds, effectiveness.*

INTRODUCTION:

The Algerian legislator has taken upon itself the task of keeping pace with what is emerging on the international scene with regard to corruption issues and of mitigating the effects of this phenomenon, which, under the cover of corrupt money, has spread to various sectors and to the wheels of governance, undermining the economic reality, the development dynamic and the investment climate and, consequently, disrupting the infrastructure on which the development reality and the national economy are based¹. The multiple effects of this have been reflected in the imbalance of the social, economic, political and cultural structure, which has led to the creation of supervisory bodies and institutions and the work on their reform in a way that responds to the magnitude of the data on corruption issues within a harmonious interactive framework that achieves this supervisory coherence and integration of the supervisory agencies². This is the bet that has driven the pace of reforms and the establishment of institutional foundations to limit the crimes of corruption in all its forms.

Therefore, within the framework of the implementation of international efforts to prevent and combat corruption, Algeria has attached particular importance to this issue within the reform agenda that it has adopted and taken on as a national and international commitment, considering that limiting this phenomenon is one of the main pillars on which the rule of law and justice is built. For this reason, the legislator has sought to harmonise the legal system with international standards by creating an integrated legal arsenal capable of reviving and strengthening the principles of responsibility, integrity and transparency in the moralisation of public life.

Since the ratification of international conventions, Algeria has endeavoured to fulfil its international obligations by implementing their content in the best possible way and by working to reform its legal and institutional organisation in line with the developments and challenges posed by reality in the

¹ Mahmoud Mohammad Mouabara, *Administrative Corruption and its Remedy in Islamic Sharia (A Comparative Study with Administrative Law)*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2011, p. 121.

² Hassanein Al-Mohamady Bawadi, *Administrative Corruption: The Language of Interests*, University Publications Office, Alexandria, 2008, p. 05.



fight against this phenomenon. This reflects the constant will and diligence to make progress in the fight against this scourge and to consolidate the values of transparency and the principles of good governance and management.

This will has been strengthened by the constitutional reforms, which have brought about many achievements, particularly in the field of moralising public life, combating corruption and strengthening the capacities of the specialised bodies in this field, which have undergone a transformation with the creation of the High Authority for Transparency and the Prevention and Combating of Corruption, its inclusion among the supervisory institutions and its enhanced authority, which gives it broad constitutional and legal powers in the field of supervision and advice.

In drafting Law No. 22/08 on the organisation of the High Authority for Transparency and the Prevention of and Fight against Corruption, the Algerian legislator took into account the experience gained by Algeria since the application of the provisions of Law No. 06/01 on the prevention of and fight against corruption, in order to develop a real and effective vision for combating this phenomenon and to make the High Authority a cornerstone of the supervisory framework, relied upon as an effective mechanism in the field to reinforce the efforts of the other supervisory institutions.

The totality of these reforms in this field leads us to ask the question: to what extent has the Algerian legislator been able to adopt legal reforms that recognise the supervisory role of the High Authority for Transparency as one of the actors to be relied upon in this field, compared to the conditions that prevailed previously?

This study has made it necessary to familiarise oneself with the importance of this subject and to strive to achieve the desired objectives by addressing this question and answering it through an analytical approach, in order to study the sources of the legal texts and to examine their contents according to a methodological approach. It begins by examining the manifestations of the elevation of these bodies to the status of authorities, studying their organisational and structural composition, as well as their multiple supervisory roles (the first section). It then goes on to evaluate this reform, highlighting the sources of failure and the shortcomings that may limit its required effectiveness (the second section).

The first section: Assessing the position of the Supreme Authority for Transparency, Prevention and Fight against Corruption.

The process of organising the Supreme Authority for Transparency, Prevention and Combating Corruption has witnessed a qualitative leap that distinguishes it from other supervisory bodies, as the Algerian legislator has provided it with a specific legal system and constitutionalised it among the supervisory bodies, to become the ideal model to be relied upon in the fight against corruption, in accordance with a modern global approach that imposes the need to institutionalise specialised oversight bodies that enjoy independence and powers that enable them to extend the rule of law to achieve the state of law and justice and strengthen the values and principles of transparency and integrity.

The first requirement: The privilege of the legislative text for the supreme authority of transparency.

The manifestations of this privilege can be seen in the emphasis placed on the organisation of the authority by a law, rather than a mere regulation. This represents a radical change in the legal framework of the regulatory bodies, which is a real guarantee of their functional independence in the field of supervision. Moreover, the Algerian constitutional legislator has sought to promote and constitutionalise its authoritative character within the supervisory mechanisms through the 2020 constitutional amendment¹. This also represents a qualitative leap, enabling it to play its role with full freedom and impartiality, and ensuring the effectiveness of this role, which was previously dominated by the consultative nature of the National Independent Authority for the Prevention and Combating of Corruption.

¹ Presidential Decree No. 20/442 of 30/12/2020 regarding the issuance of the 2020 Constitutional Amendment, Official Gazette No. (82) of 30/12/2020.



The first branch: The constitutionalisation of the authority of the High Authority for Transparency (authority or body).

In response to the changes and requirements necessitated by the need to put an end to and combat the deeply rooted phenomenon of corruption, the Algerian constitutional legislator has adopted a series of reforms, including the emphasis on the promotion of supervisory bodies through the constitutionalisation of the Supreme Authority for Transparency, in accordance with the provisions of articles 204 and 205 of chapter four of the 2020 amendment to the Constitution, which states that “the Supreme Authority for Transparency and the Prevention and Combating of Corruption is an independent institution”. Consequently, the constitutional legislator has granted it a constitutional status, replacing the term “authority”, which denotes the consultative nature that dominates its tasks, with the term “authority”, thus elevating the status of this oversight institution to the rank of authorities, making it an effective and productive oversight role, similar to the other oversight bodies and institutions¹.

The second branch: Establishing the Declaration of Independence of the Superior Transparency Authority.

The declaration on the principle of its independence states that Article 02 of Law No. 22/08, which defines the organisation, composition and powers of the Authority, establishes that it is “an independent supreme authority that enjoys legal personality and financial and administrative autonomy”.

The recognition of its legal personality gives it the power to sue and contract within the scope of its functions (Article 02 of Law No. 22/08), while its financial independence is embodied in the recognition of a special budget that it prepares annually (Article 36), and it is provided with all the financial and material means necessary for its operation. With regard to its administrative independence, it has been empowered to draw up and approve its work plan and internal regulations, as well as to draw up the Staff Regulations, which constitute the framework that defines the rights and obligations of its members and ensures its optimal functioning (Articles 22, 29).

This independence has been further strengthened by the definition of the term of office in the Authority’s Council and the recognition of its non-renewable nature (Article 24), as well as by the limitation of the cases of loss of membership (Article 26), in addition to the consecration of the principle of incompatibility in the membership of its President, which was not explicitly consecrated under the previous conditions, as Article 21/2 of Law No. 22/08 states that “...the term of office of the President is incompatible with any electoral term, function or other professional activity...”. The consecration of this principle is the most important indicator to guarantee the independence of the supreme authority, by distancing its President from any form of influence and orientation that could affect the proper performance of the duties assigned to him.

The third branch: The composition and organisation of the High Authority for Transparency.

The Superior Authority for Transparency is constituted in accordance with Article 16 of Law No. 22/08, which establishes the organisation, composition and powers of the Superior Authority for Transparency, Prevention and Fight against Corruption². It is composed of the President of the Superior Authority for Transparency, the Council of the Superior Authority and a specialised structure for administrative and financial investigations into the unlawful enrichment of public officials, assisted in the performance of its duties by a number of subsidiary directorates³.

First: The President of the High Authority for Transparency.

¹- Amiri Ahmed, *Ethicisation of Public Life and Strengthening the Principles of Transparency according to the 2020 Constitutional Amendment (The High Authority for Transparency, Prevention and Combating Corruption as a Model)*, Journal of Research in Law and Political Science, Faculty of Law and Political Science, Ibn Khaldun University, Tiaret, Volume (07) Issue (01), June 2021, p. 66.

²- Law No. 22/08, dated 05/05/2022, determining the organisation, composition and powers of the High Authority for Transparency, Prevention and Combating Corruption, Official Gazette No. (32), dated 14/05/2022.

³- Presidential Decree No. 23/234 of 27.06.2023, which establishes the structures of the High Authority for Transparency, Prevention and Combating Corruption, Official Gazette No. (45) of 06.07.2023.



The President of the High Authority for Transparency is appointed by the President of the Republic for a period of 5 years, renewable once. The President is responsible for

- Preparing the draft National Strategy for Transparency, Prevention and Fight against Corruption and ensuring its implementation and follow-up.
- Preparing the draft work plan of the High Authority for Transparency.
- Prepare the draft rules of procedure of the Supreme Anti-Corruption Agency.
- Exercise disciplinary authority over all staff.
- Preparing the draft Basic Law for the staff of the Supreme Authority.
- Managing the work of the Council of the Supreme Authority and preparing the draft annual budget.
- Preparing the annual report of the Supreme Authority and submitting it to the President of the Republic after approval by the Council.
- Referring files containing facts that may constitute a criminal offence to the competent Public Prosecutor's Office and those containing facts that may constitute an administrative offence to the President of the Court of Accounts.
- Develop cooperation and exchange information with international anti-corruption bodies.
- Regularly inform the Council of any communications or reports transmitted to it and of the action taken on them.

With regard to the President of the High Authority for Transparency, the clear and explicit position of the Algerian legislator is respected in establishing the principle of incompatibility of membership, as the legislator did not explicitly state this principle in the previous situation regarding the National Authority for the Prevention and Combating of Corruption. Article 21/2 of Law No. 22/08 states: "The presidential term is incompatible with any electoral term, function or other professional activity". The recognition of this principle includes indications that guarantee the independence of the Superior Authority for Transparency, by distancing its President from any form of domination and influence in the exercise of his supervisory role. On the other hand, the legislator should have followed the example of the non-renewability of the term of office of the President, in parallel with the non-renewability of the terms of office of the members.

Second: The Council of the High Authority.

The Council of the Supreme Authority, hereinafter referred to as "the Council", shall be chaired by the President of the Supreme Authority for Transparency and shall be composed of the following members

Three (03) members selected by the President of the Republic from among independent national personalities.

Three (03) judges (one from the Supreme Court, one from the Council of State and one from the Court of Accounts) selected by the High Council of the Judiciary and the Council of Judges of the Court of Accounts respectively.

Three (03) independent personalities selected on the basis of their competence in financial and/or legal matters, their integrity and their experience in the field of prevention of and fight against corruption by the President of the Council of the Nation, the President of the National People's Assembly and the Prime Minister or the Head of Government respectively.

Three (03) persons from civil society, selected by the President of the National Civil Society Observatory from among persons known for their interest in matters relating to the prevention of and fight against corruption.

The nature of the composition of the High Authority for Transparency embodies the diversity in the proposing bodies and the selection of its members, in addition to setting the term of membership of its members at 5 years and the recognition of its non-renewability, and limiting the cases of losing membership¹, which provides protection from forms of pressure, arbitrary detention, and performing duties with complete objectivity and neutrality, away from the views and pressures of the appointing body. All these provisions are intended to support the beginnings of its independence from all parties

¹ Article 24/3 of Law No. 22/08, which establishes the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.



and authorities. At the same time, however, it would have been more appropriate to adopt a system for electing its President, which would have ensured complete separation and independence from the executive apparatus that often dominates the supervisory institutions and bodies. The fact that this authority does not belong to any body is therefore the optimal choice and the fundamental guarantee of its independence vis-à-vis all.

The President and the members of the Council enjoy all the facilities for the performance of their duties during their term of office, and they also enjoy the protection of the State during the exercise of their duties or on the occasion thereof against all forms of threat and aggression, whatever their nature¹. In return, they are obliged to maintain professional secrecy, even after the termination of their professional relationship with the Supreme Authority, under penalty of the sanctions provided for by the legislation in force².

Third: The Integrity of the Council.

Under the chairmanship of the Secretary General of the High Authority for Transparency, in accordance with the provisions of Article 28 of Law No. 22/08.

The provisions of Article 205 of the Constitutional Amendment have defined a series of tasks and powers that establish the oversight role for the prevention and combating of corruption, which have been detailed and elaborated in the provisions of Law No. 22/08, which has defined a series of powers and tasks in which the Council of the Superior Authority for Transparency, in accordance with the provisions of Article 29 of this Law, is specialised:

Examination and approval of the draft National Strategy for Transparency, Prevention and Fight against Corruption.

Examining and approving the draft action plan of the Supreme Authority submitted to it by the President of the Supreme Authority.

Issuing instructions to the institutions and bodies concerned in the event of a breach of integrity.

Approving the draft budget of the STA and approving the STA's internal regulations.

To examine the files, which may contain acts of corruption, submitted to it by the President of the STA.

Delivering an opinion on matters submitted to the Supreme Authority by the Government, Parliament or any other body or institution in relation to its competences.

Approving the annual report on the activities of the Supreme Authority and giving an opinion on cooperation projects with international bodies and organisations in the field of preventing and combating corruption.

The High Authority for Transparency shall hold a regular meeting at the invitation of its Chairman, at least once every three (3) months, and irregular meetings whenever necessary, at the invitation of the Chairman or at the request of at least half (1/2) of its members, which constitutes the quorum required for its deliberations to be valid. If the Chairman is unable to attend, one of the members designated by him shall preside over the meeting. The law provides for the confidentiality of its deliberations³, while its decisions are taken by a majority of the members present and, in the event of a tied vote⁴, the Chairman's vote is decisive. In addition, Article 33 of Law 22/08 prohibits any member from deliberating on a matter in which he or she has had a direct or indirect, present or past interest within the previous five (5) years.

The second requirement: The diversity of the functional role of the Superior Transparency Authority.

¹- Article 24/3 of Law No. 22/08, which establishes the organisation, composition and powers of the High Authority for Transparency, Prevention and Combating Corruption.

²- Article 27 of Law No. 22/08, which establishes the organisation, composition and powers of the High Authority for Transparency, Prevention and Combating Corruption.

³- Articles 31 and 32 of Law 22/08 define the organisation, composition and powers of the High Authority for Transparency, Prevention and Combating Corruption.

⁴- Article 34 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.



The reforms that have affected the oversight bodies have led to the revival of the powers previously granted to the former National Authority, with a new spirit in the context of the Supreme Authority exercising its powers, which have been expanded and diversified between those that have the character of participation and contribution to the construction of a comprehensive strategy for the prevention of corruption, and those that have the character of deterring and repressing corrupt acts and behaviours, and putting an end to the corruptors.

The first aspect: The multifaceted supervisory role of the Superior Authority for Transparency.

Through the provisions of Law No. 22/08, the legislator has entrusted the Superior Authority for Transparency with a series of supervisory functions that constitute a legal privilege that allows it to extend its supervisory authority over the acts and negative practices that undermine the sanctity of public funds, within a functional framework with multifaceted powers and competences.

First, the supervisory dimension of the High Authority for Transparency.

In order to actualise its supervisory competence, the Supreme Authority for Transparency undertakes various tasks with a supervisory and preventive scope in order to limit forms of corruption¹. Through these tasks, it aims to ensure the effectiveness of the mechanisms, plans and measures adopted to curb negative behaviours and practices in the various institutions and administrations of the State, in order to achieve the highest indicators of integrity and transparency in the management of public affairs. This includes periodically evaluating the legal mechanisms related to transparency, prevention and control of corruption, as well as the administrative measures, and assessing their effectiveness and efficiency in mitigating the effects of forms of corruption and curbing their causes. The Authority also proposes appropriate measures and mechanisms to improve and ensure their effectiveness², with the aim of ethicising public life and strengthening the principles of transparency, good governance, prevention and the fight against corruption³.

As part of its supervisory role, the High Authority also conducts administrative and financial investigations into cases of unlawful enrichment of public officials who cannot justify the significant increase in their financial assets. These investigations may involve any person who may be involved in concealing the unjustified wealth of the public official, if it appears that the latter is the actual beneficiary⁴, since the High Authority has the competence to receive and ensure the processing of declarations of assets, a process previously entrusted to the National Anti-Corruption Authority⁵. For this reason, the High Authority has a number of powers in this regard, as defined in Article 10 of Law No. 22/08, which states that “if the High Authority, on its own initiative or following information or notification, observes a breach of the rules relating to integrity, it may take the following measures:

- Issue a warning to the person concerned if the answers given are unproductive,
- issue an order if it finds that the declarations are late, incomplete or inaccurate, or if it does not receive a reply to its request for clarification,
- notify the competent regional public prosecutor in the event of non-declaration, after having warned the person concerned, or in the event of false declaration of assets”.

To this end, it may ask the employee or the person concerned for any written or oral clarification, without invoking professional or banking secrecy or respecting the administrative hierarchy. In order to strengthen its supervisory role, the various public institutions and bodies, as well as any natural

¹- Boudrahem Linda, “The Legal Regime of the High Authority for Transparency, Prevention and Fight against Corruption: A Critical Legal Study”, *Academic Journal of Legal Research*, Faculty of Law and Political Science, Abderrahmane Mira University, Bejaia, Volume (14) Issue (01), 2023, p. 248.

²- Article 4 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

³- Article 205 of Presidential Decree No. 20/442 on the promulgation of the Constitutional Amendment 2020.

⁴- Article 5(2) of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

⁵- Article 4(3) of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.



or legal person, public or private, are required to cooperate with the High Authority and to provide it with all information, documents and records requested by it for the performance of its duties, under penalty of obstruction of the due administration of justice if they refuse to do so, and to assist it in the performance of its duties¹.

Article 11 also stipulates that “in the event of the existence of serious elements confirming the existence of unjustified wealth on the part of a civil servant, the supreme authority shall submit a report to the public prosecutor at the Sidi Amhmad court in order to take precautionary measures to freeze banking operations or seize property for a period of three (03) months by judicial order issued by the president of the same court and shall notify the public prosecutor’s office of the bodies responsible for its implementation by all legal means.

This order may be contested before the same authority that issued it within a period of five (05) days from the date of its notification to the person concerned, and the order, including the rejection of the objection, may be appealed against within a period of five (05) days from the date of its notification.

The President of the Court shall decide to lift or extend the precautionary measures, either automatically or at the request of the competent Public Prosecutor’s Office; in the event of the expiry of the prosecution, whether due to the statute of limitations or to the death of the accused, the Public Prosecutor’s Office may, in view of the evidence at its disposal, inform the judicial agent of the Treasury to request the confiscation of the frozen or seized assets through a civil action, while respecting the rights of third parties in good faith

In order to strengthen its supervisory role, the law empowers it to set up, on the proposal of the President of the Supreme Authority, any special committee to assist him in the performance of his duties², with the assistance of any person of competence to contribute to the handling of the cases and issues brought before the Council³, in order to deal with the complex cases, especially since the crimes of corruption, in their many forms, are of a complex nature, requiring the intervention of experts and specialists in the accounting and technical fields to unravel the knot of the crime.

Second: Involving civil society actors in reporting corruption.

In order to strengthen the oversight role of the Supreme Authority for Transparency, the legislator worked to promote it by involving civil society actors by opening a channel for reporting corruption crimes. Any natural or legal person with information, data or evidence relating to acts of corruption may report or notify the Supreme Authority for Transparency, provided that such report or notification is in writing, signed and contains all the elements relating to the acts of corruption and sufficient elements to identify the informant or notifying person, while providing guarantees for the protection of informants.

In the context of encouraging the reporting of offences, the Algerian legislator has set up two digital platforms⁴, represented in the Algerian Transparency Network “ in بلغنا”⁶, and the digital platform⁵ ”نراكم” the framework of spreading the culture of rejecting this phenomenon and enhancing transparency in the management of public affairs, in order to bring the citizen closer to the services of the supreme authority and facilitate the process of reporting corruption in a timely and secure manner, while ensuring their protection, the non-disclosure of their identity and the protection of the information and data received from them. This is an

¹- Article 13 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

²- Article 30 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

³- Article 35 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

⁴- Article 6 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency, Prevention and Fight against Corruption.

⁵- <https://naracom.hatplc.dz/>

⁶- <https://balighna.hatplc.dz/>



'expression of the legislators willingness to confront forms of corruption and put an end to this phenomenon.

Thirdly, the power to notify the judiciary and refer cases with a criminal description.

Article 12/1 of Law No. 22/08 stipulates that “when the supreme authority becomes aware of facts that may have a criminal character, it shall inform the territorially competent public prosecutor”. The legislator’s recognition of this fact reflects a change and a remedy for the shortcomings and obstacles that had limited the powers of the National Authority for the Prevention and Combating of Corruption, which was restricted to initiating proceedings and notifying the judicial authority, and whose role was limited to referring the file containing criminal facts to the Minister of Justice, who had the exclusive power to notify the competent public prosecutor to initiate public prosecution if necessary¹. The Algerian legislator did not stop there, but went on to extend its powers of recourse to the judiciary by recognising its power to refer to the judiciary in the event that the employee failed to declare his assets after being warned or in the event of a false declaration.

This trend, based on the recognition of the right of the supreme authority to have direct recourse to the judiciary in the event of criminal offences, is the direction in which we believe the Algerian legislator is moving in order to strengthen its control mechanisms. However, we often criticise the Algerian legislator for not disclosing the fate of the files submitted to the judiciary, in the absence of mechanisms to determine the measures taken against them².

The second branch: Contributing to the development of the National Strategy for Transparency and Prevention of Corruption.

The strategic role of the High Authority for Transparency is manifested in the adoption of a comprehensive National Strategy for the Prevention of Corruption, which is a guideline for the activation of international and national anti-corruption standards at the level of public institutions, administrations and the business sector, with the aim of effectively and efficiently improving transparency and anti-corruption measures, which will have a positive impact on the behaviour of individuals and groups³. It also oversees the strengthening of the rules of transparency and integrity in the organisation of charitable, religious, cultural and sports activities, as well as in public and private institutions, through the preparation and implementation of appropriate systems for the prevention and combating of corruption⁴, in addition to the creation of an interactive network aimed at involving civil society and unifying and promoting its activities in the field of transparency, prevention and combating of corruption⁵.

The Third Branch: Advisory and Information Powers

In accordance with Article 07 of Law 22/08, the Superior Authority for Transparency is responsible for monitoring the compliance of public administrations, local authorities, public institutions, economic institutions, associations and other entities with the systems of transparency, prevention and fight against corruption, as well as the quality, effectiveness and appropriateness of their implementation. The recommendations issued by the Supreme Authority in this regard are intended to assist in the development of appropriate measures and procedures for each entity or institution concerned.

In the event that the Superior Authority for Transparency, on its own initiative or following notification or information, observes a violation of the quality and effectiveness of the procedures

¹- Article 22 of Law No. 22/08 defines the organisation of the Supreme Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.

²- Boudrahem Linda, previous reference, p. 250.

³- A brief presentation on the process of preparing the National Strategy for Transparency, Prevention and Combating Corruption 2023-2027, prepared by the Supreme Authority for Transparency, Prevention and Combating Corruption, published on its official website: <https://hatplc.dz/>, accessed on 02/02/2024, at 21:15.

⁴- Article 04/5 of Law 22/08 defines the organisation of the Supreme Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.

⁵- Article 04/6 of Law No. 22/08 defines the organisation of the Supreme Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.



applied in the public bodies, administrations, associations and institutions related to the prevention and detection of acts of corruption, it shall issue recommendations for the adoption of the necessary measures to put an end to such violations within the timeframe established by it.

The institutions and bodies concerned are required to submit a report to the Supreme Authority on the degree of compliance with these recommendations. If there is no response or if the response is inadequate, the Supreme Authority will issue an order to the institution or body concerned, requiring it to implement the recommendations within a maximum period of one year. If the order is not complied with, the Supreme Authority informs the competent authorities to take the appropriate measures¹.

The Supreme Authority for Transparency is consulted to give its opinion on draft laws submitted by the government or on draft laws submitted by members of parliament that fall under its jurisdiction. However, this does not apply to regulations, as Article 205/6 of the Constitutional Amendment 2020 clearly stipulates that its role is to “...express an opinion on the legal texts related to its field of competence”. Its competence in this regard does not extend beyond the legal text and there is no room for it to express an opinion on the regulatory texts, as confirmed by the provisions of Article 29 of Law No. 22/08 in paragraphs 7 and 9, which state that “...to give an opinion on matters submitted by the Government, Parliament or any other body or institution to the competent Supreme Authority...to give an opinion on cooperation projects in the field of prevention and fight against corruption with international bodies and organisations”². The opinion expressed by the Supreme Authority is not binding on any entity, which may choose to accept it, as it is issued by a constitutionally competent authority for the prevention and combating of corruption, or it may be excluded for objective or subjective reasons³. It would have been appropriate for the Algerian legislator to make it compulsory to take into account the opinion of the supreme authority and to resolve this issue, since it is a control mechanism that has been elevated to the level of a supervisory authority with original jurisdiction in the fight against corruption. How can a body specialised in the fight against corruption make its opinions non-binding or exclude them for objective or subjective reasons? This trend towards non-binding authority is particularly worrying given that this is a repressive body in the fight against corruption.

With regard to its media role, it consists in collecting, centralising, exploiting and disseminating any information or recommendations that may assist public administrations or any natural or legal person in preventing and detecting acts of corruption⁴. The legislator has therefore obliged all public bodies and natural or legal persons to provide it with all the information, evidence and documents it requires to carry out its supervisory tasks⁵.

With regard to its role in the field of training, it supervises the participation in the training of the agents of the bodies responsible for transparency, prevention and the fight against corruption, as well as of the various stakeholders in this field⁶.

The fourth branch: Strengthening the principle of cooperation and partnership between it and other bodies.

¹- Article 09 of Law No. 22/08 defines the organisation of the Supreme Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.

²- Article 29 of Law No. 22/08 defines the organisation of the Supreme Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.

³- Kamal Mostafawi, Ali Mazzouz, The role of the Supreme Authority for Transparency, Prevention and Combating Corruption in the 2020 constitutional amendment: A New Approach or an Extension of the Previous Approach in Prevention and Combating, *Journal of the Legal Analyst*, published by the Laboratory of the State and Organised Crime at the University of Akli Mohand Oulhadj, Bouira, Volume (03), Issue (02), December 2021, p. 105.

⁴- Article 04/1 of Law No. 22/08 defines the organisation of the High Authority for Transparency, Prevention and Combating Corruption, its composition and its powers.

⁵- Article 13 of Law 22/08 defines the organisation, composition and powers of the Superior Authority for Transparency, Prevention and Fight against Corruption.

⁶- Article 205 of the Constitutional Amendment 2020.



The Supreme Authority for Transparency has been empowered by the legislator to establish and develop cooperative relations with regional and international bodies and organisations involved in the fight against corruption, and to work proactively in designing plans and adopting a regular and methodical approach to exchanging information with its international counterparts and with the bodies and services involved in the fight against corruption¹.

In this context, the Supreme Authority for Transparency is working to strengthen Algeria's role in the formulation of international visions and strategies to combat the phenomenon of corruption by participating in the work of the Tenth Conference of States Parties to the United Nations Convention against Corruption, which aims to remove obstacles and address challenges to effective international cooperation².

At the national level, the Supreme Authority for Transparency has organised a series of regional meetings aimed at strengthening the role of oversight and involving all stakeholders and bodies in contributing to the reduction of this phenomenon. A Memorandum of Cooperation was signed between the High Authority and the Mediator of the Republic in order to best respond to citizens' concerns and ensure the quality of public services. In addition, an agreement was signed with the Ministry of Higher Education and Scientific Research to develop training and education programmes, increase awareness programmes and contribute to the necessary reforms and measures to prevent corruption. As a result, the Minister of Higher Education issued an instruction to include a horizontal training unit on transparency, prevention of corruption and the fight against it in the various training programmes and courses in this area³.

In the same context, the constitutional legislator, through the provisions of Article 205 of the Constitutional Amendment 2020, has established another channel of communication between the control bodies, represented by the Court of Accounts, regarding the follow-up of corruption offences. This legal consecration was established by the Algerian legislator through the provisions of Article 12/2, which states that "...and the Court of Accounts shall be informed when it reaches acts that fall within its competence"⁴. This represents a qualitative leap in the creation of a comprehensive oversight framework. However, we wonder about the absence of the issue of consolidating cooperation with other oversight bodies, such as the General Inspectorate of Finance and the Central Office for the Suppression of Corruption, which is the most important body in the field of investigation and investigation of corruption crimes. Therefore, it would have been more appropriate to establish rules of cooperation and open channels of communication with all supervisory bodies and institutions in order to address the phenomenon of corruption and to create a comprehensive supervisory framework that allows the exchange of information on complex corruption cases that require the combined efforts of all supervisory bodies.

The second topic: Assessing the effectiveness of the oversight role of the High Authority for Transparency.

The establishment of this authority as an active link in the control chain reflects the Algerian state's commitment to reactivating and revitalising the control bodies, giving them a new impetus in line with internal and external circumstances. The High Authority for Transparency has thus become an instrument that can be relied upon to undermine and put an end to the phenomenon of corruption. An examination of its system reveals a number of shortcomings that may have a negative impact on the vision adopted for its establishment, which can be summarised as follows:

¹- Article 4/9 of Law 22/08 defines the organisation, composition and powers of the Superior Authority for Transparency and the Prevention of and Fight against Corruption.

²- Participation of the Superior Authority for Transparency in the proceedings of the Tenth Conference of the States Parties to the United Nations Convention against Corruption, aimed at eliminating obstacles and meeting the challenges of international cooperation, [source: <https://hatplc.dz/>, accessed on: 04/02/2024, at 22:15].

³- Instruction of the Minister of Higher Education and Scientific Research No. 076/A.C./, dated 23/01/2023.

⁴- Article 12/2 of Law No. 22/08 defines the organisation, composition and powers of the High Authority for Transparency and the Prevention of and Fight against Corruption.



The first requirement: Evaluation of the independence aspects of the supreme authority for transparency.

The principle of the effectiveness of supervisory bodies requires them to be free from forms of domination and restriction, whether in terms of their organic or functional structure. The effectiveness of any apparatus is measured by the degree of independence in the performance of tasks and functions, and any statement to the contrary judges the essential void of the oversight role of the apparatus and the required effectiveness. This is evident in the legal structure of the Supreme Authority for Transparency, which is reflected in several forms:

The first branch: The Domination of the Executive Apparatus over the Organic Independence of the Supreme Authority.

From the foregoing discussion of the nature of the composition that embodies the aspect of the organic independence of the members of the Supreme Authority, we can see that this diversity in its composition is characterised by a kind of deficiency compared to the privilege enjoyed by the President of the Republic in controlling this apparatus and its members. He alone has the power to appoint the President of the Authority for a renewable term of office, in accordance with Article 21 of Law No. 22/08. This monopolisation of this prerogative is a waste of the Authority's independence. For this reason, researchers often call for the need to empower the members of the oversight bodies to elect the head of the apparatus from among their members, since the appointment and renewal of the term of office leads to the imposition of loyalty to the appointing authority, as opposed to the members, whose term of office cannot be renewed and whose selection is entrusted to several bodies, as mentioned above.

This diversity remains purely formal, since the appointment is made by presidential decree of the President of the Republic, in addition to all the bodies that the law has empowered to make the selection, who are appointed by the President of the Republic, which leads to an indirect participation in the appointment of the members of the Supreme Authority. Furthermore, the three members chosen by the President of the Republic from among independent national personalities represent the dominance of the Executive over the Superior Authority for Transparency, despite the powers and duties conferred on it by law.

We also take note of the observations regarding the cases established for the termination of membership, as defined in Article 26 of Law No. 22/08, which opens the door to the discretionary power of the President of the Republic in this regard, especially through the text "committing serious acts and actions inconsistent with his obligations as a member of the Authority" as one of the cases for the termination of membership. The term "serious" is used in a broad and flexible manner, with multiple meanings and interpretations, due to the lack of criteria for defining serious acts and the lack of specification of those acts that are considered serious and lead to the termination of the member's duties¹.

The Second Branch: The relativity of the functional independence of the supreme authority.

The aspect of its limitation is manifested in the obligation of the head of the Supreme Authority to submit an annual report to the President of the Republic, which is a form of control over its actions. Then, we urge the legislator not to be precise about the publication of the annual report, especially since in the provisions of Article 04, which defines the powers of the Supreme Authority for Transparency, it is stated that "... and inform public opinion of its content", so does this mean that public opinion should be informed through the media? It would have been appropriate for the legislator to have been more explicit in this regard and to have stipulated the obligation to publish the report in the Official Journal of the People's Democratic Republic of Algeria, by analogy with the Court of Accounts.

Why, then, is the report submitted only to the President of the Republic and not to the other authorities? It would have been possible to provide for it to be submitted to Parliament, which would have opened a debate on it and provided mechanisms for following up these reports and their results,

¹ Boudarhem Linda, op. cit., p. 254.



in addition to the measures taken on their content, which would have strengthened the principle of transparency and popular control, given their effective and real role in curbing corruption crimes. From a financial point of view, although it has a special budget, it remains subject to the general State budget, in accordance with the provisions of Article 36 of Law No. 22/08, which subjects all the funds it receives for the management of its affairs to prior and subsequent control, as confirmed by the provisions of Article 38 of the same law, which states: “The accounts of the Supreme Authority shall be kept in accordance with the rules of public accounting, in compliance with the laws and regulations in force.

“The accounts of the Supreme Authority are subject to the control of the competent bodies of the State”.

The second requirement: Manifestations of the limited powers of the supreme authority.

The promotion of the authoritarian character of the Supreme Authority gives it a set of deterrent powers that enable it to put an end to negative and corrupt practices. However, the indicators contained in the provisions of Law No. 22/08 were contrary to the requirements of the authoritarian character as a constitutional privilege of the Supreme Authority, lacking the deterrent mechanisms to extend the reach of its control.

The first branch: The predominance of the advisory character in the tasks of the supreme authority.

In parallel with its supervisory role, the Supreme Authority for Transparency is expanding the scope of its advisory role, as it works to collect, centralise, exploit and disseminate any information and recommendations that can help public administrations and any natural or legal person in preventing corruption, and to propose appropriate solutions and mechanisms to improve administrative measures to reduce it, In addition to monitoring the work and activities carried out and ensuring the existence of transparency and anti-corruption systems and the quality and adequacy of their implementation, it has the right to express opinions on legislative texts related to its areas of competence and to contribute to the ethicisation of public life and the promotion of the principles of transparency and good governance.

What has been established about this aspect of its role is that it only makes proposals and that its role in this respect is purely advisory, which means that the opinions and recommendations it issues are not binding, and this leads to the predominance of the advisory character in the totality of the powers conferred on it.

Its intervention in the legislative field is not mandatory under article 205 of the Constitution, which leaves it to the discretion of the competent authority to consult it or not in this field, especially since the Algerian legislator has not clarified this issue precisely, and it also raises the question of whether it can issue an opinion on its own initiative or whether the matter depends solely on being consulted by the competent authority.

The Second Branch: The Lack of Authority in Issuing Deterrent Orders

Article 205 of the Constitutional Amendment 2020 states “...and issue orders, as necessary, to the concerned institutions and bodies...” and this issue was clarified by the provisions of Article 09, which states “...in case of non-response or deficiency, the supreme authority shall issue an order to the concerned institution or body obliging it to implement the recommendations within a period not exceeding one year.

If the order is not complied with, the supreme authority shall, by means of a regulation, inform the designated competent authorities so that they may take appropriate measures”¹.

It should be noted that the legislator did not outline the required effectiveness of the exercise of its powers in issuing orders. It exercises them only when the entities concerned fail to implement its recommendations and, moreover, it has no binding power to ensure the implementation of the orders it issues. It can only instruct the competent authorities to take appropriate measures, which remain unclear in the absence of a legal text defining them.

¹ Article 09 of Law No. 22/08 defines the organisation, composition and powers of the Supreme Authority for Transparency and the Prevention and Fight against Corruption.



The same points can be raised with regard to its orders in the event that it detects a delay in the submission of the declarations, or a deficiency or inaccuracy in their content, or a failure to respond to the request for clarification regarding a breach of the integrity rules, since the legislator has not clarified the measures to be taken by the highest authority in the event of non-compliance with its orders and their outcome, especially since the legislator has defined the cases in which the Public Prosecutor is to be informed in the event of a warning to the person concerned or in the event of a false declaration of assets.

CONCLUSION:

The conclusion of the study records that the Algerian legislator reflects this concern in confronting the phenomenon of corruption and protecting the administration and state institutions, and ensuring their ethicisation. This has led to the elevation of the institutions and bodies of control and their reform in line with the challenges and stakes posed by the reality of the situation. A series of constitutional and legal reforms have been adopted in the field of oversight and in the oversight institutions responsible for this field, abandoning the National Anti-Corruption Agency, which in reality has demonstrated its ineffectiveness and inefficiency, in favour of the Supreme Authority for Transparency, which has been recognised for its legal and functional privilege, in particular the constitutionalisation of its authoritative nature, in favour of the Supreme Authority for Transparency, which has been recognised for its legal and functional privilege, in particular the constitutionalisation of its authoritative nature, and for the fact that it has been endowed with a series of powers, such as the right to issue orders and to refer files of a criminal nature directly to the competent judicial authority, as well as the opening up of all channels of communication in order to involve civil society actors in the construction of a solid supervisory structure, in addition to the diversity of its formative character, which was intended to give it a strong impetus in its field of competence and a qualitative leap in the involvement of many parties in its construction.

However, despite the diversity of its powers and functions, we note that it lacks many mechanisms that could lead to a ruling on its ineffectiveness, in the absence of recognition of some powers that reflect its constitutionally enshrined authoritative nature. It does not have the power to immediately suspend those involved in the corruption crimes it uncovers, nor does it have the coercive power to impose fines, as the Court of Auditors does, or at least the power to force the competent authorities to carry out its orders, in addition to the lack of a communication base between the various other supervisory bodies, such as the Court of Auditors, on matters falling within its competence, which wastes the efforts and efforts made in the field of preventing and combating corruption.

Based on the analysis of the legal and functional reality of the Supreme Authority for Transparency, we recommend a series of measures and solutions to strengthen its role in accordance with its constitutional and legal character, which can be summarised as follows:

1. Recognise the functional and organisational independence of the ATA and establish the principle of election in the selection of its President, instead of the method of appointment, in order to ensure full continuity and independence from the executive branch.
2. Strengthen the relationship between the TOPA and the Parliament by submitting a copy of its report to the Parliament for review and discussion and by involving the Parliament in the preparation of legislation that falls within its scope and competence.
3. Accelerate the issuance of regulatory texts to provide a clear picture of its legal system and clarify the procedures of some tasks and powers that the provisions of Law No. 22/08 refer to for regulation.
4. Give it dissuasive powers, such as the right to impose fines, to ensure the implementation of its orders in the event of non-compliance by the parties concerned.
5. Adopt mechanisms to clarify the fate of the reports it submits and the action taken on them.
6. Establish channels of communication between itself and the other control bodies in order to create an integrated control framework, which the control bodies often lack.

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