

Confiscation as a legal mechanism for recovering the proceeds of corruption crimes in Algerian legislation.

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Received: 02/06/2025

Accepted: 10/08/2025

Published: 28/10/2025

Abstract

Corruption crimes pose a serious threat to the national economy and its components, as they lead to the squandering of public wealth and the plundering of national resources. This necessitates the adoption of effective mechanisms to recover the proceeds of crime. In this context, "confiscation" emerges as one of the most important legal tools enabling the state to recover funds and property resulting from corruption crimes and deprive perpetrators of their benefits. Pursuant to Law No. 06-01 of February 20, 2006, on the prevention and fight against corruption and its subsequent amendments, the Algerian legislature introduced a sophisticated confiscation system, in accordance with the provisions of the United Nations Convention against Corruption (2003), ratified by Algeria. This system includes confiscation based on a conviction and confiscation without a conviction, preceded in some cases by a precautionary measure, namely freezing or seizure. This mechanism raises fundamental legal issues: How did the Algerian legislature organize the substantive and procedural provisions for the confiscation of the proceeds of corruption crimes? What is the legal basis upon which it regulated its provisions at the domestic and international levels? To answer this problem, the research was divided into two axes: the first: the concept of confiscation, and the second: confiscation procedures.

Keywords: Confiscation by conviction, confiscation without conviction, seizure or freezing, Law 06-01, United Nations Convention against Corruption.

Introduction

Corruption in its various forms and manifestations is one of the most serious threats facing modern states, as it leads to the depletion of public resources, undermines trust in institutions, and hinders economic and social development. According to estimates by the United Nations Office on Drugs and Crime, the amount of money stolen annually due to corruption is estimated to be between 2 and 5% of global GDP, equivalent to at least US\$1 trillion¹. This staggering figure reflects the scale of the economic disaster caused by corruption and highlights the urgent need for effective mechanisms to recover these funds.

In this context, “confiscation” has emerged as one of the most important legal tools used by states to combat corruption and recover its proceeds. Confiscation is not limited to being a supplementary punishment or security measure, but has become a strategic procedural mechanism aimed at depriving perpetrators of the fruits of their crimes, dismantling the economic structures of organized crime, and recovering stolen public funds.

The 2003 United Nations Convention against Corruption emphasized the importance of confiscation as a key tool in combating corruption, stipulating in Article 31 that States Parties shall take "such measures as may be necessary, in accordance with the principles of their domestic law, to establish the confiscation of the proceeds of criminal acts established in accordance with this Convention, or property the value of which is equivalent to such proceeds."²

In response to these international trends, and recognizing the seriousness of corruption and the need to dry up its financial sources, the Algerian legislature developed a comprehensive confiscation system under Law No. 06-01 of February 20, 2006, on the prevention and combating of corruption³, which has undergone successive amendments, the most recent of which was Law No. 11/15 of August 2, 2011⁴, with the introduction of Law No. 22-08 of May 5, 2022⁵, which defines the organization, composition, and powers of the High Authority for Transparency, Prevention, and Combating Corruption, introducing new and advanced forms of confiscation, including confiscation without conviction.

Confiscation in the context of corruption crimes has specific characteristics that distinguish it from traditional confiscation in general criminal law, in terms of its broad scope, complex procedures, dual nature (both a penalty and a measure), the possibility of its application without criminal conviction in certain cases, and its international dimension in the context of cross-border money laundering.

However, the application of confiscation in the area of corruption crimes raises numerous legal and practical issues related to reconciling the effectiveness of this mechanism with respect for fundamental human rights guarantees, particularly the right to property and the principle of legality of crimes and penalties, as well as procedural challenges associated with proving the link between the funds and the crime, the practical difficulties in tracing and recovering cross-border funds, and the lack of international cooperation in some cases.

This raises the central question of this study: How did Algerian lawmakers organize the substantive and procedural provisions for confiscating the proceeds of corruption? What is the legal basis on which they relied in organizing these provisions at the domestic and international levels?

To answer these questions, this study will be divided into two main parts: The first part will focus on the concept of confiscation as a mechanism for recovering the proceeds of corruption, through its definition and characteristics. The second part will examine the procedural framework for confiscation, by outlining the legal procedures that precede it, such as seizure or freezing, through to confiscation procedures based on a conviction or without a conviction, and finally the disposal of confiscated property.

Part I: The concept of confiscation as a mechanism for recovering the proceeds of corruption

Confiscation, in its general sense, is a penalty consisting of the deprivation, without compensation and for the benefit of the state, of funds and property obtained from criminal

proceeds or that would have been used in the commission of a crime. In other words, it is one of the legal means available to the state to seize proceeds and funds obtained directly or indirectly from the commission of a crime or that would have been committed, including crimes of corruption that burden the economies of states. So what is confiscation and what does it entail?

First: Definition of confiscation

Linguistically, confiscation is derived from the verb “to confiscate,” meaning to take and seize something. Confiscation is the taking and seizure of money and the transfer of its ownership by force⁶. In general usage, it means depriving the owner of his property by force.

From a technical point of view, there are many jurisprudential definitions of confiscation. Ahsan Busqia defines it as “a legal procedure that leads to the transfer of ownership of something from the convicted person to the state, without compensation, as a supplementary punishment or as a security measure.”⁷

Abdullah Suleiman defines it as: “the forcible seizure of property from its owner and its transfer to the state, without compensation, by virtue of a court ruling or by force of law, either as a punishment or as a preventive measure.”⁸

On the other hand, Mohamed Sobhi Najm defines it more broadly as: “the forcible deprivation of private property from its owner and its transfer to state ownership, whether as a supplementary punishment, a precautionary measure, or a preventive measure, pursuant to a court ruling.”⁹

From a legal standpoint, Algerian lawmakers have not provided an explicit, comprehensive definition of confiscation in the Penal Code or the Anti-Corruption Law, but have merely regulated its provisions and conditions in various texts. However, the concept of confiscation can be inferred by extrapolating from the relevant legal texts, where:

Article 15, paragraph 01, of the Algerian Penal Code, amended by Law No. 06-23 of December 20, 2006, states that: “Confiscation is the final transfer to the state of a specific asset or group of assets, or their equivalent value where applicable.”¹⁰

In the context of corruption offenses, Law No. 06-01 on the prevention and combating of corruption, as amended and supplemented by Article 51, paragraph 2, stipulates that: “In the event of conviction for the crimes provided for in this law, the judicial authority shall order the confiscation of illicit proceeds and funds, taking into account cases of recovery of assets or rights of third parties acting in good faith.”¹¹

At the international level, Article 02, paragraph z, of the United Nations Convention against Corruption states: “Confiscation, which includes deprivation where applicable, means the permanent deprivation of property by order of a court or other competent authority.”¹²

Through these texts, confiscation in corruption crimes can be defined as: A legal mechanism that orders the confiscation of funds, property, or proceeds obtained from a corruption crime or used in its commission, or their equivalent value, and their transfer to state ownership by force and without compensation, pursuant to a court ruling or administrative decision, with the aim of depriving the perpetrator of the fruits of their crime and recovering the embezzled public funds.

Second: Characteristics of confiscation

From the above definitions of confiscation, we find that it has several characteristics. Confiscation is considered one of the most effective criminal penalties in combating corruption

because confiscating the criminal proceeds of corruption crimes means eliminating the purpose that criminal organizations seek to achieve. It is no less of a deterrent than custodial sentences because it simply means stripping offenders of the proceeds and benefits of their criminal enterprise. This has been addressed by the Algerian legislature in Articles 09 and 15 of the Penal Code and Articles 50 and 51 of Law 06/01. The confiscation of criminal proceeds is also addressed in the United Nations Convention against Corruption.

01: Confiscation as a supplementary penalty

Confiscation is essentially a supplementary penalty according to Article 9 of the Algerian Penal Code, which states that: "Supplementary penalties are: legal detention, deprivation of national, civil and family rights, residence restrictions, residence bans, partial confiscation of assets, temporary prohibition from practicing a profession or activity, closure of an establishment, exclusion from public contracts, prohibition from issuing checks and/or using payment cards, suspension or withdrawal of a driver's license or prohibition from obtaining a new license, withdrawal of a passport, publication or suspension of a conviction or sentence."¹³

As a supplementary punishment, confiscation has the following characteristics:

1- Dependence on the original punishment: Confiscation cannot be imposed as a supplementary punishment unless an original punishment (imprisonment or fine) has been imposed, as it is dependent and cannot stand alone.¹⁴

02-Punitive nature: Confiscation as a penalty aims to hurt the convicted person and deprive them of their property as punishment for committing the crime, thereby achieving specific and general deterrence.

03-Personal nature: As a penalty, confiscation must be imposed only on the convicted person's assets, in accordance with the principle of the personal nature of punishment stipulated in Article 43 of the Constitution, which states that "no conviction shall be made except in accordance with a law enacted prior to the commission of the criminal act."¹⁵

04- Mandatory provision: Confiscation may not be imposed as a penalty unless expressly provided for by law, in accordance with the principle of "legality of crimes and penalties" set forth in Article 01 of the Penal Code: "There shall be no crime, penalty, or security measures without law."¹⁶

02: Confiscation as an In Rem Penalty

That is, it is imposed on money or something related to the crime for which the person is convicted, whether it was the cause of obtaining it or using it, or whether it was intended to be used in it. Therefore, it applies to that money or item, whether it is in the possession of the offender or someone else, since the point is not the ownership of the money or item, but rather the money or item itself, regardless of who owns it.¹⁷

03: Mandatory confiscation in the case of recovery of proceeds of corruption

In the area of illicit proceeds and funds, the Algerian legislature has made confiscation a mandatory measure to be imposed by the criminal judge in corruption crimes involving illicit proceeds, even though it is a supplementary penalty and is optional in other cases¹⁸. This is what we conclude from the text of Article 51 of Law 06-01, which stipulates that an order must be issued to confiscate illicit funds and proceeds in the event of conviction for crimes provided for in the Law on the Prevention and Combating of Corruption, taking into account the recovery of assets or rights of third parties acting in good faith¹⁹.

4: Subject Matter of Confiscation

Confiscation shall apply to property or assets of all kinds, whether tangible or intangible, movable or immovable, tangible or intangible, as well as documents and legal instruments proving ownership of such assets or the existence of rights related thereto. In other words, all criminal proceeds, i.e., all property derived or obtained directly or indirectly from the commission of a crime²⁰.

Article 31, paragraphs 1 and 2, of the Convention against Corruption also urges each State Party to take, to the fullest extent possible within the scope of its domestic legal system, the necessary measures to enable the confiscation of the proceeds of crime or equipment or other instruments used or intended for use in the commission of criminal acts under this Convention, and each State shall take such measures as may be necessary to enable the detection, tracing, freezing, or seizure of any of the items referred to in paragraph 1 of this article, for the purpose of eventual confiscation.²¹

It follows from the first paragraph of Article 31 of the Convention that confiscation as a penalty applies to corruption offenses covered by the Convention and includes the following:

1. Proceeds of crime derived from acts criminalized under this Convention or property the value of which is equivalent to such proceeds.

The term “proceeds of crime” is defined in Article 2(e) of the Convention as “any property derived or acquired, directly or indirectly, from the commission of offences.” This means that confiscation does not only apply to funds obtained directly from a corruption offense, such as funds embezzled by an employee or a bribe received, but also includes the equivalent value of such funds. This means that confiscation can apply, for example, to real estate or cars purchased by the employee with embezzled funds or bribe money, and in general to all property acquired with the proceeds of corruption.

2-Property, equipment, or tools that were used or intended to be used in the commission of criminal acts under this Convention, which is a traditional example of items subject to confiscation²².

However, Algerian law does not allow for general confiscation, as Article 15 of the Penal Code stipulates that the residence necessary to house the spouse and first-degree ascendants and descendants of the convicted person may not be confiscated if they were actually occupying it at the time of the crime, provided that this residence was not acquired by unlawful means. The funds referred to in paragraphs 1 to 4 and 6 to 13 of Article 636 of the Code of Civil and Administrative Procedure and the income necessary for the livelihood of the spouse and children of the convicted person, as well as the ascendants living under his or her care²³.

Part II: Procedures for confiscating proceeds from corruption offenses

The Algerian legislature and the United Nations Convention have paid particular attention to the penalty of confiscation, which in many cases is considered the most successful and ideal means of recovering criminal proceeds. Each has specified the procedures for requesting confiscation by foreign countries, including the documents to be attached to the request and the method of sending the request, in Articles 06-01 of the Law on the Prevention and Combating of Corruption. This can be inferred from a reading of the articles of the law, particularly Article 5 on "international cooperation and the recovery of assets." It stipulates that, in order to cooperate in the area of confiscation, a state must be a party to the United Nations Convention against Corruption. It can therefore be said that the role of domestic law is limited to regulating confiscation procedures between states parties, so that states where the direct proceeds of crime

or property that has been exchanged or transferred are located are obliged to initiate confiscation procedures and carry them out²⁴, and to take one or more pre-confiscation measures, or what are known as precautionary measures, to facilitate the confiscation procedure²⁵. We will first address the freezing and seizure of funds, then the confiscation procedures in Law 06-01 on the Prevention and Combating of Corruption, which is divided into confiscation by conviction, confiscation pending conviction, and disposal of confiscated property.

First: Seizure or freezing as a precautionary measure

The legislator has provided for legal measures of a temporary precautionary nature that allow the competent public authorities to quickly and flexibly seize funds used or obtained from crimes as soon as prosecution begins, without waiting for a criminal conviction in these crimes. This provides greater opportunities to thwart any attempts to evade the confiscation of such funds²⁶, which is the procedure of seizure or freezing. Article 50 of Law 24/15, the new Code of Criminal Procedure, authorizes the freezing and/or seizure of property, funds, and illicit proceeds resulting from the commission of one or more crimes... ..or corruption offenses. Precautionary measures may include the freezing and/or partial or total seizure of the property and funds of persons connected with the offense and for which there is strong evidence that they are the proceeds of crime under investigation²⁷. What do we mean by this and what are the conditions?

01: The concept of seizure or freezing

This is stipulated in Article 02, paragraph h, of Law 06-01, which states: “Freezing or seizure: imposing a temporary ban on the transfer, replacement, disposal, or transfer of property, or temporarily taking custody or control of property, based on an order issued by a court or other competent authority.”²⁸ The Anti-Corruption Law does not distinguish between seizure and freezing. It should be noted that seizure or freezing takes place during the investigation and inquiry phase and remains in effect during the trial phase until a conviction is issued by the competent judicial authority, after which the property is confiscated. However, if the investigation ends with an order to proceed or if the accused is acquitted, the seizure or freezing is lifted by the investigating judge²⁹, in accordance with the procedures set out in Article 259 of the Code of Criminal Procedure³⁰, given the legal equivalence between seizure and freezing. The difference between the two is that freezing is the temporary retention of funds in the hands of their holder and a prohibition on their transfer, exchange, disposal, or movement, such as the freezing of bank accounts held by banks that are considered holders of the funds. Seizure, on the other hand, is the temporary seizure and retention of funds by the public prosecutor's office and/or another authority, such as customs.³¹

It can be said that the first step in confiscation proceedings to recover stolen criminal proceeds in accordance with the United Nations Convention against Corruption is for the requesting State to submit a request to the requested State to freeze the suspected funds³². In accordance with Article 54 of the Convention against Corruption, the State must, through its judicial authorities only, and based on solid evidence against the person requesting the freezing and recovery of funds, take the necessary judicial measures to freeze or seize the property based on a freezing or seizure order issued by the court or the public prosecutor due to the existence of criminal charges for corruption crimes. The same article specifies three cases in which the competent authorities in the state may directly freeze or seize property. These cases are:

-Freezing or seizure pursuant to a freezing order or seizure order issued by a court or competent authority of another country.

2-Freezing based on a request submitted by another country.

3-Taking additional measures to preserve property based on an arrest or criminal charge related to the seizure of that property.³³

All items related to the crime, i.e., items on which the crime was committed, or used in its commission, or could have been used in its commission, or were obtained from it, and anything that is useful in uncovering the truth in general. It is therefore conceivable that, in corruption crimes, criminal proceeds, whether direct or indirect, may be seized. All tools and equipment, as well as documents and legal instruments proving ownership of or entitlement to those proceeds, may also be subject to seizure.³⁴

02: Conditions imposed on seizure or freezing

The legislator imposed a set of conditions in Article 64 of Law 06-01 so that proceeds derived from corruption or property, equipment, and tools used or intended for committing these crimes can be frozen or seized:

1-Membership in the United Nations Convention against Corruption: The state requesting the freezing must be a party to the Convention. This condition is clear from the first paragraph of Article 64 of Law 06-01, where the legislator used the phrase “at the request of one of the States Parties to the Convention.”

2-The subject of the seizure or freezing must be proceeds derived from a corruption offense, or property, equipment, or instruments used or intended for use in such offenses.

3-The request for seizure or freezing submitted by a State Party must be accompanied by a freezing or seizure order issued by a judicial or competent authority in that State.

4. Justifications and reasons supporting the seizure or freezing measure must be provided, along with evidence that the criminal property and proceeds will ultimately be confiscated.³⁵

03-Procedures for implementing seizure and freezing

The seizure shall be carried out pursuant to a court decision or an order from the competent authority. as stated in Article 51 of the Law on the Prevention and Combating of Corruption. However, it does not specify the procedures for its implementation or the competent authority for imposing seizure or freezing. Nevertheless, referring to the general rules stipulated in the Code of Criminal Procedure, the public prosecutor may, automatically or upon a reasoned request from a judicial police officer, during the preliminary investigation, to request the president of the competent court to take precautionary measures to seize funds and/or freeze any banking transactions of any natural or legal person strongly suspected of involvement in one of the crimes stipulated in Article 50, including the aforementioned crimes of corruption. It also provides for the possibility of notifying the competent authority in the field of prevention and combating money laundering and terrorist financing in order to block bank transfers, whereby the public prosecutor submits a petition to the president of the competent court setting out the reasons justifying the precautionary measures. If the request for freezing and/or seizure is based on sufficient grounds or reasonable evidence that the property and funds are the proceeds of one of the crimes referred to in Article 50, the president of the court shall immediately order the freezing and/or seizure of the property that is the subject of the request. If a judicial investigation is opened, the investigating judge shall be competent to take precautionary measures, whereby the order containing the precautionary measures shall be

executed at the request of the Public Prosecutor's Office based on its original copy and before it is notified to the party concerned with the operation. The order may be notified by the Public Prosecutor's Office directly to financial institutions or through the competent authority in the field of prevention and combating money laundering and terrorist financing, to which a copy of the order shall be sent.³⁶

The precautionary measure shall remain in force for a period of six months, renewable upon request by the public prosecutor to the president of the competent court. If a judicial investigation is opened, the precautionary measures taken shall remain in force, and the investigating judge shall be competent to extend or lift them. He may also order the precautionary measures provided for in Article 50, if they have not been ordered previously. The investigating judge's order may be appealed before the indictment division within three days of its notification, and the president of the court remains competent to rule on objections and requests made by the person concerned by the precautionary measures provided for in Article 50 and by any interested party. He may, after consulting the public prosecutor, authorize the person concerned by the precautionary measures to use part of his funds to cover his essential needs and those of his family and dependents, and for any necessary and legitimate purposes³⁷. The public prosecutor at the National Economic and Financial Prosecutor's Office, the investigating judge, and the president of that office shall also exercise their powers throughout the national territory.³⁸

If the proceeds of corruption are located abroad, the procedures stipulated in Article 64 of the Anti-Corruption Law must be followed, and seizure and freezing shall be applied based on a request submitted by the state whose judicial authorities have issued a precautionary order to the state where the funds to be seized or frozen are located, provided that solid reasons are given for resorting to precautionary measures such as the detention or arrest of the owner of the funds to be seized. The request to impose the precautionary measure is sent to the Ministry of Justice, which in turn submits it to the competent public prosecutor, who then refers it to the competent court for a decision. The court's ruling is subject to appeal and cassation in accordance with the law.³⁹

Article 64, paragraph 3, indirectly specifies the competent court to rule on the matter, namely the “urgent matters division,” as inferred from the phrase “...the competent court that rules on the matter in accordance with the procedures set forth in the article on urgent matters.”⁴⁰

Second: Confiscation provisions in Law 06-01 on combating corruption

The Algerian legislature followed the provisions of the International Convention against Corruption with regard to the principle of confiscation of criminal proceeds and property, and attempted to regulate its application by specifying the types of confiscation that can be applied and the legal procedures to be followed in order to obtain a confiscation order from the Algerian judiciary or to execute a confiscation order issued by a foreign jurisdiction. They also provided a general framework for returning confiscated proceeds to the requesting state or to their rightful owners.⁴¹

By examining the legislative texts through which the legislator addresses the confiscation of the proceeds of corruption crimes, we conclude that there are two types of confiscation: confiscation based on a conviction and confiscation without a conviction.

01: Confiscation based on a conviction

Confiscation shall be based on a conviction in accordance with the provisions of Article 15 bis 1 of the Penal Code and in accordance with the provisions of Article 51, paragraph 2, of Law 06-01, which stipulates that in the event of a conviction for the crimes specified in this law, the proceeds and illicit funds shall be confiscated. Paragraph 3 of Article 51 of Law 06-01 states that the convicted person must return what has been embezzled, but if it is impossible to return the money as it is, he is obliged to return the value of the benefit obtained.⁴²

Therefore, since we are talking about confiscation in a specific type of crime, namely corruption, which the Algerian legislator has given special treatment to by removing certain provisions relating to it from the Penal Code, we must ask ourselves how the confiscation of the proceeds of corruption is determined. Is it the same as that which prevails according to the general rules? Or, given the specific nature of corruption crimes, particularly as they are transnational organized crimes, have they deviated from those general rules to highlight new mechanisms for their application in line with the idea of international cooperation to prevent and combat corruption, in particular mutual legal assistance, which the international convention considers one of its fundamental principles that States Parties must adhere to when transposing the content of the convention into their domestic legislation. This principle was taken into account by the Algerian legislator when drafting Law 06-01, which explicitly mentions the principle in the provisions of Title V, entitled “International Cooperation and Asset Recovery.”⁴³

By extrapolating the provisions of Article 63 of Law 06-01, particularly paragraphs 1 and 2, we conclude that confiscation based on a conviction is carried out in two ways:

1-Confiscation ordered by the Algerian judicial authorities: as stipulated in paragraph 2 of Article 63 of Law 06-01: “While investigating money laundering offenses or other offenses within their jurisdiction in accordance with the legislation in force, judicial authorities may order the confiscation of property of foreign origin acquired through one of the offenses provided for in this law, or that used in committing them.” This situation presupposes that the proceeds belong to the foreign state requesting confiscation, which has jurisdiction over the criminal act, and that, when the jurisdiction of Algeria, which is the state receiving the request to examine a crime related to money laundering or any other crime within its jurisdiction, is established, it may, in ruling on this crime, order the confiscation of the property⁴⁴.

Article 53 of Law 24/14 on Algerian Criminal Procedure also states that in the event of conviction for the crimes specified in Article 50 of the same law, including corruption crimes, the judicial authority shall order the confiscation of frozen and/or seized property, funds, and illicit proceeds, taking into account cases of recovery of assets or rights of third parties acting in good faith. In the event of the sale of seized property, the proceeds shall be deposited in a special account of the public treasury until a final judgment or decision is issued in the case determining its fate.⁴⁵

02-Confiscation orders by foreign judicial authorities: This situation assumes that the requesting State Party's competent judicial authorities have prosecuted the perpetrators of corruption offenses, resulting in a conviction and an order to confiscate the proceeds and property derived from these offenses. However, the holders of these proceeds have managed to transfer them to the territory of a foreign state, rendering the confiscation order on its territory ineffective as long as the subject of the confiscation is not present. Therefore, in order to restrict the perpetrators and deprive them of the opportunity to obtain and benefit from these illegal

proceeds, even if they have transferred them from one place to another, the legislator has allowed, through the first paragraph of Article 63, the possibility of enforcing a confiscation order issued by a foreign jurisdiction on Algerian territory, in accordance with the principle of recovery of proceeds through international cooperation. This leads us to conclude that this issue concerns the enforcement of a foreign judgment on national territory and not its issuance⁴⁶. This is also enshrined in the United Nations Convention against Corruption in Article 54, paragraph 1(a): “Each State Party shall ... take such measures as may be necessary to permit its competent authorities to enforce a confiscation order issued by a court in another State Party.”⁴⁷

In order for confiscation to be carried out on the basis of a foreign conviction, the law requires certain conditions to be met, some of which are common to other forms of confiscation, namely confiscation on the basis of a criminal judgment issued by an Algerian court and confiscation without a criminal conviction. These conditions are jurisdiction and the requirement that the request be made in writing⁴⁸. The conditions specific to this type of confiscation are set out in Article 66 of Law 06-01 and can be summarized as follows: A statement of the facts relied upon by the requesting State, a description of the procedures required, and a certified copy of the order on which the request is based; A description of the property to be confiscated, specifying its location and value where possible; a statement containing the facts and information determining the scope of execution of the confiscation order issued by the requesting State, together with a declaration by the latter specifying the measures it has taken to notify the States Parties in good faith, in an appropriate manner, and to ensure that legal formalities have been observed, and a declaration that the confiscation order is final, in the case of the execution of a confiscation order.⁴⁹

With reference to Algerian legislation on confiscation orders issued by foreign judicial authorities, a confiscation order issued by a foreign authority is sent directly to the Ministry of Justice, which forwards it to the public prosecutor at the competent judicial authority, provided that the request is made by a State party to the Convention against Corruption. It is also required that the request containing the confiscation decision or order specify the proceeds of crime, property, equipment, or any means used to commit one of the corruption offenses provided for in the law. The Public Prosecutor's Office then sends this request (the foreign judgment) to the competent court, accompanied by its request. The court's judgment is subject to appeal and cassation in accordance with the law.

Judgments issued on the basis of requests made by the Public Prosecutor's Office are enforced by all legal means. We can therefore conclude that, in order for the Algerian legislature to recognize foreign judgments issued in relation to the confiscation of the proceeds of corruption, the conditions set out in Articles 67 and 68 of the Law on the Prevention and Combating of Corruption must be met, which amounts to ratification of this type of judgment. Nevertheless, the question remains of granting powers to anti-corruption authorities at all stages, whether before or after the fact, to ensure that they can carry out their work in the best possible manner, particularly in the context of recognizing foreign judgments concerning confiscation.⁵⁰

02: Confiscation without conviction

The legal basis for confiscation without a criminal conviction is Article 54(1)(c) of the Convention against Corruption and Article 63 of the Law on the Prevention and Combating of Corruption, This refers to legal action taken against property based on legal evidence that the property itself is the proceeds of illegal activity. It is not considered an action against the

offender, but rather an action against the property that is separate from criminal proceedings against the perpetrator of the crime. The term is used without reference to a conviction. This means that the requesting State must provide all evidence and documents supporting that the funds to be confiscated were obtained through the commission of one of the acts of corruption criminalized by the Convention and its inability or failure to obtain a conviction and a statement of the reason for the failure or non-obtainment thereof. and it is submitted to the court designated by the receiving State on the basis that the competent authority to hear the case is the judicial authority.⁵¹

Article 54(c) of the Convention on the Prevention and Combating of Corruption provides for cases in which confiscation may be carried out without a conviction, including, but not limited to, cases in which the offender cannot be prosecuted, such as death, flight, absence, or other appropriate cases⁵². The Algerian legislature has stipulated cases of confiscation without conviction in Article 63, paragraph 03, of Law 06-01 on the Prevention and Combating of Corruption: “The confiscation of the property mentioned in the previous paragraph is required even in the absence of a conviction due to the expiration of the public prosecution or for any other reason.”⁵³

From these two texts, we conclude that confiscation without conviction does not constitute a personal lawsuit requiring a criminal trial against the accused and a conviction, but rather is a measure directed against criminal proceeds, and is therefore known as confiscation in kind.

03: Disposal of confiscated property

The return of confiscated criminal proceeds to states is considered the last resort and the final measure that the confiscating state can take within the framework of the recovery process, which the Anti-Corruption Convention refers to as “the return and disposal of assets.”⁵⁴ The Algerian legislator referred to this in Article 70 of Law 06-01 on the Prevention and Combating of Corruption, which states: When a confiscation decision is issued in accordance with the provisions of this section, the confiscated property shall be disposed of in accordance with the relevant international treaties and applicable legislation.”⁵⁵ It is clear that there is an explicit reference to the application of the provisions of the United Nations Convention against Corruption.⁵⁶

Article 57 of the United Nations Convention against Corruption deals with the disposal of proceeds and property derived from corruption offenses, stipulating in paragraph 2 a fundamental principle that States Parties must observe, as follows: “Each State Party shall, in accordance with the fundamental principles of its domestic law, adopt such legislative and other measures as may be necessary to enable its competent authorities, when acting upon the request of another State Party, to return confiscated property in accordance with the provisions of this Convention, taking into account the rights of bona fide third parties.”⁵⁷

Our interpretation of Article 57, paragraph 1, of the United Nations Convention against Corruption leads us to conclude that there are several ways in which proceeds and property subject to confiscation may be disposed of. The Convention lists these ways, but this list is not exhaustive; rather, it is merely illustrative. as evidenced by the provisions of Article 57, paragraph 5, which gives States Parties absolute freedom to negotiate other arrangements and mechanisms to be enshrined in the agreement for the purpose of regulating the disposal of assets. This, in turn, implies the application of the principle of state sovereignty set forth in

Article 4 of the Convention and, therefore, the non-imposition of specific and exclusive methods that the parties are obliged to follow.⁵⁸

Conclusion

In conclusion of this research paper on confiscation as a legal mechanism for recovering proceeds consisting of property obtained from corruption crimes, which the Algerian legislator addressed through the texts of the Law on Prevention and Combating of Corruption, Law 06-01, and by reference to the provisions of the United Nations Convention against Corruption of 2003 ratified with reservation by Algeria, we reached the following main conclusions:

1- Confiscation represents a pivotal legal tool in the anti-corruption system, combining a punitive dimension as it is a complementary penalty, a recovery dimension through which funds derived from illegal sources resulting from corruption crimes are recovered, and finally a preventive dimension by dismantling the financial structure of corruption, which makes it of a composite nature and an integrated strategy.

2- The Algerian legislator developed, based on comparative international experiences, a multiple confiscation system consisting of confiscation without conviction, also known as *in rem* confiscation, as well as a precautionary procedure consisting of seizure or freezing of criminal proceeds. This diversity gives authorities great flexibility in confronting the complex methods used by offenders to conceal their criminal proceeds.

3- The issue of confiscation without conviction and the seizure or freezing procedure, despite their great effectiveness, raises a constitutional problem related to the balance between the effectiveness of combating corruption and respect for fundamental rights and freedoms, especially the right to property and the principle "the accused is innocent until proven guilty by judicial ruling." This requires application under judicial supervision.

4- Property and proceeds obtained from corruption crimes are the most important focus in the confiscation mechanism, and their identification and precise control is complex and difficult, especially if they are of an international nature. With technological development, it has become easy to transfer and smuggle funds using complex methods such as nominal ownership or the use of shell companies.

5- Given the international and cross-border dimension of corruption crimes, the effectiveness of confiscation depends primarily on international cooperation, which faces major challenges, such as differences in defining some concepts such as the definition of corruption crimes and the penalties prescribed for them, variation in confiscation conditions and scope and even in the burden of proof, and the length of procedures for implementing judicial authority requests.

¹ : United Nations Office on Drugs and Crime, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation, 2nd ed. (Vienna: UNODC, 2017), 15

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- ² Article 31 of the United Nations Convention against Corruption adopted by the United Nations General Assembly in New York on October 31, 2003, ratified with reservation by Algeria pursuant to Presidential Decree No. 04-128 dated April 19, 2004, Official journal No. 26 dated April 25, 2004.
- ³ Law No. 06-01 dated February 20, 2006, relating to the prevention and combating of corruption, Official journal, No14 dated March 8, 2006.
- ⁴ Law 11/15 dated August 2, 2011, Official journal 44 dated August 10, 2011, amending and supplementing Law 06/01, the Law on Prevention and Combating of Corruption.
- ⁵ Law No. 22-08 dated May 5, 2022, Official journal No. 32 dated May 14, 2022, containing the organization of the High Authority for Transparency and Prevention and Combating of Corruption, , amended and supplemented
- ⁶ Ibn Mandur : Lissan al-Arab (Beirut: Dar Şadir, 1990), entry "şadr."
- ⁷ Ahsan Bousqia: A Concise Guide to Special Criminal Law, Crimes against Persons and Crimes against Property, 11th edition, Dar Houma, Algeria, 2016, p. 287.
- ⁸ Abdullah Sulayman: Explanation of the Algerian Penal Code: General Part, 5th edition, Office of University Publications, Algeria, 2010, p. 412.
- ⁹ Muhammad Şubhi Najm: penal code : General Part, Dar al-Thaqāfa for Publishing and Distribution, Cairo, Egypt, 2008, p. 523.
- ¹⁰ Law 06-23 dated December 20, 2006, Official journal 84 dated December 24, 2006, amending and supplementing Order 66/156 dated June 8, 1966, containing the Penal Code.
- ¹¹ Law 06/01: Previous source.
- ¹² United Nations Convention against Corruption adopted by the United Nations General Assembly in New York on October 31, 2003, ratified with reservation by Algeria pursuant to Presidential Decree No. 04-128 dated April 19, 2004, Official journal No. 26 dated April 25, 2004.
- ¹³ Order 66/156 dated June 8, 1966, Official journal 49 dated June 11, 1966, containing the Algerian Penal Code as amended and supplemented.
- ¹⁴ Ahsan Bousqia: A Concise Guide to general Criminal Law, 20th edition, Dar Houma, Algeria, 2015, p. 345.
- ¹⁵ Constitution of the People's Democratic Republic of Algeria: Official journal No. 82 dated December 30, 2020.
- ¹⁶ Algerian Penal Code: Previous source
- ¹⁷ Bousaid Majida: Legal Mechanisms for Recovering Criminal Proceeds in the Framework of Combating Corruption, Doctoral Thesis, Department of Law, Faculty of Law and Political Sciences, Qasdi Merbah University, 2018-2019, Ouargla, Algeria, p. 105.
- ¹⁸ Haĥa Abd al-Ali : Legal Mechanisms for Combating Administrative Corruption in Algeria, Thesis submitted for obtaining a doctorate in law, specialization in public law, University of Mohamed Khider, 2012-2013, Biskra, Algeria, pp. 347-348.
- ¹⁹ Article 51 of Law 06-01: Previous source.
- ²⁰ Article 02, Paragraphs W-Z of Law 06-01: Previous source.
- ²¹ Article 31, Paragraphs 1 and 2 of the Anti-Corruption Convention: Previous source.
- ²² Nabil Malkia: Administrative and Financial Corruption in Algerian Criminal Legislation, Thesis complementary to obtaining a master's degree in international criminal law, Faculty of Law, University of Constantine, 2008-2009, Algeria, pp. 181-182.
- ²³ Article 15 of the Algerian Penal Code: Previous source.
- ²⁴ Bousaid Majida: Previous reference, p. 115.
- ²⁵ Daĥiya Abdlatif - Balwađiĥ alṬayeb: Procedures for Confiscation of Crime Proceeds, Journal of Studies and Research, University of M'sila, Volume 09, Issue 02, Algeria, 2024, p. 64.
- ²⁶ Daĥiya Abdlatif - Balwađiĥ alṬayeb : Previous reference, p. 64.

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- ²⁷ Article 50 of Law 24/15 dated August 3, 2025, Official journal 54 dated August 13, 2025, containing the Algerian Code of Criminal Procedure.
- ²⁸ Article 02 of Law 06-01: Previous source.
- ²⁹ Zakariya Bouamama : Precautionary Procedures for Prevention of Disposal of Corruption Proceeds, Al-Muḥallil al-Qanouni , Volume 04, Issue 01, University of Bouira, Algeria, 2022, p. 04.
- ³⁰ Article 259: "If the investigating judge finds that the facts do not constitute a felony, misdemeanor, or violation, or that there is insufficient evidence against the accused, or the perpetrator of the crime remains unknown, he shall issue an order of no grounds for prosecution of the accused. Provisionally detained accused persons shall be released immediately despite the Public Prosecutor's appeal unless they are detained for another reason. The investigating judge shall decide at the same time on the return of seized items. The expense account shall be settled, and the civil claimant shall be obligated to pay them, if there is a civil claimant in the case. However, the civil claimant in good faith may be exempted from all or part of the expenses by a special reasoned decision." Law 25-14 dated August 3, 2025, Official journal 54 dated August 13, 2025, containing the Algerian Code of Criminal Procedure.
- ³¹ Zakariya Bouamama: Previous reference, p. 04.
- ³² Muṣṭafa Ṭahir: Legislative Confrontation of the Phenomenon of Money Laundering Obtained from Drug Crimes, 2nd edition, Cairo, Egypt, 2004, p. 183.
- ³³ Article 54 of the Anti-Corruption Convention: Previous source.
- ³⁴ Article 31 of the Anti-Corruption Convention: Previous source.
- ³⁵ Haouari Souad : Confiscation of Proceeds in Corruption Crimes: Is There a Distinction from General Rules?, Journal of Legal Studies, University of Saida Moulay Tahar, Volume 11, Issue 01, Algeria, June 2024, pp. 213-216.
- ³⁶ Article 51 of Law 25/14, Code of Criminal Procedure: Previous source.
- ³⁷ Article 52 of Law 25/14, Code of Criminal Procedure: Previous source.
- ³⁸ Article 316 of Law 25/14, Code of Criminal Procedure: Previous source.
- ³⁹ Article 67 of Law 06-01: Previous source.
- ⁴⁰ Haouari Souad: Previous reference, p. 217.
- ⁴¹ Same reference: p. 219.
- ⁴² Article 51 of Law 06-01: Previous source.
- ⁴³ Haouari Souad : Previous reference, p. 220.
- ⁴⁴ Article 63, Paragraph 02 of Law 06-01, Anti-Corruption Law: Previous source.
- ⁴⁵ Article 53 of Law 24/15, Algerian Code of Criminal Procedure: Previous source.
- ⁴⁶ Same source.
- ⁴⁷ Article 54, Paragraph 01, Item (a) of the United Nations Convention against Corruption: Previous source.
- ⁴⁸ Haouari Souad : Previous reference, p. 223.
- ⁴⁹ Article 66 of Law 06-01, Anti-Corruption Law: Previous source
- ⁵⁰ Nabil Malkia : International Cooperation in the Field of Recovering Assets Derived from Administrative Corruption Crimes, Journal of Professor-Researcher for Legal and Political Studies, Issue 03, University of M'sila, Algeria, 2016, pp. 103-104.
- ⁵¹ Daḥiya Abdlatif - Balwaḍiḥ alṬayeb : Previous reference, p. 70.
- ⁵² Article 54, Paragraph (c) of the Convention on Prevention and Combating of Corruption: Previous source.
- ⁵³ Article 63, Paragraph 03 of Law 06-01, Law on Prevention and Combating of Corruption: Previous source.
- ⁵⁴ Daḥiya Abdlatif - Balwaḍiḥ alṬayeb: Previous reference, p. 71.
- ⁵⁵ Article 70 of Law 06-01, Law on Prevention and Combating of Corruption: Previous source.
- ⁵⁶ Article 57, Paragraph 02 of the United Nations Convention against Corruption: Previous source.

⁵⁷ Same source.

⁵⁸ Haouari Souad : Previous reference, p. 231.

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