

## The Constitutional Principles of Economic Governance Policy in Algeria: In light of the 2020 Amendment

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### Abstract

In the context of ongoing efforts to confront the crises afflicting the Algerian national economy, the public authorities have, in successive stages, embarked on economic reform processes aimed at addressing the various imbalances that have emerged at the implementation level. However, as many experts have confirmed, these reforms have not borne fruit. This has made it necessary to engage in serious reflection on formulating and adopting an economic policy characterised by the rational and judicious utilisation of all the economic resources with which the country is endowed and by the valorisation of all national competences without excluding any of them to drive economic growth in a balanced manner throughout the national territory. Since the design and implementation of this policy for the governance of the national economy fall within the remit of the public authorities of the State, it must comply with the provisions of the Constitution, particularly in light of its most recent amendment in 2020, the principles governing the management and regulation of economic affairs.

**Keywords:** Constitutional principles; economic governance; freedom of competition; equality; integrity.

### Introduction:

Although all the resources that would have enabled Algeria to achieve an economic advantage similar to that realised by certain East Asian countries, the four Asian Tigers—South Korea, Singapore, Hong Kong, and Taiwan—in the 1960s and 1970s, reality has shown that the national economy has remained stagnant because it has continued to hold hostage to the hydrocarbon sector,

whose prices have persistently experienced sharp declines in the world market, resulting in severe financial crises that have had highly adverse effects on both society and the state.

To revive the national economy, the authorities in Algeria have made several attempts to remedy the various problems and imbalances from which it (that is, the national economy) was suffering; however, most of these reforms, for different reasons, failed, to the point that new reforms were introduced to correct the earlier reforms, that is, reforming the reforms!

Faced with this situation, and in light of the global trend towards adopting and implementing economic governance, Algeria no longer has any option but to work on governing its economy to overcome the problems and crises it faces and to enable it to achieve growth rates that would make it a strong, competitive economy capable of ensuring sustainable development in the country.

Moreover, because economic governance is closely linked to the economic rights and freedoms guaranteed by the Constitution, it cannot be carried out in isolation from the principles it embodies, which must be observed and respected to ensure a balance between the interests of all actors in the economic sphere, economic operators, social partners, consumers on the one hand, and, on the other hand, the interest of the state in economic development and market equilibrium in a manner that guarantees the protection of economic public order therein.

Since compliance with these constitutional principles is a matter of utmost importance in every respect, particularly from the legal and economic standpoints, we have deemed it appropriate to address them in this research, within the framework of examining a *problématique* centred on the following question: What are the constitutional principles in light of the 2020 amendment that the competent authorities in Algeria must observe when formulating and implementing their policy for the governance of the national economy?

By examining the rules and provisions contained in the 1996 Constitution, in light of its latest amendment of 2020, it may be said that although the Algerian constitutional framer has not stated this explicitly, he has subjected the policy of economic governance to several constitutional principles within whose framework it must be carried out, on the basis of the pain of unconstitutionality. These principles may be reduced to three main principles, namely, the principle of freedom of competition, the principle of equality, and the principle of integrity. These are the principles that we attempt to address successively in the following three sections.

## **First Axis: The Principle of Freedom of Economic Competition: Economic Pluralism**

After years of strict adherence to socialism<sup>1</sup> as a method for managing economic affairs and following the severe financial crisis that Algeria experienced due to the sharp decline in public treasury revenues resulting from the sharp fall in oil prices in the late 1980s, the constitutional framer had no option but abandoned socialism and instead shifted to a market economy policy based on economic openness and freedom of competition, a policy that the International Monetary Fund played a significant role in Algeria's adoption of through the pressures it exerted on the authorities to grant them loans to cover some of the state's financial needs.

At present, the principle of economic competition is grounded in the first paragraph of Article 61 of the 1996 Constitution, which affirms the freedom of investment and trade.<sup>2</sup>

Freedom of economic competition is defined as "working in a market in which there are multiple economic operators engaged in the same activity and in which they continue in this competition without constraints."<sup>3</sup> Moreover, it has also been defined as "the struggle between enterprises in the same market in order to win the largest possible number of clients and to maximise their profits and their presence in the market."<sup>4</sup> Moreover, it is further defined as "the freedom to enter the market and to engage in the desired economic activity without any obstacles or restrictions, to achieve economic efficiency and improve consumers' standard of living."<sup>5</sup>

Moreover, because the present context does not allow for a detailed examination of all that relates to the principle of freedom of economic competition, we will confine ourselves in this first axis to addressing, first, the elements that must be present to be able to speak of the existence of competitive freedom and, second, the guarantees of enjoyment of the freedom of economic competition.

### **First: Elements of Freedom of Economic Competition**

Free competition, in its existence and operation, relies on a set of rights and freedoms that constitute a solid foundation for it; it is not possible to speak of freedom of competition in their absence because they are what gives this freedom its substance and allows its holders actually to enjoy it, not merely as a slogan.

These rights and freedoms on which freedom of competition is based may be summarised as follows:

1. **The right to enter the market (competition) and to exit it:** This right finds its basis in the Algerian Constitution of 1996 through the first paragraph of article 61, which enshrines and recognises all the freedom of investment and trade, thereby allowing for a plurality of economic operators in the same activity or in related activities, such that the market is not reserved to a single operator or to a group that controls it. At the same time, no economic operator should be compelled to remain in competition because he is exercising freedom, whether in investment or in trade, and not fulfilling an obligation; just as he has the right to voluntarily decide to enter the market of competition, he likewise has the right to exit it whenever he wishes, all of this, of course, within the framework of the law.
2. **The right to enjoy competitive capacities:** Since the Algerian Constitution, like other comparative constitutions, as a rule recognises the freedom of every person lawfully to contract and to consume, this has opened the door for economic operators to compete to gain the satisfaction and confidence of the most significant possible number of consumers and thus not only to guarantee their continued presence in the market (competition) but also to maximise their profits by securing the largest possible share of the market. As is well known, preventing economic operators from enjoying competitive capacity in the market is not only in the interest of the more competitive but also in the interest of consumers because it increases their opportunities to compare goods and services and then choose the best quality and price. With respect to how not to obstruct economic operators in their pursuit of enhancing their competitive capacities and thus their ability to assert their presence and remain in the market, this consists of removing all legal and bureaucratic obstacles that limit the ability of enterprises to develop their productive capacities, which is beneficial for them and for the national economy as a whole. This right, i.e., the right to the existence of a competitive environment, was not constitutionally stipulated in Algeria until recently and was by virtue of the march 2016 amendment, pursuant to which the second paragraph of article 43 of the 1996 Constitution came to affirm the necessity of the state's working to improve the business climate in Algeria, as the Algerian constitutional framer affirmed, in the context of national economic development.
3. **The right to the existence of markets is open to competition:** It is not sufficient for an economic operator to enter the field of competition in the production of a particular good or service and to have the capacity to assert himself as a strong competitor in order actually to enjoy the freedom of competition, if he is unable to make himself and his product known among the mass of consumers, or if he is unable to market his products and move them to

where demand for them is possible and available. For example, in the field of public procurement contracts,<sup>6</sup> the contract must be advertised in a manner that allows the most significant possible number of operators to enter and compete to submit the best offer and win the contract. In this regard, the Algerian constitutional framer has always affirmed the necessity of protecting the national economy from any form of capture,<sup>7</sup> that is, from all acts that would place the market at the service (to the benefit) of one or more operators to the exclusion of the others, for this does not only harm operators and consumers but also harms the state, since it will, for example, cause its revenues from direct taxes to decline as a result of the decrease in turnover achieved by those operators.

## **Second: Guarantees of the Enjoyment of Freedom of Economic Competition**

An economic operator, whether national or foreign, will not commit its funds to a given project unless it is certain that there are guarantees on which it may rely in order for its project to enter the field of competition. If such guarantees are absent, there is no doubt that the economic operator will not risk its funds by engaging in a project that cannot compete, as that would mean losing the money invested in it.

Since the essence of free competition is based on the spirit of initiative and on economic operators' willingness to invest and establish numerous projects, the Algerian constitutional framer, by virtue of the 2020 amendment, was clear and firm in this respect because the state must encourage the flourishing of enterprises in the service of national economic development.<sup>8</sup>

To that end, the state has worked to establish rules (guarantees) to protect competition from practices that undermine it. The latter are understood to mean "all that is committed by traders (operators) in their relations; these are practices undertaken by one undertaking in relation to another, the nature of which is either to hinder, or to limit, or to distort the freedom of competition in the market, thereby harming overall economic activity, competitors, and consumers alike. "<sup>9</sup>

In view of the competition law,<sup>10</sup> the Algerian legislature has established protection for the freedom of competition, first, by deterring practices that restrict competition, and second, by providing for the control of concentrations (merger operations).

- 1. Prohibition of practices that restrict competition:** There are many economic practices that operators must avoid because they fall within what is prohibited, in that they infringe on the

principle of the freedom of competition. The following is a brief presentation of the most important of these practices:

2. **Agreements:** These refer to the existence of an explicit or implicit concurrence of will between two or more undertakings that are independent in their decision-making to follow a particular conduct or to achieve a common purpose in the market that is characterised by a restrictive nature for competition.<sup>11</sup> The position of the Algerian legislature regarding such agreements was clear and strict,<sup>12</sup> as it provided for the prohibition of all practices and orchestrated acts and explicit or implicit arrangements and agreements when they are intended or may be intended to hinder, limit, or distort the freedom of competition in the same market or in a substantial part thereof, particularly when they seek to do the following:
  - restrict entry into the market or the exercise of commercial activities therein;
  - reduce or control production, outlets, investment, or technological development;
  - share markets or sources of supply;
  - hinder the setting of prices according to market rules by artificially encouraging their rise or fall;
  - apply unequal conditions for equivalent services to commercial partners, thereby depriving them of the benefits of competition;
  - conclude contracts with partners conditional upon their acceptance of additional services unrelated to the subject matter of those contracts, whether by their nature or according to commercial usage;
  - allow the award of a public contract for the benefit of those engaging in such restrictive practices.
2. **Abuse in the exercise of economic power:** Although the essence of competition lies in the race between economic operators to acquire additional points of strength that allow each operator to be a strong competitor to others, the acquisition of such economic power may lead to attempts to exploit it abusively, either as a result of enjoying a dominant position in the market or of enjoying a situation of economic dependence. Just as the Algerian legislature has prohibited any abuse arising from a dominant position in the market or from a monopoly of it or of a part of it,<sup>13</sup> it has also forbidden any undertaking to abuse the situation of dependence of another undertaking, such as a customer or a supplier, where this undermines the rules of competition, as in the case of, for example:<sup>14</sup>

- refusal to sell without legitimate justification;
- tied or discriminatory selling;
- selling conditional upon the purchase of a minimum quantity;
- obliging resale at a minimum price;
- breaking off commercial relations solely because the operator refuses to submit to unjustified commercial conditions;
- any other act that is likely to reduce or eliminate the benefits of competition within a market.

3. **Abuse in selling or offering to sell at low prices:** It is prohibited under Algerian law to offer or sell to consumers at arbitrarily reduced prices in comparison with production, transformation, and marketing costs, where such offers or practices are intended, or may lead, to the exclusion of an undertaking or to hindering one of its products from entering the market.<sup>15</sup>

**2/Control of concentrations (merger operations):** Some define concentration as<sup>16</sup> "the grouping or bringing together of two or more undertakings within a specific structure, with a view to effecting a permanent change in the structure of the market, with all the undertakings thus grouped losing their independence in order to reinforce the economic power of the whole." The Algerian legislature has not defined it but has instead specified how it arises, namely, where:

1. two or more undertakings that were previously independent merge;
2. one or more natural persons influencing at least one undertaking, or one or more undertakings, acquire control, directly or indirectly, over one or more undertakings or over part thereof, by acquiring shares in the capital, by purchasing elements of the undertaking's assets, by contract, or by any other means;
3. A joint undertaking is created that permanently carries out all the functions of an independent economic undertaking.

Since concentrations and economic merger operations, even when carried out with good intentions,<sup>17</sup> usually constitute an attempt to infringe on the principle of freedom of competition, the Algerian legislature has subjected them to control. This control is not considered a restriction on economic freedom, as might be imagined, because such control constitutes a firm guarantee of the freedom of competition. The Competition Council has considered that the control of concentrations does not constitute an obstacle for undertakings as much as a guarantee for the preservation of the

competitive environment necessary for their competition. Thus, it serves as an effective instrument for creating conditions conducive to economic growth.<sup>18</sup>

## **Second Axis: The Principle of Equality between Economic Operators**

Institutions aim to guarantee equality between all male and female citizens in terms of rights and duties by removing obstacles that hinder the development of the human personality and prevent the effective participation of all in political, economic, social, and cultural life.

By this provision, Article 34 of the 1996 Constitution, the Algerian constitutional framer, has established a general and fundamental objective that all state institutions must observe and from which they may not depart in all fields and sectors, including the economic sector, namely, the guarantee of equality between persons. Owing to its great importance, the constitutional framer returned to it and reaffirmed it by stating:<sup>19</sup> “The state works to improve the business climate and encourages the flourishing of enterprises without discrimination, in the service of national economic development.”

Accordingly, any policy for the governance of the national economy must, constitutionally, be carried out within the framework of the principle of equality between economic operators, whether as the constitutional framer has indicated in the field, first, of enjoyment of rights: equality before public services, or, second, in the field of the assumption of obligations: the principle of equality before taxes.

### **First: Equality between Economic Operators before Public Services**

Unlike administrative police, public services constitute a positive administrative activity undertaken by the public administration to satisfy the needs of the public, economic operators, and others with whom it interacts. The purpose of any public service is to provide and deliver the public services needed by members of society. Since its establishment, the public service's functioning and operation have been financed by public funds, and the basic rule governing the public service is that it should provide services to all on an equal footing and without discrimination on the basis of birth, race, sex, opinion, or any other personal or social condition or circumstance.<sup>20</sup>

The obligation of the public service to provide its services to economic operators who meet the legal conditions and who are in identical legal positions constitutes a right that it must respect and fulfil

within the time limits and in the manner laid down by law, without any discrimination, on the pain of incurring administrative liability for any damage it causes in the event of a breach of this constitutional and legal obligation.

Among the consequences arising from equality between economic operators before public services is the principle of neutrality of the public service (administrative neutrality).<sup>21</sup> This principle means that, in performing its functions and in its management, the public service must take into account the requirements of the public interest, and its manager must not use it to support specific interests at the expense of others.<sup>22</sup>

In this regard, the neutrality of the public service vis-à-vis the beneficiaries of its services, whether economic operators or others, does not bear only the negative meaning, which consists of the requirement that its managers remain at an equal distance to avoid any preferential treatment involving discrimination and thus a breach of the principle of equality but also carries a positive meaning,<sup>23</sup> namely, the obligation on the administration of the competent authorities to act to ascertain whether there is any disparity in the enjoyment of rights between operators without lawful cause or justification and, in such a case, to put an end to this discrimination. The logic of neutrality requires those responsible for exercising the powers conferred on them to ensure that their subordinates do not favour one person and/or group over others, since this would constitute a violation of the principle of equality that must prevail among all those in identical legal positions.

In reality, the obligation of public services to remain neutral in their relations with economic operators arises within a broader context, namely, the transformation of the role of the state from an interventionist state to a regulatory state, that is, its withdrawal from direct intervention in economic life through the pursuit of economic activities, since this has not proven effective owing to the speed and flexibility that characterise the business environment in decision-making, which administrative bureaucracy has been unable to match. Instead, to avoid any breach of the economic public order that it seeks to impose in practice among economic operators, the state has resorted to adopting a new type of administrative body enjoying independence to intervene in the market, but this time to regulate it by virtue of the powers vested in such bodies, especially their regulatory and sanctioning powers. As the state's assumption of the role of regulator in the economic sphere has made it akin to a referee and/or a judge, it requires it to comply with what both must comply with the principle of neutrality.

## **Second: Equality between Economic Operators before Taxes**

Unlike many states whose constitutions do not expressly provide for the principle of equality before the law,<sup>24</sup> successive Algerian constitutions expressly enshrined it and accorded it due attention.<sup>25</sup>

While equality in general is understood to mean the absence of discrimination and the likeness between individuals in rights and duties,<sup>26</sup> the application of this to economic operators subject to tax does not have the same meaning from the legal and financial standpoints. Equality before tax, from the legal standpoint, means nothing other than equality before the tax law and thus has a specific legal meaning, unlike tax justice.<sup>27</sup> Which remains difficult to define.

On this basis, the principle of equality before the law has been defined in law as meaning<sup>28</sup> “that it is impermissible for the tax law to provide for any discrimination between persons in the field of taxation,” and as meaning<sup>29</sup> “that all those who occupy identical legal positions are subject to the same legal treatment without differentiation among them for reasons relating to their persons or their identities,” and as meaning<sup>30</sup> “that the rules of tax law address all individuals without discriminating in favour of any person or entity on the basis of sex, colour, or religion; they are treated in the same legal manner regardless of that.” It has also been said that this principle means<sup>31</sup> “that the tax law may not contain any unjustified discrimination, that is, one based on sex, origin, religion, or race.”

From a financial standpoint, the principle of equality before tax means imposing on each taxpayer (economic operator) a tax burden proportionate to their financial capacity, without requiring all taxpayers to pay a single uniform tax amount.<sup>32</sup> This is what the Supreme Constitutional Court in Egypt has affirmed in many of its decisions, stating.<sup>33</sup> “Whereas it is established in the case law of this Court that the principle of equality before taxes does not mean that taxpayers must be identical in the amount of tax they pay...”.

From the foregoing definitions, it becomes clear that the principle of equality before tax requires the legislature to distribute the tax burden among taxpayers on objective and justified bases,<sup>34</sup> such that not all are subjected to a single tax burden (absolute equality); instead, it must standardise the tax burden only for those taxpayers who are in an identical financial position (equality in treatment) and ensure that those in different financial positions bear a tax burden proportionate to each one's ability to pay (equality in sacrifice).

Notably, absolute equality is considered nonobjective and devoid of justice,<sup>35</sup> as if the legislature were to apply it, it would treat all those within the state as if they were in the same financial position, which is neither logical nor acceptable. Notably, the commitment to achieving equality in sacrifice, which is the most important form of equality,<sup>36</sup> undoubtedly leads to the realisation of three types of tax equality,<sup>37</sup> namely:

1. **Equality by means of the tax law:** This is manifested in the intervention of the legislature, through the rules of tax law, to divide economic operators subject to tax into specific groups and categories.<sup>38</sup> Each party's capacity to participate contributes to the financing of public burdens and expenditures. Accordingly, in this type of equality, it is the law that intervenes to equalise economic operators with identical ability to pay by placing them in a group or category of their own.<sup>39</sup>
2. **Equality within the tax law:** This is achieved when the legislature incorporates into the tax law a specific tax regime for each of the aforementioned groups or categories, such that, in principle, each group or category becomes subject to a single tax regime.<sup>40</sup>
3. **Equality before the tax law:** This means the obligation to apply the tax regime that the legislature has assigned to each group or category to all taxpayers (operators) falling under it without discrimination, which may be based on birth, race, sex, opinion, or any other personal or social condition or circumstance.<sup>41</sup> In other words, all taxpayers (operators) belonging to the same group or category must be subject to identical tax treatment so long as the law itself has not differentiated among them.

Despite the importance of the principle of equality before tax in protecting economic operators who are subject to taxation, both legal doctrine<sup>42</sup> and constitutional case law<sup>43</sup> recognise that it is not an absolute principle that admits no exceptions.<sup>44</sup> These exceptions are reflected in the legislature's ability to standardise treatment across different groups and categories, on the one hand, and to differentiate treatment between individuals within the same group or category, on the other hand. While this is intended to enable the legislature to exercise its discretionary power in shaping the state's tax policy in a manner consistent with the achievement of the public interest or other legitimate interests it seeks to realise, any such tax exception must always be justified and not arbitrary, and its adoption must be based on objective reasons that render it acceptable in both reason and logic.<sup>45</sup>

### **Third Axis: The Principle of Integrity in Economic Transactions**

Governance, when it first emerged in the economic sphere, came to combat corruption to put an end to its mechanisms of spread and its culture, including the values that tolerate it.<sup>46</sup> In this regard, the Algerian constitution<sup>47</sup> The framers were clear and strict regarding state institutions, stressing the need to protect the national economy from any form of manipulation, embezzlement, bribery, unlawful trade, abuse, capture, or unlawful confiscation. He also prohibited state institutions from engaging in feudal, regional, or clientelist practices and from establishing relations of exploitation and dependence.

On this axis, we attempt to address, first, the consequences and effects of the absence of integrity in economic transactions on economic development and, second, the causes that lead to the spread of corruption instead of integrity in economic transactions, with the goal of avoiding or limiting them as much as possible.

### **First, the consequences of the absence of integrity in economic transactions on economic development**

There is no doubt that the absence of integrity in economic transactions clearly and explicitly points to the existence of what is known as economic corruption, since the latter is based on public officials exploiting their positions unlawfully to obtain unjustified benefits, thereby flouting all professional, religious, and moral values, as well as legal obligations.

Instead of integrity, transparency, and objectivity in the management of economic affairs for the purpose of enhancing the efficiency of the economic system and increasing its growth rates, we find that economic corruption legitimises, or seeks to legitimise, behaviours such as those mentioned above, which the Algerian constitutional framer has prohibited, to serve narrow, private interests at the expense of the public interest.

In the context of rampant economic corruption, the economy becomes incapable of development and growth and suffers from numerous crises and problems that limit its effectiveness. Among the problems caused by corruption in all its forms is<sup>48</sup> the problem of the squandering of public funds, which costs the public treasury enormous financial losses in various forms, such as tax and customs evasion; the irrational use of public means and facilities in a manner that harms them; and the smuggling of hard currency.

What is most serious about these behaviours is not only that they prevent national economic development from advancing in stages and leaps but also that they undermine confidence in state institutions by transforming their perception from a means of serving the public interest into a means of serving private interests. To avoid and combat this, the Algerian constitutional framer has stated:<sup>49</sup> "Positions and mandates in state institutions may not be a source of wealth, nor a means of serving private interests. Every person appointed to a high office in the state, elected to a local council, or elected or appointed to a national council or a national body must declare his assets at the beginning and at the end of his term of office..."

Notably, some argue that economic corruption improves welfare and increases economic efficiency, rather than the opposite, because it enables the overcoming of various bureaucratic obstacles. In the same vein, some hold that economic corruption can, in fact, spur economic growth, or at least not hinder it, by facilitating domestic investment, thereby generating high tax revenues. They cite, as evidence, the experience of Southeast Asia, where despite the prevalence of corruption, this did not affect economic growth. Accordingly, the relationship between economic development and the absence of integrity is not inverse.

This view, however, has been countered by the fact that recent cross-sectional studies indicate an inverse relationship between the absence of integrity in economic transactions and the flourishing and growth of economic activity, with adverse effects on economic development. The predominant view is that the relationship between the absence of integrity in economic transactions and increased economic growth is, in principle, an inverse one, but in some cases, it may not be so; that is, integrity in economic transactions may be lacking and/or diminished, and yet, we may nevertheless observe economic progress, as in the case of the Southeast Asian experience.<sup>50</sup>

## **Second: Causes of the Absence of Integrity in Economic Transactions**

Just as economic corruption may arise from<sup>2</sup> members of the bureaucratic apparatus, it may also arise from ordinary individuals, such as tax evaders, customs evaders, and factory owners, who engage in fraud in their production, among others. Economic corruption arises to facilitate acts that may be unlawful or lawful, such as when a bribe is offered, for example, to induce public officials to perform their duties, and it likewise arises, as a rule, to obtain material or moral gains, whether for an individual or for an undertaking.

Since this is not the place to address all the causes that generally lead to economic corruption, that is, to the absence of integrity in economic transactions, we have deemed it sufficient to highlight the main causes leading to the occurrence of one of its most widespread forms (namely, economic corruption) in Algeria, namely, tax evasion, which, owing to its profound effects on the national economy, led the Algerian constitutional framer, by virtue of the 2020 amendment, to provide that it, together with the smuggling of capital, is punishable by law.<sup>51</sup>

The reason for this constitutional provision, newly introduced by the 2020 amendment, is that the Algerian constitutional framer is fully aware that the national economy is adversely affected by tax evasion, which is reflected, for example, in the breach of the rules of fair competition: the person who evades payment of the taxes due will be in a financial position that undoubtedly makes him more capable of competing than the one who does not evade them and pays them. It also hampers economic progress, since taxpayers who are investors and holders of capital do not favour states with numerous and/or high taxes; thus, they work to smuggle that capital to what are known as tax havens.

The following are the leading causes of tax evasion: the tax system, tax administration, and economic conditions.

**1. Causes relating to the tax system: These causes may be summarised as follows:<sup>52</sup>**

- 1. The heaviness of the tax burden:** The multiplicity and number of taxes and the high rates at which they are levied increase their weight upon the taxpayer, which may prompt him to evade them.<sup>53</sup>
- 2. Complexity of the tax system:** Among the principal causes of the problem of tax evasion is the complexity of the tax system to such a degree that the tax administration itself may encounter difficulties in understanding and applying it, which runs counter to the principle of simplicity that ought to characterise the tax system. A tax governed by an overlapping and unclear legislative framework and whose assessment and collection require a lengthy chain of complex and burdensome procedures will undoubtedly constitute a strong incentive for taxpayers to evade payment. As the saying goes,<sup>54</sup> “Evasion is the swift consequence of a bad tax.”
- 3. Instability of tax legislation:** The proliferation of tax laws and their frequent amendments render them inconsistent and shrouded in ambiguity. This leaves ample room for

interpretation at the application stage, rather than the principle of certainty and clarity that ought to prevail, thereby allowing doubt and mistrust of the tax system to take hold among taxpayers, leading them, in turn, to embrace the idea of tax evasion.<sup>55</sup>

4. **Weakness of the penalties prescribed for tax evasion:** Among the important causes that lead to tax evasion is the feeling of fearlessness, resulting from the fact that taxpayers who are caught attempting to evade, or with respect to whom evasion is discovered, are not subjected to punishment, or that the penalties that may be imposed upon them are weak and inadequate. In reality, penalties should be deterrent and should not be confined to the taxpayers concerned alone; they should also extend to all those who have participated in, assisted with, or incited evasive (fraudulent) conduct.<sup>56</sup>
5. **Weakness of tax auditing:** Since the Algerian tax system is based primarily on tax declarations, the tax administration must verify the accuracy and reliability of the declarations submitted by taxpayers, as the level of tax revenue depends on the quality and effectiveness of tax auditing.<sup>57</sup> When such auditing is weak or nonexistent, this is likely to increase opportunities for tax evasion for those who wish to engage in it.

**3. Causes relating to the tax administration:** It is self-evident that the tax administration is the body responsible for implementing tax legislation and putting it into effect in practice, and as such, any malfunction affecting it will inevitably be reflected in the performance of the tax system as a whole. One of the most serious problems the tax administration may face is a lack of competence and/or integrity among its personnel, which encourages and entrenches tax evasion. The lack of competence is attributable to several factors,<sup>58</sup> including inadequate training and qualifications due to the absence of seriousness and specialisation in the programmes of the institutions responsible for preparing staff and enabling them to perform their duties in the best possible manner and the migration of qualified personnel to other sectors because of low wages and the lack of incentives, which results in a shortage of professional experience. In addition, the absence or insufficiency of material resources, such as the lack of suitable premises and the absence of modern technologies in the workplace, means that tax files are not digitised, are more susceptible to manipulation, and take longer to examine and process. For integrity, its weakness has many causes, including the weakness of the moral dimension among a large segment of members of society as a whole\*, the weakness of inspection and control operations by the competent authorities, and perhaps the principal reason is the absence of strict sanctions against employees who are proven to have committed tax-corruption

offences, which may lead some taxpayers to feel that justice is absent and to seek to apply it themselves by evading payment of tax in turn.<sup>59</sup>

**4. Causes related to economic conditions:** The economic conditions surrounding the tax system play an important role in either exacerbating or alleviating the problem of tax evasion. Periods of economic decline or recession often lead to higher levels of tax evasion, as rising inflation rates in such situations weaken the purchasing power of consumers (small taxpayers), compelling them to reduce their expenditures. This, in turn, makes it difficult<sup>60</sup> for holders of capital and project owners (large taxpayers) to shift and/or lessen the tax burden imposed on them as a result of various production and investment operations. As all of these factors result in increased psychological tax pressure on all taxpayers (both small and large), attempts at tax evasion are very likely to multiply. Nor should the role played by the spread of the parallel economy be overlooked, for it not only entrenches the problem of evasion but, by normalising it (making it appear natural), has rendered the success of the state's efforts at tax incentivisation extremely difficult,<sup>61</sup> as is the case in Algeria.

### **Conclusion:**

The importance of the desired economic governance lies in its focus on the steps required to manage economic affairs, whether at the policy or implementation level. Since these affairs, like other matters, are subject to the legal system in force in the state, they are affected by it just as they affect it. For this legal influence on the policy that the authorities may adopt for the governance of the national economy to be positive, the Algerian constitutional framer has surrounded it with a set of principles within which and in the light of which it must be carried out. These principles are, specifically, the principle of freedom of competition, the principle of equality, and the principle of integrity. On the basis of these constitutional principles, we conclude that the strong economy that economic governance policy seeks to attain cannot be achieved without free and fair competition within an environment of equality among all economic actors.

### **Endnotes:**

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<sup>1</sup> Article 10 of the 1976 Constitution states that socialism is the irrevocable choice of the people.

<sup>2</sup> Samia Kessal, "The Principle of Freedom of Trade and Industry as a Legal Basis for Free Competition," paper presented at the National Conference on Freedom of Competition in Algerian Law, Faculty of Law and Political Science, University of Annaba, 3–4 April 2013.

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<sup>3</sup> Mohamed Mohamed Abdel Latif, “The Constitution and Competition,” *Journal of Legal and Economic Research*, Faculty of Law, University of Mansoura, no. 38, 2005, 94.

<sup>4</sup> Amal Zaidi, *Lectures in Competition Law*, printed course notes, 2016, 5, accessed 20 April 2018, [dspace.univ-setif2.dz/xmlui/handle/123456789/849](http://dspace.univ-setif2.dz/xmlui/handle/123456789/849).

<sup>5</sup> Mohamed Cherif Kaddou, “The Principle of Protecting Free Competition in Ordinance no. 03–03 and Law no. 04–02,” *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, University of Tizi Ouzou, no. 01, 2017, 7.

<sup>6</sup> See, for example: Nadia Tiyab, “The Enshrinement of the Principle of Freedom of Competition in the Field of Public Contracts as a Means of Protecting Public Funds,” paper presented at the National Conference on the Role of Public Procurement Law in the Protection of Public Funds, Faculty of Law, University of Médéa, 30 May 2013, 4; Fara Samah, “Activating the Principle of Competition: A Reading in the Public Procurement Law,” paper presented at the National Conference on the Law of Competition between Liberalisation of Initiative and Regulation of the Market, Faculty of Law and Political Science, University of Guelma, 16–17 March 2015, 3.

<sup>7</sup> See art. 9 of the 1996 Constitution in the light of the 2020 amendment.

<sup>8</sup> See Article 43 of the 1996 Constitution after the 2016 amendment.

<sup>9</sup> Ahsan Bousqia, *Lectures in Business Criminal Law*, delivered to second-year students, École supérieure de la magistrature, academic year 2007–2008; cited in Tioursi Mohamed, *The Legal Constraints on Competitive Freedom in Algeria*, Dar Houma, Algiers, 2013, 186–87.

<sup>10</sup> Ordinance no. 03–03 of 19 July 2003 on competition, as amended and supplemented (Official Gazette, no. 43, 20 July 2003).

<sup>11</sup> Mohamed Cherif Kaddou, *Competition Law and Commercial Practices*, Baghdadī Publications, Algiers, 2010, 38.

<sup>12</sup> See art. 6 of Ordinance no. 03–03 mentioned above.

<sup>13</sup> See art. 7 of Ordinance no. 03–03 mentioned above.

<sup>14</sup> See art. 11 of Ordinance no. 03–03 mentioned above.

<sup>15</sup> See art. 12 of Ordinance no. 03–03 mentioned above.

<sup>16</sup> Jean-Bernard Blaise and Richard Desgordes, *Droit des affaires*, 9th ed. (Paris: L.G.D.J, 2017), 452.

<sup>17</sup> Najat Ben Joual, *The Legal System of Economic Concentrations under Competition Law*, master’s thesis, Faculty of Law and Political Science, University of M’sila, 2016, 24.

<sup>18</sup> Mohamed Cherif Kaddou, *Competition Law and Commercial Practices*, previously cited reference, 53.

<sup>19</sup> Second paragraph of art. 43 of the 1996 Constitution in the light of the 2016 amendment.

<sup>20</sup> Ammar Boudiaf, *The Concise Administrative Law*, 2nd ed., Dar Jisour, Algiers, 2007, 332.

<sup>21</sup> Nasser Lebbad, *The Concise Administrative Law*, 4th ed., Dar al-Mujaddid, Setif, 2010, 207. It should be noted that, despite doctrinal disagreement over the relationship between the principles of neutrality and equality, the French Constitutional Council has tended to view neutrality as synonymous with equality. See further: Bouhafs Sidi Mohamed, *The Principle of Administrative Neutrality in Algerian Law*, doctoral thesis, Faculty of Law, University of Tlemcen, 2007, 180.

<sup>22</sup> Mohamed al-Saghir Ba‘ali, *Administrative Law*, Dar al-‘Ulum, Annaba, 2002, 223.

<sup>23</sup> Jacques Robert, *Libertés publiques* (Paris: Montchrestien, 1982), 445.

<sup>24</sup> Haydar Wahhab ‘Abbud, “The Principle of Equality before Tax: A Comparative Study between Islamic Sharia and Positive Tax Systems,” *al-Huquq Journal*, Faculty of Law, al-Mustansiriya University, no. 05, 2009, 130.

<sup>25</sup> See arts. 78 of the 1976 Constitution, 61 of the 1989 Constitution, and 82 of the 1996 Constitution after the 2020 amendment.

<sup>26</sup> Shahada Abu Zaid, *The Principle of Equality in Arab States*, doctoral thesis, Faculty of Law, Ain Shams University, 2001, 30. Muhammud Nuh, “The Principle of Equality,” accessed 21 April 2018, <http://www.arab-encyclopedia.com/ /details.law.php?full=1&nid=16427>

<sup>27</sup> Mohamed Mohamed Abdel Latif, *Constitutional Guarantees in the Tax Field*, 1st ed. (Kuwait: Kuwait University Publications, 1999), 134.

<sup>28</sup> Duraid Issa Ibrahim, “Tax Treatment within the Framework of the Principle of Equality before Tax,” *Anbar University Journal of Legal and Political Sciences*, no. 6, 2012, 302. Jihad Sa‘id Nasser Khassawneh, *Constitutional Guarantees of the Tax Obligation under Jordanian Legislation*, doctoral thesis, Graduate School, Amman Arab University for Graduate Studies, 2006, 130.

<sup>29</sup> Haydar Wahhab ‘Abbud, previously cited reference, 126.

<sup>30</sup> Abd al-Basit Ali Jasim al-Zubaidi, *Tax Justice* (Alexandria: Modern University Office, 2015), 76.

<sup>31</sup> Dnidni Yahia, *Public Finance*, 2nd ed. (al-Qubba: Dar al-Khaldounia, 2014), 184.

<sup>32</sup> Duraid Issa Ibrahim, previously cited reference, 301; Abd al-Basit Ali Jasim al-Zubaidi, previously cited reference, 77.

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<sup>33</sup> Quoted in Mohamed Mohamed Abdel Latif, previously cited reference, 135.

<sup>34</sup> Dnidni Yahia, previously cited reference, 184.

<sup>35</sup> Haydar Wahhab ‘Abbud, previously cited reference, 128.

<sup>36</sup> Amin Atif Saliba, *The Role of Constitutional Justice in Establishing the Rule of Law* (Tripoli: Modern Foundation for the Book, 2002), 437.

<sup>37</sup> Abdelaziz Mohamed Salman, “The Right to Equality,” *al-Dusturiyya* (Journal of the Supreme Constitutional Court), Cairo, 2009, accessed 1 July 2016, [hccourt.gov.eg/](http://hccourt.gov.eg/).

<sup>38</sup> Mohamed Mohamed Abdel Latif, previously cited reference, 135.

<sup>39</sup> The French Constitutional Council affirmed this in its decision of 19 December 1982, stating that “equality before tax is equality by categories (L’égalité devant l’impôt est une égalité par catégories),” quoted in Amin Atif Saliba, previously cited reference, 437.

<sup>40</sup> Hussein Khalaf, *General Provisions in Tax Law* (Cairo: Dar al-Nahda al-‘Arabiyya, 1966), 74; Dnidni Yahia, previously cited reference, 184.

<sup>41</sup> See arts. 40 of the 1976 Constitution, 28 of the 1989 Constitution, and 37 of the 1996 Constitution after the 2020 amendment.

<sup>42</sup> Duraid Issa Ibrahim, previously cited reference, 316.

<sup>43</sup> See further Amin Atif Saliba, previously cited reference, 439 and following.

<sup>44</sup> For more on the subject of “exceptions in tax law,” see, for example, Qabas Hasan ‘Awwad al-Badrani, “Exception in the Iraqi Income Tax Law,” *Journal of Future Research*, Al-Hadba University College, no. 19, 2006, 197 and following.

<sup>45</sup> Ahmed Fathi Sorour, *Constitutional Protection of Rights and Freedoms*, 2nd ed. (Cairo: Dar al-Shorouk, 2000), 127.

<sup>46</sup> Miloud Sefari, “Good Governance: Concept, Principles, and Critiques,” *Journal of Arts and Social Sciences*, Faculty of Arts and Social Sciences, University of Setif, no. 5, 2007, 19.

<sup>47</sup> See arts. Articles 9 and 10 of the 1996 Constitution, after the 2016 amendment.

<sup>48</sup> Souhila Arzki Imensourane, “The Impact of Economic Corruption on Development Activity in Developing Countries,” *Journal of Regional Studies*, University of Mosul, no. 15, 2009, 161 ff.

<sup>49</sup> Art. 23 of the 1996 Constitution, as amended in 2016.

<sup>50</sup> Abdullah bin Hasan al-Jabri, “Economic Corruption: Its Types, Causes, Effects, and Remedies,” accessed 23 April 2018, <https://faculty.psau.edu.sa/.../doc-6-doc-89fb52e6ca126344d7c49>

<sup>51</sup> Last paragraph of art. 78 of the 1996 Constitution after the 2016 amendment .

<sup>52</sup> Nasser Murad, *The Effectiveness of the Tax System between Theory and Practice* (Algiers: Dar Houma, 2003), 158–59.

<sup>53</sup> Rahal Nasr and ‘Awadi Mustafa, *Corporate Taxation between Theory and Practice* (al-Wadi: Bin Moussa al-Sa‘id Library, 2010), 70; Abdel-Moneim Fawzi, *Public Finance and Fiscal Policy* (Beirut: Dar al-Nahda al-‘Arabiyya, 1972), 225.

<sup>54</sup> Nasser Murad, *Tax Evasion and Fraud in Algeria*, 1st ed. (Algiers: Dar Qurtuba, 2004), 12; Reda Khalasi, *Fragments of Tax Theory* (Algiers: Dar Houma, 2014), 422.

<sup>55</sup> Berrahmani Mahfoud, *Property Tax* (Alexandria: Dar al-Jami‘a al-Jadida, 2009), 298.

<sup>56</sup> Abdel-Moneim Fawzi, previously cited reference, 225.

<sup>57</sup> Rahal Nasr and ‘Awadi Mustafa, previously cited reference, 59.

<sup>58</sup> See also: Abdel-Majid Qaddi, *The Effectiveness of Tax-Based Financing in the Context of International Developments*, doctoral thesis, Institute of Economic Sciences, University of Algiers, 1995, 250 ff. *This is because the problem of tax evasion is contributed to, in its occurrence and persistence, by the evader, the colluding employee, and those who remain silent about it, and so on.*

<sup>59</sup> Mohamed Sa‘id Farhoud, “Tax Justice from an Economic Perspective,” *Journal of Law*, University of Kuwait, no. 4, 2001, 124.

<sup>60</sup> Nasser Murad, *Tax Evasion and Fraud in Algeria*, previously cited reference, 15.

<sup>61</sup> Abdel-Majid Qaddi, *The Effectiveness of Tax-Based Financing in the Context of International Developments*, previously cited reference, 274.