# Powers of the Public Prosecution in Prosecuting Economic Crimes under the Code of Criminal Procedure 25/14

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**Abstract :**
The Public Prosecution enjoys broad powers and a distinct procedural specificity in prosecuting economic and financial crimes in accordance with the Code of Criminal Procedure 25-14, where the legislator has at times strengthened its role and at other times limited it, seeking through this legislative framework to protect public funds, enhance transparency, and reduce the drain on the national economy by means of mechanisms that combine deterrence with flexibility in procedural handling.
**Keywords:** Public action, postponement of prosecution of legal entities, prior complaint, consultation of the supervisory authority, economic crimes.

## Introduction :

Economic and financial crimes are among the most serious contemporary crimes due to their direct impact on draining public funds, harming the national economy, and undermining the requirements of transparency and integrity in management. In this context, the Algerian legislator, through the Code of Criminal Procedure 25-14, has sought to establish a special procedural policy that enhances the role of the Public Prosecution in prosecuting this type of crime by granting it distinctive procedural powers and adopting flexible mechanisms that combine deterrence with sound procedural handling.

However, these powers were not granted without limitation; rather, they were constrained by a set of controls and exceptions aimed at reconciling the effectiveness of criminal prosecution with the protection of the normal functioning of economic institutions, especially public ones.

From here emerges the importance of the topic, which sheds light on a set of new procedures introduced by Law 25-14, such as postponing criminal prosecution of the legal person and seeking the opinion of the National Public Procurement Committee, as well as older procedures already known in Algerian legislation, such as the prior complaint, with the aim of understanding how the Public Prosecution employs and applies these procedures when the matter concerns acts of an economic nature, on the occasion of exercising its right to initiate public proceedings.



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The study also aims to highlight the aspects of procedural treatment adopted by the legislator in prosecuting economic crimes, in order to assess them by identifying the advantages and disadvantages of the practical application of these procedures, ultimately reaching the preparation of results and the formulation of proposals to address the points of deficiency surrounding these fledgling procedures on the occasion of the next legal amendment.

Thus, the topic raises the problem of the extent to which the Algerian legislator has succeeded in achieving a balance between expanding the powers of the Public Prosecution in combating economic crimes and imposing procedural constraints that may restrict its freedom in initiating public proceedings.

In answering the problem of the study, we relied on the analytical method as the most appropriate for this research, as it requires analyzing the relevant legal texts, particularly the Code of Criminal Procedure 25-14, in order to clarify the various provisions and rules detailing the role assigned by the Algerian legislator to the Public Prosecution in its exercise of public proceedings in their economic aspect, all of this within the following two topics:

First Topic: Provisions that strengthen the role of the Public Prosecution in initiating public action in economic crimes

Second Topic: Provisions that restrict the right of the Public Prosecution in initiating public action in economic crimes

## First Topic: Provisions that strengthen the role of the Public Prosecution in initiating public action in economic crimes

Economic and financial crimes are among the types of criminal behavior that most affect the financial stability of the state, which led the Algerian legislator to strengthen the role of the Public Prosecution and expand its powers to initiate public action and conduct it effectively through the authority to establish and propose certain newly introduced procedural mechanisms that allow for settlement before prosecution.

### First Requirement : The procedure of postponing criminal prosecution of the legal person

The Algerian legislator has allowed the conclusion of an agreement with a legal person who commits a financial or economic crime, and this is, in reality, a positive measure because the most severe penalty that may ultimately be imposed on a legal person is a fine, and therefore it is preferable that the dispute be resolved through reconciliation.

#### Section One: Definition of the Postponement of Criminal Prosecution of the Legal Person

The Algerian legislator did not provide a definition of the procedure of the deferred agreement for the criminal prosecution of the legal person; rather, in Article 105 of the Code of Criminal Procedure, it addressed the conditions for its conclusion, from which it can be inferred that it is a procedural mechanism of a consensual, contractual, and anticipatory nature. It allows and permits—before the initiation and institution of public proceedings—the conclusion of an agreement between, on the one hand, the Public Prosecutor and, on the other hand, the private legal person who has committed or participated in one or more of the offences listed in Article 106 of the Code of Criminal Procedure. Its content is the suspension of its criminal prosecution on condition that it undertakes to pay a fine and to return the funds and assets resulting from the offence, whether those that were disposed of or those that were transferred abroad, as well



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as to pay all amounts owed to the public treasury and to the injured parties, and to submit to a reform program whose components are determined by the Public Prosecution.[1]

**Section Two: Conditions for the Postponement of Criminal Prosecution of the Legal Person**

In accordance with Articles 105 and 106 of the Code of Criminal Procedure, the Algerian legislator has surrounded the procedure of postponing the criminal prosecution of the legal person with a set of conditions aimed at ensuring the seriousness of this procedure and its optimal use, which can be summarized as follows:

**First: The legal person must be subject to private law**

With reference to the provisions of Article 105 of the Code of Criminal Procedure 15-14, the measure of deferring criminal prosecution concerns the private legal person subject to private law who has committed or participated in one of the offences listed in Article 106 of this law. Accordingly, all private legal persons, whatever their purpose, are subject to criminal liability, whether their activity is voluntary or profit-seeking, and whether it is political or professional. Consequently, commercial companies with an economic purpose are held liable, whether they belong to the public sector, such as public economic enterprises of an industrial and commercial nature, or to the private sector.[2]

In other words, the entity must be either a private company or a public economic enterprise (EPE), since the latter is subject to commercial law pursuant to Ordinance 01-04, and on this basis it is covered by the deferred prosecution agreement.[3]

**Second : The existence of strong elements that suggest conviction**

The Algerian legislator has required, in order for the public prosecutor's office to propose a deferred prosecution agreement to the legal person, that during the preliminary investigation it must gather sufficient evidence, elements and proof that would justify convicting the legal person if prosecuted. The mere presence of suspicion or trivial, insignificant evidence does not meet the requirement; rather, the case file must contain serious acts punishable by law.

**Third: The procedure must achieve the desired result of the follow-up**

In this case, the Public Prosecutor weighs between two options: trial or agreement, and between financial recovery and deterrence, bearing in mind that the Public Prosecution must be knowledgeable and fully aware of the economic and financial aspects in order to activate the economic dimension established by the procedural legislator.[4]

The option of deferral is capable of achieving the sought-after objective of the trial, namely the recovery of the rights of the Treasury and the affected parties, and mending the rift caused by the crime, in addition to saving the time that judicial investigation would have required. The

[1]_Saidi Abdel Rahman, Agreement to Postpone the Criminal Prosecution of the Legal Person in Algerian Code of Criminal Procedure, Global Policy Review, Mohamed Bougherra Boumerdes University, Vol. 10, No. 1, 2026, p. 1101.

[2]_Abdel Rahman Khalf, General Criminal Law (Comparative Study), 4th edition, Balqis Publishing House, Algeria, 2019, p. 362.

[3]_Ordinance 01-04 of 20 August 2001 on the Organization, Management and Privatization of Public Economic Institutions in Algeria, Official Gazette No. 47 of 22 August 2001.

[4]_Saidi Abdel Rahman, Op.Cit, p. 1105.



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determination of the usefulness of the procedure, however, depends on the exercise by the Public Prosecution of the expediency power granted to it by law.[1]

**Fourth: The case file must be at the stage of preliminary investigation**

This refers to the stage of gathering evidence or conducting inquiry and investigation carried out by the judicial police, meaning that the agreement is concluded "before initiating public proceedings," as explicitly stated in Article 105 of the Code of Criminal Procedure, where the Public Prosecutor exercises his discretional power. As for the cases that have already been disposed of by the latter, the application of this procedure is prohibited with respect to them, which strengthens this procedural restriction and confirms its preventive nature as a preemptive alternative to prosecution.[2]

**Fifth: Possibility of assessing damages**

Before proposing the measure of postponing criminal proceedings, the Public Prosecutor must make sure that it is possible to assess the damages caused by the offense to the public treasury and public institutions. This condition is one of the most important, due to the difficulty of determining these damages, especially since further damages may appear after the agreement is concluded. This is addressed by the legislator in Article 110 of the Code of Criminal Procedure, which does not make the extinction of the public action a reason preventing the parties harmed by the offense subject to deferred prosecution from enforcing their rights before the civil courts.[3]

**Section Three: Offenses covered by the agreement**

The agreement to defer criminal proceedings against a legal person covers all financial and economic offenses, including tax offenses, customs offenses, and all corruption offenses, with the exception of bribery, as listed in Article 106 of the Code of Criminal Procedure. These are offenses that do not affect public order or public security, and the legislator has also excluded offenses of a moral nature from the scope of settlement.

- The offense of embezzlement of public funds as provided for in Article 119 bis of the Penal Code.[4]
- Offenses of obstructing investment as provided for in Articles 418 and 419 of the Penal Code.[5]
- All corruption offenses provided for in the law on the prevention and fight against corruption, with the exception of bribery offenses.[6]

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[1]_Abdelali Hafdallah, Characterization of the Charge as an Effect of the Principle of Expediency in Initiating Public Prosecution, Journal of Law and Local Development, Ahmed Draia University – Adrar, Vol. 3, No. 2, 2021, p. 54.

[2]_ The legislator has made this procedure take place at the stage preceding the initiation of public prosecution—just like criminal mediation—and it would have been preferable if it were also left available during the investigation and trial stages, especially if new facts emerge that make the agreement useful and effective.

[3]_Yahla Rabah, Postponement of Criminal Prosecution under Code of Criminal Procedure 25-14, Journal of Research in Law and Political Science, Tiaret University, Vol. 12, No. 1, 2026, p. 183.

[4]_Law 24-06 of 28/04/2024 on the Penal Code, Official Gazette No. 30 of 30/04/2024, amending and supplementing Ordinance 66-156 of 08/06/1966, Official Gazette No. 49 of 11/06/1966.

[5]_Law 24-06, previously mentioned.

[6]_Law 06-01 of 20/02/2006 on the Prevention and Fight against Corruption, Official Gazette No. 14 of 08/03/2006, amended and supplemented by Ordinance 11-15 of 2/08/2011, Official Gazette No. 44 of 10/08/2011.



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- Foreign exchange offenses provided for in the law on the repression of violations of foreign exchange regulations and the movement of capital to and from abroad.[1]
- Smuggling offenses.[2]
- Offenses related to invoicing.[3]
- Offenses related to the monetary and banking law.[4]
- Offenses related to the stock exchange of transferable securities.[5]
- Offenses related to the customs law.[6]
- Misdemeanors related to tax evasion and fraud provided for in tax and financial legislation.

**Second requirement : Concluding a Deferred Criminal Prosecution Agreement**

The legislator structured the steps for concluding an agreement related to the deferral of criminal prosecution in a way that secures the benefit of the legal person on the one hand, and on the other hand crowns the speedy resolution of the dispute in acknowledgment of the public interest, by defining the procedural stages for concluding the agreement, setting out the obligations imposed on the legal person, and, in return, clarifying the consequences incurred as a sanction for violating the provisions of the agreement.

**Section One: Procedures for Concluding a Deferred Criminal Prosecution Agreement**

What is meant by this is the practical legal stages that are implemented to conclude the agreement.

**First : Proposal of the draft agreement**

This stage is based on the submission of an offer by the Public Prosecutor to conclude an agreement with the legal entity, as he holds a legal discretionary power either to initiate the public action or to close the file,[7] when the legal person is suspected of committing one of the crimes listed in Article 106 of the Code of Criminal Procedure, through investigation and inquiry reports and the collection of evidence. If it becomes clear to the Public Prosecutor that there are burdens (charges) against the legal entity that make its conviction likely upon prosecution, in this case the legal representative of the legal person is summoned, provided that he has no connection with the commission of the crime attributed to the legal person, whether

[1]_ Ordinance 96-22 of 09/07/1996, relating to the repression of violations of the legislation and regulations concerning foreign exchange and the movement of capital to and from abroad, O.G. No. 43 of 10/07/1996, as amended and supplemented by Ordinance 10-03 of 26/08/2010, O.G. No. 50 of 01/09/2010.

[2]_Ordinance 05-06 of 23/08/2005, relating to the fight against smuggling, O.G. No. 59 of 28/08/2005, as amended and supplemented by Ordinance 06-09 of 15/07/2006, O.G. No. 47 of 19/07/2006.

[3]_Law 04-02 of 27/06/2004, laying down the rules applicable to commercial practices, O.G. No. 41 of 27/06/2004, as amended and supplemented by Law 10-06 of 15/08/2010, O.G. No. 46 of 18/08/2010.

[4]_ Law 23-09 of 21/06/2023, containing the Monetary and Banking Law, O.G. No. 43 of 27/06/2023.

[5]_ Legislative Decree 93-10 of 23/05/1993, relating to the stock exchange for securities, O.G. No. 34 of 23/05/1993, as amended and supplemented by Law 03-04 of 17/02/2003, O.G. No. 11 of 19/02/2003.

[6]_ Law 79-07 of 21/07/1979, containing the Customs Law, O.G. No. 30 of 24/07/1979, as amended and supplemented by Law 17-04 of 16/02/2017, O.G. No. 11 of 19/02/2017.

[7]_Ali chamlal, The New Explanation of the Code of Criminal Procedure – Book One: Investigation and Prosecution –, Dar Houma, Algiers, 2017, pp. 97, 98.



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as a principal perpetrator, accomplice, or instigator, and he is offered the conclusion of a deferred criminal prosecution agreement.[1]

**Second: Preparation of the draft agreement**

During this stage, the Public Prosecutor takes the initiative to notify the State Litigation Officer, as the representative of the State, and if there are victims, he also informs them that he intends to conclude an agreement with the legal entity so that the damage suffered by them and the amount or value of the compensation claimed by them can be determined.[2]

In any case, he then summons the representative of the legal entity to inform him that he intends to conclude an agreement with him, and he informs him of the conditions mentioned above, provided that the draft agreement necessarily includes the following:[3]

- The identity of the legal representative of the legal entity who signed the agreement.
- A detailed presentation of the facts and the time and date of their commission, together with their legal characterization.
- A presentation of the measures taken under judicial supervision.
- A statement of the efforts made by the legal entity to put an end to the crime or to uncover its perpetrator and the measures taken against him.
- Determination of the amount of the fine owed to the Public Treasury and the methods and time limits for its payment.
- In addition, specification of the compensation to be paid to the injured public party and the methods and time limits for its payment.
- The expenses related to the implementation of the agreement.

The legislator has granted the legal person several guarantees, foremost among them the right to choose a lawyer or expert to examine the draft agreement.[4] The Public Prosecutor also informs it that it has a period of one month to respond to the proposal he has submitted, whether by acceptance or rejection. As for the Treasury's Judicial Agent and the victim, they are informed so that the nature of the damage can be determined. If the legal person accepts, the Public Prosecutor then provides it with a proposal or draft agreement that includes the amount of the fine, which may not exceed 30% of the average turnover for the last three years, with the possibility of extending the payment period up to four years. The problem lies in how the Public Prosecutor is to determine this amount; in reality, he needs experts. In the event that the representative of the legal person refuses, the Public Prosecutor has no choice but to resort to the usual classical means of criminal prosecution.

**Section Two: Obligations Imposed on the Legal Person**

The duties imposed on the legal person are set out and included in the content of the agreement. In sum, the provisions of the Code of Criminal Procedure state that the postponement of criminal proceedings is not valid and does not produce its legal effects unless the legal person is subjected to a set of obligations, some financial and others corrective.

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[1]_Atoui Hanan, "Postponement of Criminal Prosecution of Legal Persons under the Provisions of Law No. 25-14," Journal of Law and Political Science, Naama University Center, Vol. 12, No. 1, 2026, p. 220.

[2]_Article 108, paragraph 2 of the Code of Criminal Procedure.

[3]_ Article 108, paragraph 4, C.C.P

[4]_ Article 108, paragraph 3, C.C.P.



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**First: Obligations as an Alternative to Punishment**

- Payment of a financial fine to the Public Treasury, the value of which may not exceed 30% of the average annual turnover for the last three (3) years. In calculating the amount of the fine, particular consideration is given to the damage suffered by the Public Treasury, the undue benefits obtained from the crime, or the turnover resulting from the contract or transaction related to the criminalized acts.
- Payment of compensation to the injured public party if it is concerned by the agreement (in cases of crimes related to fraud and tax evasion).[1]

It is possible to pay the amount of the fine and/or compensation according to a schedule determined by the Public Prosecutor, taking into account the amount of the fine or compensation and the financial situation of the legal person, which in all cases cannot exceed four (4) years.

The legal person shall bear the costs arising from the mission entrusted to the expert or experts or the body referred to in this article.

**Second: Obligations related to the reform program**

When establishing the procedure of postponing criminal prosecution of the legal person, the Algerian legislator attempted to set out a preventive and reformist policy based on prevention and guidance instead of punishment. This is limited, according to what is stated in Article 107 paragraph 4, to submitting to an internal reform program to support integrity and prevent crimes committed by the legal person as provided in Article 106, prepared by an expert or a qualified body, such as: reorganizing internal control mechanisms, establishing measures to prevent the recurrence of acts,[2] or any other obligation that the Public Prosecutor deems appropriate, noting that the legislator's use of this latter phrase is broad, which gives wide scope for its use by Public Prosecutors in an arbitrary manner when choosing and adding obligations.

**Section Three: Effects Arising from the Agreement**

The Algerian legislator has clarified the effects resulting from the implementation of the deferred prosecution agreement within its procedural criminal legislation, from which two issues can be inferred.

**First : The issue of implementing the obligations set out in the agreement**

- The deferred prosecution agreement is considered an enforceable instrument bearing the enforcement formula, and it enjoys the same authority as a judicial ruling in accordance with Articles 600 to 604 of the Code of Civil and Administrative Procedure.[3]
- The running of the limitation periods for the public action is suspended during the application of the deferred prosecution agreement.[4]

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[1]_Yougrta Moussaoui, "The Agreement to Postpone Criminal Prosecution: In Search of the Effectiveness of the Economic Public Order," Academic Journal of Legal Research, University of Béjaïa, Vol. 17, No. 1, 2026, pp. 127, 128.

[2]_Saidi Abdelrahman, previously cited reference, p. 1108.

[3]_Law 08-09 of 25/02/2008, containing the Code of Civil and Administrative Procedure, Official Journal No. 21 of 23/04/2008, as amended and supplemented by Law 22-13 of 12 July 2022, Official Journal No. 48 of 17/07/2022.

[4]_Article 110, paragraph 1, C.C.P.



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- The public action is terminated if the legal entity complies with the obligations imposed on it under the substance of the agreement, and in that case the Public Prosecutor informs the concerned legal entity and all other parties of this.[1]
- The extinction of the public action leaves intact the civil action seeking compensation before the civil courts, brought by the victims of the crime.[2]

**Second: The issue of the legal person's failure to fulfill its obligations**

In the event that the legal person completely or partially disclaims the performance of its duties, this results in the following:

- The Public Prosecutor shall notify its legal representative of the suspension of the implementation of the deferred criminal prosecution agreement, which takes effect immediately from the date of notification.[3]
- The Public Prosecution regains its right to initiate public proceedings according to the usual classical methods. On this basis, it is prohibited to use the substance of the statements made by its legal representative against it before the investigating or trial authority, unless the Public Prosecution was already aware of them in advance.[4]
- The trial authority must take into consideration, in its judgment, the partial obligations fulfilled by the legal person during the period prior to the suspension of the application of the agreement.[5]

**Second Topic: Provisions restricting the Public Prosecution's right to initiate public proceedings in economic crimes**

One of the characteristics of the Public Prosecution is its freedom to initiate public proceedings; however, this exclusive right is not absolute. The Algerian legislator, under Code of Criminal Procedure No. 25-14, has restricted it in the field of economic and financial crimes with limited exceptions, aiming thereby to preserve economic stability and the continuity of public institutions, which in all cases must be kept away from the acts of mismanagement committed by their managers.

**First requirement: prior complaint**

It was introduced into Algerian law for the first time in 2001. Since the date of its insertion into the Code of Criminal Procedure (after having previously been provided for in the Penal Code), it has been the subject of debate between supporters and opponents. This debate was reflected in the legislator's hesitation: twice it was inserted into the law and twice withdrawn. It was included in 2001 and then removed in 2015; it was reintroduced in 2019 and withdrawn again in 2021, before finally being brought back in 2025.

**First subsection: acts subject to the prior complaint**

These are defined in Article 8 of the Code of Criminal Procedure, and concern management acts that result in theft, embezzlement, misappropriation, damage, or loss of funds.

[1]_Article 110, paragraph 1, C.C.P.
[2]_Article 110, paragraph 4 of the Code of Criminal Procedure.
[3]_Article 112, paragraphs 1 and 2 of the Code of Criminal Procedure.
[4]_Article 113, paragraph 2 of the Code of Criminal Procedure.
[5]_Article 113, paragraph 3 of the Code of Criminal Procedure.



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The expression "management acts" (Acte de gestion) refers us to economic law. Moreover, the legislator intends both intentional and unintentional acts committed by the manager, for which a complaint must be filed before any prosecution can be brought. I consider this to be abnormal in cases of embezzlement and theft, where there should be no prior complaint, but rather immediate prosecution.[1]

As for the prior complaint, it is justified in cases of dissipation (la dissipation), because the term "dissipation" is elastic. We have seen many prosecutions brought on the basis of dissipation, which is a point of contention between the manager's understanding of the term and that of the preliminary investigation. Sometimes a manager is prosecuted for dissipation and the courts summon the CEO or the person in charge in order for them to join the proceedings as a civil party, only for them to argue that there was no dissipation and that the institution suffered no damage. Thus, the prior complaint is justified because it truly concerns a disputed matter. The same applies to management acts that lead to the loss or damage of funds: sometimes a person may be prosecuted on the basis that they caused a loss of funds, whereas in reality they argue that they actually preserved the funds.[2]

Add to this that the legislator did not include, within Article 8 of the Code of Criminal Procedure, all the acts set out in the Anti-Corruption Law that require a complaint, such as: the unlawful use of property, and unlawful detention.[3] This means that if the act is classified in the manner mentioned above at the level of the police and the prosecution, it does not require a prior complaint. And we know that misappropriation is ultimately the unlawful use of property, which means that the prosecution, in order to avoid the requirement of a prior complaint, can classify the act not on the basis of misappropriation but on the basis of unlawful use of property. As for unintentional acts, is what is provided for in Article 119 bis of the Penal Code, namely negligence in management, ultimately also subject to a prior complaint or not? Here we answer in the affirmative, even though Article 8 of the Code of Criminal Procedure did not mention it and did not refer us to Article 119 bis of the Penal Code. However, by referring to the latter, we find that it states the same as Article 8 of the Code of Criminal Procedure, therefore what is provided for in Article 119 bis of the Penal Code is also subject to a prior complaint.

**Section Two: Institutions concerned with the prior complaint**

The Algerian legislator spoke of public economic enterprises, and the main problem lies in the lack of precision in the terminology in the Arabic version of the text, especially when translated. Algerian law used the expression "public enterprise" to refer to: the public economic enterprise, the public enterprise of an industrial and commercial nature (EPIC), and the national enterprise. Which of these is meant?

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[1] _Law 01-09, dated 26 June 2001, relating to the Penal Code, Official Gazette No. 34, dated 27 June 2001, amending and supplementing Ordinance 66-156 dated 08 June 1966, Official Gazette No. 49, dated 11 June 1966. Article 119 thereof.

[2] _Abdelrahmane Khalfi, Criminal Procedure in Algerian and Comparative Legislation, 2nd edition, Dar Balqis, Algeria, 2016, p. 189.

[3] _In one judicial practice, the director of a public institution for poultry farming faced a pandemic, so the director was forced to sell at half price, otherwise the poultry would be lost and perish. He was prosecuted for embezzlement on the grounds that, by his conduct, public funds were lost, whereas in reality he preserved them. This is where we truly need a prior opinion or complaint in cases of embezzlement.



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And in answering this question, the legislator means by the phrase "public institution" only the public economic enterprise (Entreprise publique économique), which is subject to commercial law and generally takes the form of either a joint stock company SPA (Société par actions) or a limited liability company SARL (Société à responsabilité limitée).[1] As for public institutions of an industrial and commercial nature, they are not concerned by the prior complaint, such as: Algérie Poste, unlike Sonatrach, Sonelgaz, banks, and insurance companies.[2]

**Section Three: Persons concerned with the prior complaint**

The Algerian legislator used in the Arabic text the term "manager", and by referring to the use of terminology in Algerian codification, we find that the term "manager" is used to refer to:
(le gestionnaire, le gérant du SARL, le dirigeant d'entreprise)

In reality, the legislator means by "manager" (gestionnaire) because it has a broader scope than the other mentioned terms. In this context, we find there are two types of managers:

- The legal managers (gestionnaires légaux) provided for in the Commercial Code: if the company is a joint-stock company (SPA), the manager here is the CEO, the members of the Board of Directors; and if the company is a limited liability company (SARL), the manager here is the gérant.[3]

The prior complaint, according to the types of managers, is not limited only to the CEO and the members of the Board of Directors, but also extends to other persons, namely:

- The operational managers (gestionnaires opérationnels), who are the central director at the company level, the regional directors, the unit directors (such as: a factory director, the director of a particular bank branch...), the head of department... all of them are considered managers and are likewise concerned by the prior complaint.

**Section Four: The corporate bodies authorized to file the complaint**

Article 8 of the Code of Criminal Procedure indicates in its substance that the complaint must be submitted by the members of the corporate bodies, and through examining and analyzing its content, it appears that the correct and more precise term which the Algerian legislator should have used in this context is "company organs" (les organes sociaux).[4]

Social bodies vary according to the form of the company. If the company is a joint-stock company (Société par actions), its bodies are: the Chairman of the Board of Directors, the Board of Directors, and the Shareholders' General Assembly.

The Board of Directors serves as the link between the company's owners and shareholders on the one hand, and the managers and executive management on the other. Among its most important powers are establishing the company's general principles and its medium- and long-

[1] _Article 29 of Law 06-01 relating to the prevention and fight against corruption, as amended by Ordinance 11-15.

[2] _Drameshia Lamia, The Public Economic Institution in Algeria – A Foundational Study –, Al-Hiwar Al-Thaqafi Journal, University of Ibn Badis Mostaganem, Vol. 5, No. 2, 2016, pp. 2–3.

[3] _Mohamed Bakararshoush, Commentary on the text of Article 6 bis of the Code of Criminal Procedure, Dafatir Al-Siyasa wa Al-Qanun Journal, University of Ouargla, Vol. 12, No. 1, 2020, p. 371.

[4] _Bouamar Sabrina, The Manager in Commercial Companies, Al-Ustadh Al-Bahith Journal for Legal and Political Studies, University of M'sila, Vol. 7, No. 2, December 2022, pp. 216–217.



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term strategic plans. It is also among the duties of the board members to approve the company's crucial decisions.[1]

This structure, the "Board of Directors," is provided for in Article 610[2], paragraph 1 of the Commercial Code, and Article 622 of the Commercial Code highlights the importance of this structure.[3]

However, if the company is a limited liability company (SARL), its bodies are: the manager (le gérant) and the Partners' Assembly.

Example: The director of the Mila branch (BNA Bank) embezzles or misappropriates funds, such as by granting loans without guarantees... The judicial police begin their investigations and conclude that a crime has been committed. However, the Public Prosecutor cannot initiate criminal proceedings without a complaint filed by the bank's Chairman and CEO, or by the Board of Directors (which he himself chairs).

In reality, the problem arises with regard to joint-stock companies, since the Shareholders' Assembly is chaired by the Prime Minister, and thus a complaint must be filed by the latter. Here, the matter becomes somewhat complicated.

But if no complaint is filed – and this is the crux of the matter – the purpose or motive of the prior complaint is that it was introduced within the framework of decriminalizing management acts, and this is the purpose officially announced by the Algerian legislator. Referring to the second paragraph of Article 8 of the Code of Criminal Procedure, which in substance provides that members of social bodies who become aware of the commission of an offense and do not report it are criminally liable for failing to report the offense.

Will the Public Prosecutor then prosecute the Chairman and CEO on the basis of failing to report the offense? By analyzing the legal provisions, I believe that if the legislator genuinely intended to decriminalize management acts, there would be no prosecution on the basis that we have decriminalized management acts and left them dependent on a complaint from the social bodies. Assuming that the latter argue that no offense exists, then in principle the Public Prosecutor should not prosecute, and the judiciary remains required to answer the question raised.

The prior complaint is a safeguard for everyone. Sometimes certain cases are technical, and the members of the social bodies are more familiar with management issues, given that they conduct an internal administrative investigation before the Chairman and CEO takes action. If it is concluded that the act carried out by the manager did not in fact harm the company but rather benefited it, then in this case no complaint will be filed and the report will be closed.

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[1]_This is with the aim of unifying legal terminology and avoiding contradictions between two laws, given that the legislator used the term "company organs" to express (organes sociaux) in the text of Article 51 bis of the Penal Code regarding the criminal liability of the legal person.

[2]_ Loukal Mariam, "Analysis of the complaint of social bodies as a precondition for initiating public proceedings against managers of public economic companies," Journal of Law and Political Science, Abbas Laghrour University – Khenchela, Issue 12, June 2019, p. 117.

[3]_Ordinance 75-59 of 26 September 1975, containing the amended and supplemented Commercial Code, Official Gazette No. 101 of 19/12/1975, Article 610/1 of which provides: "The joint-stock company is managed by a board of directors consisting of at least three members and at most twelve members."



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However, if it becomes a matter of accountability, in this case the principle of decriminalizing management acts is rendered absent.

**Second requirement: Seeking the opinion of the supervisory authority / National Committee for Public Procurement**

The Algerian legislator stipulated in Article 56 of the Code of Criminal Procedure, regarding public procurement offences, that the Public Prosecutor may seek the opinion of the National Council for Public Procurement before initiating proceedings. The latter has a period of one month to respond and state its opinion, which is then attached to the case file, but in reality, this opinion is not binding on the Public Prosecutor.

Moreover, embezzlement and theft do not require a prior complaint; rather, their perpetrator is supposed to be prosecuted directly without any prior complaint.

Accordingly, we conclude that public procurement offences raise problems both for investigators (the judicial police) and even for the judiciary, the reason being, as we have noted, their connection with technical matters and the need for expert opinion. This supports and strengthens our assertion and view that the natural and proper place for public procurement offences is among offences requiring a prior complaint.

By referring to Law 01-09 relating to the Penal Code, when the prior complaint requirement was first introduced, public procurement offences were among the offences that required such a prior complaint. Consequently, we do not understand why the Algerian legislator retreated from this and replaced the prior complaint with the procedure of seeking the opinion of the supervisory authority when it comes to public procurement offences.

**Section one: The authority to be notified**

The opinion is to be sought, mandatorily or optionally depending on the assessment of the Public Prosecution, through the Public Prosecutor at the Court of Appeal, while the decision to initiate public proceedings remains exclusively subject to the authority and discretion of the Public Prosecution.

**Section two: Procedural time limits**

The National Council for Public Procurement must respond and give its opinion within thirty (30) days from the date of its notification, and the opinion issued must be obligatorily attached to the case file.[1]

- For the valid initiation of public proceedings in this respect, it is required that the report or complaint be of known origin.[2]

**Conclusion:**

- Based on the ideas presented, we conclude that the Algerian legislator has adopted, in the field of economic crimes, a dual approach that, on the one hand, strengthens the role of the public prosecutor through newly created mechanisms such as the agreement to defer prosecution of the legal person, which allows for the recovery of funds, compensation of affected parties, and implementation of corrective programs before initiating public proceedings.
- On the other hand, the legislator has subjected this role to procedural constraints such as the prior complaint and seeking the opinion of the supervisory authority in some crimes, which

[1]_Article 56, paragraph 1 of the Code of Criminal Procedure.

[2]_ Article 56, paragraph 2 of the Code of Criminal Procedure.



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reveals its concern for taking into account the specific nature of the economic aspect and its technical character.

- Acts of embezzlement and theft do not require a prior complaint; in fact, the perpetrator is supposed to be prosecuted directly without a prior complaint.
- The effectiveness of the procedural policy adopted by the Algerian legislator in this context remains dependent on the proper use by the public prosecutor of the powers granted to them, and on the revision of certain restrictions that may strip prosecution of its effectiveness, especially in clear crimes such as acts of embezzlement and theft, which we have concluded do not require a prior complaint.
- The system of deferred criminal prosecution seeks to reduce the burden on the courts, decrease the number of cases brought before them, and speed up the adjudication of criminal files. It also aims to prevent all harm arising from the dissolution of the legal person, and it also contributes to reducing the costs related to criminal prosecution procedures.

And as with any academic study, it is necessary to point out some proposals that must be taken into consideration, especially regarding legislative shortcomings:

- Restoring the standing of the Public Prosecutor by granting them a strong legal status that corresponds to the extensive powers granted to them by the Algerian legislator under Code of Criminal Procedure 25-14.
- Strengthening safeguards that prevent abuse by the public prosecutor's office and take into account the specific nature of economic management, in a way that ensures effective protection of public funds.
- Focusing the liability of managers in public economic institutions within the scope of civil liability for management acts arising from negligence.
- The procedures related to agreements on postponing criminal prosecution should be reformed by subjecting them to the supervision of the trial judge, to ensure the appropriateness of the measure in light of the seriousness of the facts and the proper assessment of the compensatory fine, since the judge's oversight and approval of this guarantees the fundamental rights of the legal person to have recourse to the courts and confers transparency and credibility on the agreement.
- Any agreement to postpone judicial prosecution of a legal person must be made public, in order to allow for popular oversight over it and to achieve the deterrent function of the agreement, by informing other stakeholders of the terms of the agreement and of the other acts that were sanctioned under it.
- The success of this system requires concerted efforts and respect for the safeguards afforded to all parties, whether the victim or the legal person, and it is necessary to ensure that this measure does not become a means of escaping punishment. This can only be achieved through continuous training of members of the public prosecutor's office and by promoting a culture of consensual restorative justice.
- It would be preferable for the legislator to include public procurement crimes within the procedure of a prior complaint, because these too are technical matters and genuinely require a prior complaint.

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