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The reality of embezzlement and bribery crimes in the banking sector in light of Law 06/01, amended and  
supplemented

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Electronic link:

<https://internationaltaxjournal.online/index.php/itj/article/view/361>



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## The reality of embezzlement and bribery crimes in the banking sector in light of Law 06/01, amended and supplemented

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**Abstract**---The Algerian legislator has clearly emphasised the importance of embezzlement and bribery crimes in the context of offences undermining the duties of public office. These crimes are among the most dangerous types of administrative corruption afflicting the state, representing a breach of trust. This highlights the importance of implementing preventive measures against internal and external corruption. Algeria has aligned its efforts with those of the international community, keeping pace with the transformations mandated by international relations. Amending its domestic legislation to comply with these obligations was imperative for Algeria, especially given the Penal Code's and related laws' inability to combat corruption and develop the national legislative framework. This was achieved through the enactment of Law 06/01, dated 20 February 2006, concerning the prevention and combating of corruption, which was amended and supplemented in 2011. The law aims to support measures to prevent and combat corruption, and enhance integrity, accountability and transparency in the management of the public and private sectors.

**Keywords**---embezzlement, bribery, banking sector, combating corruption.

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### How to Cite:

Bouokka, K. (2025). The reality of embezzlement and bribery crimes in the banking sector in light of Law 06/01, amended and supplemented. *The International Tax Journal*, 52(6), 3698–3714. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/361>

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Submitted: 06 February 2025 | Revised: 27 August 2025 | Accepted: 14 November 2025  
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## Introduction

Financial and administrative corruption is a deeply rooted social issue in human history and one of the most pressing global concerns, which expert reports unanimously agree must be contained<sup>1</sup>. It has received significant attention from numerous studies and occupies an important place in the reform priorities of governments in both the public and private sectors. This reflects an awareness of the seriousness of the issue, its expanding scope and the interconnectedness of its various aspects. It also reflects the growing magnitude of the issue due to the economic and social transformations occurring worldwide. Corruption is arguably the main problem facing the new global system, representing a significant obstacle to societal development, hindering development efforts, undermining the social fabric and obstructing economic growth. It also impairs states' ability to fulfil their developmental and investment roles, resulting in human rights violations. Corruption distorts international competition and trade flows. Former U.S. Secretary of Commerce Michael Kantor referred to corruption as a 'virus' that threatens the health of the international trading system<sup>2</sup>.

At its core, corruption represents a severe disruption to societal values, causing countries to disintegrate for various internal and external reasons related to a lack of transparency and disrespect for the law. It undermines public trust in governing authorities and weakens confidence in administrative bodies due to abuses of power and illegal activities that deviate from civilised conduct. This hinders the path to democracy and the rule of law, violating social values, principles and systems, as well as public interest, through illicit means such as exploiting positions of power, bribery and embezzlement. Such behaviour paves the way for the proliferation of crime, which threatens the security and stability of societies and diminishes the quality of public services. The landmarks of development in any country cannot be discerned amidst the growth of this phenomenon<sup>3</sup>.

Linguistically, the term 'corruption' derives from the Latin verb 'to break', indicating that a behavioural or administrative norm has been broken with the intention of achieving a benefit that is directly resultant from the act of corruption. There are three main types of corruption: organic corruption, moral corruption and legal corruption, or corruption in public office.

Some consider corruption to be synonymous with "decay," "damage," and "disruption." Scholar Ibn Manzur viewed corruption as the opposite of reform. He stated that a people decay when they sever familial ties and that corruption is contrary to public interest, signifying a departure from moderation. Specialists have different views on how to define the concept of corruption, and there is no comprehensive definition that encompasses all aspects of corruption<sup>4</sup>. Some argue that corruption involves abusing influence to achieve personal gain and misusing public authority for private benefit. Others define it as 'the use of public authority to gain personal profit or social prestige contrary to legislation and standards of human behaviour'.

Additionally, some view corruption as a term that describes 'the disordered state of administrative work, whether due to the prevalence of bribery among employees or due to negligence and inattention in management'. It also encompasses behaviours that violate regulations and laws, contradicting societal values and ethics. The International Monetary Fund defines corruption as 'the relationship of vested

<sup>1</sup>- Khalil Abdelkader, Economic Study of the Corruption Phenomenon in Algeria, Second National Conference on Mechanisms for Protecting Public Funds and Combating Corruption, Dr. Yahi Faris University in Médéa, Faculty of Law, May 5-6, 2009, p. 03.

<sup>2</sup>- Haj Ali Badr Eddine, Crimes of Corruption and Mechanisms for Combating Them in Algeria, Part Two, First Edition, Dar Al-Ayyam, Jordan, p. 09.

<sup>3</sup>- Ben Azouz Mohamed, Administrative and Economic Corruption: Its Effects and Mechanisms for Combating It in Algeria, Algerian Journal of Globalization and Economic Policies, Issue 07, 2016, p. 13.

<sup>4</sup>- Nouari Ahlam, Concept of Administrative and Financial Corruption and Its Impacts, Second National Conference on Mechanisms for Protecting Public Funds and Combating Corruption, Dr. Yahi Faris University in Médéa, Faculty of Law, May 5-6, 2009, p. 10.

interests aimed at obtaining benefits from this behaviour for an individual or a group linked to individuals'. In its 1996 report, the IMF describes corruption as 'the misuse of public authority to gain private benefits, which necessarily involves the acceptance or solicitation of bribes by public officials'. Some definitions expand the scope of corruption to include cultural dimensions such as values, traditions and ideological systems. There are also one-dimensional definitions that portray corruption as a product of laxity and chaos. In his well-known introduction, Ibn Khaldun states that 'the foundation of corruption lies in the desire for luxurious living among individuals and the ruling group', identifying social, economic, political, administrative and organisational causes related to complex bureaucratic procedures.

### To combat and eradicate this phenomenon

In light of the growing international consensus on the need to unite against this transnational issue, it has become essential for everyone to intensify their efforts. This requires the establishment of robust legal and preventive frameworks to promote transparency, alongside mechanisms dedicated to combatting corruption, studying its manifestations, and curbing its spread. International cooperation to enhance the effectiveness of anti-corruption mechanisms is also vital to preserve public funds and coordinate international anti-corruption efforts.

Algeria, which has been affected by corruption within its institutions, has prioritised this issue at regional and international levels, aligning its efforts with those of other countries worldwide. The country has placed the utmost importance on combatting corruption in all its forms and activating the role of its legal institutions, and has ratified international anti-corruption agreements, including the Maputo Convention, signed on 11 July 2003 under the auspices of the African Union. The convention emphasises the close link between good governance and the fight against corruption, stating that 'the concerned states commit to enhancing the protection of human rights, supporting institutions and democratic culture, ensuring good governance and the rule of law, and combating the corruption affecting African countries'. Algeria ratified this convention through Presidential Decree 06/137<sup>5</sup>.

Furthermore, on 31 October 2003, Algeria signed the United Nations Convention, which entered into force on 14 December 2005. This signals Algeria's sincere international commitment to combatting corruption comprehensively and amending national legislation<sup>6</sup>. Algeria ratified the convention through Presidential Decree 04/128, dated 19 April 2004, which includes a reservation on the UN Convention, as adopted by the UN General Assembly in New York on 31 October 2003 (Official Gazette No. 26, dated 25 April 2004).

Following international efforts, the Arab Convention against Corruption was issued in Cairo on 21 December 2010. The convention aims to enhance measures for preventing, combating and uncovering corruption in all its forms. The Convention also seeks to strengthen Arab cooperation in preventing this scourge and recovering assets linked to it. By incorporating the provisions of international anti-corruption agreements and emphasising the importance of preventing internal and external corruption, Algeria has aligned its efforts with those of the international community<sup>7</sup>.

In light of transformations in international relations, Algeria has amended its domestic legislation to comply with these commitments, given the inadequacy of the Penal Code and related legislation in combating corruption and developing the national legislative framework. Consequently, Law 06/01 was enacted on 20 February 2006 concerning the prevention and combating of corruption. This law was subsequently amended by Order No. 10/05 on 26 August 2010 and Law No. 11/15 on 2 August 2011.

<sup>5</sup>- Presidential Decree No. 06/137 dated April 10, 2006, ratifying the African Union Convention on Preventing and Combating Corruption adopted in Maputo on July 11, 2003, Official Gazette No. 24, dated April 16, 2006.

<sup>6</sup>- Haj Ali Badr Eddine, Op. Cit., p. 10.

<sup>7</sup>- Haj Ali Badr Eddine, Op. Cit., p. 20.

The law aims to support measures for preventing and combating corruption, enhancing integrity, accountability and transparency in the management of both the public and private sectors, and facilitating and supporting international cooperation and technical assistance in preventing and combating corruption, including asset recovery<sup>8</sup>.

The Algerian legislator defined corruption in Article Two of Law 06/01 concerning the prevention and combating of corruption, stating: 'For the purposes of this law, corruption refers to all crimes specified in Chapter Four, which include:

- Bribery of public officials
- unjustified advantages in public procurement or their unlawful use;
- Bribery in public procurement
- Bribery of foreign public officials and employees of international public organisations.

Embezzlement of property by a public official.

Betrayal

Illegal exemptions and reductions in taxes and duties

- Abuse of influence

Misuse of office

Illegally obtaining benefits

- False declaration of assets

- Unjust enrichment

Embezzlement of private property

Money laundering

- Concealment

- Obstruction of justice

- Protection of witnesses, experts, whistleblowers and victims

Malicious reporting

Failure to report crimes

This study will focus on the crimes of embezzlement and bribery within the banking sector<sup>9</sup>. The issue is posed as follows:

### **How has the Algerian legislator addressed these crimes in the banking sector?**

#### **Section One: Embezzlement in the Banking Sector**

The importance of this crime stems from several considerations, the most significant of which are:<sup>10</sup>

The subject of this crime is public money or funds from financial institutions contributed by ordinary members of the public. In the eyes of the legislator, this money holds greater significance than private funds because it is not tied to the interests of a specific individual, but rather to the collective interests of society as a whole. Therefore, criminalising the act of embezzling such funds is a crucial way of protecting both public and private interests.

The perpetrator is either a public employee or someone tasked with public service, or an individual who, by virtue of their position in certain financial institutions, handles funds belonging to others. Their behaviour in this crime reflects the seriousness of exploiting their position to commit the offence. Additionally, their possession of the money is a fiduciary responsibility, facilitating the misappropriation of funds, since they are acting on behalf of, and for the benefit of, the community.

Criminal responsibility exists to mitigate abuses affecting the banking profession and is directed against dishonest bankers, since financial dealings are often fertile ground for temptation<sup>11</sup>.

<sup>8</sup>- Article One of Law No. 06/01 dated February 20, 2006, amended and supplemented by Law 11/15 dated August 2, 2011, Official Gazette No. 44.

<sup>9</sup>- The Algerian legislator defined the crime of bribery in Articles 126 and 127 of the Penal Code for the briber and in Article 129 for the bribee, although the term "bribee" is not explicitly mentioned. After the amendment in 2006, the previous articles were repealed and replaced by Article 25 of Law 06/01 concerning the prevention and combating of corruption.

<sup>10</sup>- Al-Tawil Nail Abdel Rahman Saleh, Rabeh Najeh Dawood, Banking Operations and Crimes Committed Against Them, Part One, Dar Wael for Printing and Publishing, Amman, Jordan, 2000, p. 206.

<sup>11</sup>- Haj Ali Badr Eddine, Op. Cit., p. 204.

The crime of bribery is distinguished from other crimes by two features. The first relates to the statute of limitations for public prosecution, which applies to bribery in all its forms, as stated in Article 50 of the Law on the Prevention of Corruption. This article states that public prosecution for corruption crimes is not time-barred if the proceeds of the crime are transferred abroad. In all other cases, the provisions of the Code of Criminal Procedure apply, particularly Article 8 bis, which states that public prosecution does not expire for felonies and misdemeanours relating to bribery. Consequently, the crime of bribery is not subject to statutory limitations.

Secondly, the penalties imposed for bribery are not subject to limitations, as stipulated in Article 612 bis of the Code of Criminal Procedure, unlike other corruption crimes.

Conversely, responsibility has been established for those who exploit the advantages of this activity, including the advanced tools, techniques and methods used, and the presumed trust in transactions. It is essential to ensure that the funds entrusted to employees in this sector are adequately protected. The interest protected in the crime of embezzlement is limited to safeguarding the state's financial interests and ensuring that duties of trust and public confidence are not violated. Therefore, the protected interest is not solely financial, but also encompasses ensuring that the functional activity aligns with the objectives of public service<sup>12</sup>.

In light of the criminal protection that the legislator established for banking credit through criminalisation policy, embezzlement was organised in the Penal Code and then became a manifestation of corruption under the Law on the Prevention and Combating of Corruption. This is also covered by Order 03/11 concerning currency and credit, as amended and supplemented.

#### **First – definition of the crime of embezzlement:**

Embezzlement is defined as 'taking someone else's property without their consent', or the unlawful appropriation of movable property, documents or other items by public employees, those in similar positions or employees of financial institutions and public limited companies due to their position. Any unlawful appropriation or possession of an item without the owner's consent is also considered embezzlement.

Scholar Garçon defined it as 'the appropriation of an item, including its material and moral aspects, without the owner's or possessor's consent.<sup>13</sup>

Rather than defining the crime of embezzlement, the Algerian legislator stipulated its elements. Article 29 of the amended and supplemented Law on the Prevention and Combating<sup>14</sup> of Corruption states: 'Any public employee who embezzles, damages, wastes or intentionally and unlawfully retains or uses for their own benefit, or for the benefit of another person or entity, any public or private property, financial assets or other valuables entrusted to them by virtue of their position, shall be punished by imprisonment for a term of two to ten years and a fine of 200,000 to 1,000,000 DZD.'

The legislator organised this crime with the aim of protecting public and private property entrusted to public employees in the course of their duties<sup>15</sup>. Article 132 of the Law on Currency and Credit states: 'The president, members of the board of directors, or general managers of a bank or financial institution who embezzle, waste, or intentionally and unlawfully retain property belonging to the owners or holders of securities, funds, or other documents involving an obligation or release, delivered to them as a deposit, pledge, or loan, shall be punished by imprisonment for a term of one to ten years and a fine ranging from five million (5,000,000) to ten million (10,000,000) DZD.' This constitutes a breach

<sup>12</sup>- Abdul Hamid Mohamed Al-Shawabi, *Banking Operations in Light of Jurisprudence, Judiciary, and Legislation*, Manarat Al-Ma'arif, Alexandria, Egypt, 2005, p. 1662.

<sup>13</sup>- Nour El-Din Ben Cheikh, *Legal Protection of Bank Deposits in Algerian Legislation*, Doctorate in Law, Faculty of Law and Political Science, University of Hajj Lakhdar Batna, Academic Year 2014-2015, p. 205.

<sup>14</sup>- Which replaced Article 119 of the Penal Code concerning public safety, Section One on embezzlement and betrayal.

<sup>15</sup>- Ahsen Bouskiah, *Summary of Special Criminal Law, Part One, Crimes Against Persons, Crimes Against Property, and Some Special Crimes, especially: Money Laundering and Drug Crimes*, 10th Edition, Dar Houma, Algeria, 2009, p. 25.

of trust by a public employee with regard to any property in their possession that has been entrusted to them by virtue of their position. Thus, the crime is characterised as a betrayal of trust tainted by the exploitation of one's position<sup>16</sup>.

The importance of criminalisation is evident in the measures aimed at preventing and combating corruption, enhancing integrity, accountability and transparency in the management of the public and private sectors, and facilitating international cooperation and technical assistance in the prevention and combating of corruption, including asset recovery.

**Secondly, the elements of the crime of embezzlement are as follows:**

For the legal structure of the crime of embezzlement to be established, the status of a public employee must be fulfilled. Embezzlement can only be committed by someone holding this status. There must also be a material element characterised by the act of embezzlement. The object of embezzlement is the possession of appropriated items due to the position held. Furthermore, a moral element is required<sup>17</sup>, represented by criminal intent, along with a legal element that distinguishes embezzlement from other crimes.

**1. The presumed element: The status of the perpetrator**

For the crime of embezzlement to be committed, the perpetrator must have a specific status, namely that of a public employee or someone in a similar position working in a financial institution. This status is a common and presumed element in most corruption crimes, as defined in Article 2<sup>18</sup> of Law 6/01, as amended and supplemented. According to the provisions of Article 132 of the Law on Currency and Credit, the penalty for embezzlement only applies to banks if the perpetrator is a member of the board of directors, president or general manager. If the embezzlement is committed by someone who does not possess this status, then the crime does not occur.

Given the importance of this status for this crime, the court — specifically the judges hearing the case — must verify it in their ruling, so that the Supreme Court can exercise oversight. Otherwise, the ruling would be flawed due to a lack of reasoning. It is not necessary for the ruling to prove that the perpetrator knew they were a public employee, as a person inherently knows the attributes they possess<sup>19</sup>.

In its rulings of 12 March 1985<sup>20</sup> and 26 October 1999, the Supreme Court confirmed the following:<sup>21</sup> 'Whereas Article 119 of the Penal Code presumes the perpetrator to be a public employee or officer, regardless of title or designation, temporarily holding a paid or unpaid position and serving the state, local authorities, economic institutions or any private entity undertaking a public service.' As the contested decision did not confirm that the accused belonged to any of these categories, he could not be considered a public employee. Therefore, if the entity that suffered from his actions was one of those mentioned in Article 119 of the Penal Code, the accused's actions must have been an attempt to embezzle funds from the National Savings and Reserve Fund agencies, to which he did not belong as a security guard. Consequently, the funds he embezzled with his brother and partner were not in his possession, nor was he entrusted with them by virtue of his position or due to it. This means that the last condition for the crime of embezzlement under Article 119 of the Penal Code is also not met.

<sup>16</sup>- Abdul Hamid Mohamed Al-Shawabi, Op. Cit., p. 1662.

<sup>17</sup>-Ali Abdelkader Al-Qahouji, General Part of the Penal Code, Book Two: Criminal Responsibility and Criminal Penalty, University Publications House, Alexandria, Egypt, 1998, p. 76.

<sup>18</sup>- This is the same definition found in Article 02 of the United Nations Convention Against Corruption, Abdul Majid Jabari, Legal Studies in Criminal Law in Light of the Most Important Recent Amendments, Dar Houma for Printing and Publishing, 2012, Algeria, p. 131.

<sup>19</sup>- Abdul Hamid Mohamed Al-Shawabi, Op. Cit., p. 1663.

<sup>20</sup>- Supreme Council, Criminal Chamber, 12/03/1985, File No. 40330, Judicial Journal, No. 02, 1990, p. 255.

<sup>21</sup>- Supreme Court, 26/10/1999, File No. 225559, Supreme Court Journal, Judicial Precedent of the Criminal Chamber, 2003 Special Issue, p. 435.

Therefore, the arguments raised by the appellants are founded and necessitate the annulment of the contested decision.<sup>22</sup>

While the 2006 Law on the Prevention of Corruption resolved the issue of applying its rules to public institutions, public economic institutions are no longer faced with the problem of defining an employee's status as a presumed element in the commission of corruption crimes. However, difficulties remain regarding the application of this law to banks. The text specifically mentions the punishment of bank presidents, board members and general managers. If the crime is committed by someone who does not have the aforementioned status, then the provisions of Article 29 regarding the combating of corruption apply.

According to Article 132, the legislator has increased the penalty for these individuals, which may reach life imprisonment if the embezzled or squandered amount exceeds 10,000,000 DZD. In cases where the crime is committed by individuals other than those specifically designated (i.e. employees), the provisions of Article 29 apply, with a maximum penalty of 10 years.

## **2 – The material element:**

In the crime of embezzlement, the material element involves the perpetrator concealing the property in their possession, using or consuming it as if they were the owner, engaging in any act that infringes the embezzled property, or failing to deliver it to the entitled recipient. These activities all represent a change in the accused's intention regarding the property in their possession. By behaving like an owner, the perpetrator indicates an intention to convert incomplete possession into full possession<sup>23</sup>. However, a mere change of intent is insufficient; there must be an action by the accused that clearly expresses this intention.

Embezzlement is correlated with malicious intent or the intent to own, which is manifested through criminal behaviour and clearly reflects a change in the intention of possession, thus constituting the crime. Here, the term 'embezzlement' is used in a specific sense, presupposing that the perpetrator had possession of the property at the time of committing the criminal act. However, this possession is considered incomplete and temporary because the possessor has the material element of possession without the accompanying moral element. This means that, although they have the money in their possession, they have no authority over it except under the conditions of their possession<sup>24</sup>. This concept is realised in the crimes of breach of trust and embezzlement.

Thus, the general meaning of forcibly taking property from its owner is not intended here, since the crime of embezzlement assumes that the perpetrator already possessed the property prior to the act of embezzlement. Furthermore, it is the status of the perpetrator (public employee) and those in similar positions that distinguishes the crime of embezzlement.

### **A. Manifestations of criminal behaviour:**

According to Article 132 of Order 03/11, as amended and supplemented, it states: '... they embezzle, waste or intentionally and unlawfully retain or use for their own benefit, or for the benefit of another person or entity, any property, funds or public or private financial assets, or any other items of value.' Criminal behaviour relating to the crime of embezzlement can manifest in several forms, which we outline below:

#### **A-1 Embezzlement:**

<sup>22</sup>- Jalila Masour, Bank Liability for Banking Credit in Algerian Law, Doctoral Thesis in Business Law, Faculty of Law and Political Science, University of Batna 1, Academic Year 2016-2017, p. 371.

<sup>23</sup>- Kamel Al-Saeed, Explanation of the Penal Code: Crimes Harmful to Public Interest, Analytical Comparative Study, First Edition, Dar Al-Thaqafa, 2008, p. 514.

<sup>24</sup>- Nail Abdel Rahman Saleh Al-Tawil and Najeh Dawood Rabeh, Op. Cit., Part One, Dar Wael for Printing and Publishing, Amman, Jordan, 2000, p. 214.

This occurs when an employee lawfully possesses property or an item by virtue of their position and then acts as though they are the owner of that property<sup>25</sup>. It is assumed that the perpetrator had prior possession of the embezzled item or money; however, this possession is incomplete or temporary, enabling them to act as though they are the owner. If the perpetrator engages in behaviour revealing their intention to transform their incomplete possession of the money into full possession, the embezzlement is realised. Thus, embezzlement is legally established when the perpetrator adds property entrusted to them to their possessions, acting as the owner and intending to treat it as their own. Therefore, embezzlement is not merely a physical act or a purely internal intention, but rather a composite act involving a physical manifestation of ownership supported by an intention to possess. It involves the intention to misappropriate property entrusted to them<sup>26</sup>.

#### **A-2 Waste:**

Waste occurs when a trustee removes property entrusted to them from their possession, either by using it themselves with the intention of owning it, or by acting as an owner would, such as selling, pledging or gifting it to others. Waste implies extravagance and squandering; for example, granting loans to a project that is unlikely to be viable or to result in repayment. Waste requires the removal of the property from the embezzler's possession, which follows the act of embezzlement. Embezzlement, on the other hand, does not remove the property from the embezzler's ownership; it merely changes the nature of the possession<sup>27</sup>. Mere use of the property does not constitute waste if it is for beneficial purposes<sup>28</sup>.

Temporary possession can be transformed into final possession through a legal or physical act that is easy to prove, although it may be difficult to recover the property. The difference between embezzlement and waste is that the former does not transfer ownership of the property; it merely alters the nature of possession. In the case of waste, however, the property must be removed from the embezzler's possession following the act of embezzlement. Therefore, waste necessarily involves embezzlement and is a subsequent material act. Simply using the property does not equate to waste, as use may not be limited to personal gain. There is no distinction in terms of whether the act occurs on the entire property or just part of it.

The perpetrator does not have to benefit personally from the embezzlement; the crime exists even if the benefit accrues to someone other than the embezzler. Realisation of this embezzlement element is not affected by whether the embezzled property has been damaged or recovered<sup>29</sup>, as criminalisation of the act does not depend on causing harm to the embezzled property or its owner. The legislator's aim in criminalising the act is to protect the trust in the relationship between employees or those in similar positions and the entities they serve, thereby fulfilling their duty of trust and integrity when performing their work<sup>30</sup>.

#### **A-3 - Retaining property without just cause:**

In this case, the act is not the seizure or complete or partial waste of the property, but rather retaining it without just cause<sup>31</sup>. This disrupts the purpose for which the money was allocated, thereby protecting the bank's assets. Simply holding the money does not equate to embezzlement, as this indicates that the perpetrator does not intend to act upon it or present themselves as the true owner. It is not necessary for damage to occur here; the return of the property does not negate the criminal act, as criminalisation is not contingent on causing harm to the embezzled property or its owner.

### **B – Elements of Criminal Behaviour:**

The elements of criminal behaviour in the crime of embezzlement include the employee possessing the embezzled property. The property must have been entrusted to the perpetrator by virtue of their position and not in their personal capacity.

<sup>25</sup> Abdul Hamid Mohamed Al-Shawabi, Op. Cit., p. 1665.

<sup>26</sup> Same reference, p. 1666.

<sup>27</sup> Ahsen Bouskiah, Op. Cit., p. 20.

<sup>28</sup> Mohamed Sobhi Najm, *Explanation of the Algerian Penal Code, Special Section*, 5th Edition, National Publishing Office, Algeria, 2004, p. 163.

<sup>29</sup> Jalila Masour, Op. Cit., p. 373.

<sup>30</sup> Nail Abdel Rahman Saleh Al-Tawil and Najeh Dawood Rabeh, Op. Cit., p. 215.

<sup>31</sup> Same reference, p. 215.

**B-1 Employee possession of the embezzled property:**

Article 132 of the Law on Currency and Credit states: ‘... for the account of owners of securities, funds or documents involving an obligation or release, entrusted as a deposit, pledge or loan only...’ For the employee to be found guilty of embezzlement, it must be proven that they had possession of the property or security in question due to their position, i.e. that there is a connection between their possession of the property and their job. The employee must have actual control over the property and be obligated to protect and use it for the purposes permitted by law.

Embezzled property includes assets, funds, financial securities, valuable items, all types of accounts and documents such as promissory notes, cheques and certificates of indebtedness that are due, as well as commercial papers, contracts and all movable property in the employee’s custody. Incidentally, this also includes documents that entail an obligation or release entrusted in advance as a deposit, pledge or loan. These items do not have to be under the employee’s supervision; they may be necessities for their job, whether the property is public or private. According to Article 41 of Order 06/01, ‘Any person managing or working in a private sector entity in any capacity during the course of economic, financial or commercial activity who intentionally embezzles any property<sup>32</sup>, funds or private financial securities or any other valuable items entrusted to them in the course of their duties shall be punished by imprisonment for a term of six months to five years and a fine of 50,000 to 500,000 DZD.’

**B-2. The property must have been delivered to the perpetrator in their professional capacity and not in their personal capacity.**

First and foremost, embezzlement is a harmful crime, meaning it causes material damage in the form of an actual violation of a legally protected right. This harmful result is embodied in a bank employee appropriating funds in their possession. Embezzlement can only occur if the property was entrusted to the employee by virtue of their position and not in their personal capacity. This means that items embezzled, damaged, wasted, retained or unlawfully used must have been placed or entrusted to the employee by virtue of their position<sup>33</sup>.

The delivery does not have to be made in a specific manner or form; for example, it is not necessary for a receipt to be provided or for the money to be placed in a safe for official use. It is sufficient for the property to be in the hands of the employee in any form, whether recorded in official books or delivered directly to the employee responsible for receiving the funds. For example, it is sufficient that the property subject to the crime has been delivered to one employee, who then hands it over to the employee responsible for receipt, who subsequently embezzles it.

There must be a causal relationship between the employee’s possession of the property and their position. This means that the employee must receive the funds in accordance with the laws governing their position or the deposits they manage. The crime is only realised if the receipt of the embezzled funds aligns with the requirements of their work and falls within the scope of their duties according to the law.

For embezzlement to occur, it is not necessary for the property to be delivered in the strict sense; it is sufficient for the employee to be in possession of it by virtue of their position. The causal link between possession and position is not negated even if acquiring possession due to the position involved a violation of the law. The law only requires that the position be the reason for the employee’s possession of the property. It is not necessary for the property to have been required for their original duties; it is sufficient that the employee has been temporarily assigned a task that grants them possession of the property, whether this assignment is in writing or verbal<sup>34</sup>.

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<sup>32</sup>. Financial activity may refer to banking operations considered a commercial activity according to Article 02 of the Commercial Law; it is a sector aimed at profit.

<sup>33</sup>. Abdul Majid Jabari, Legal Studies in Criminal Law in Light of the Most Important Recent Amendments, 3rd Edition, Dar Houma for Printing and Publishing, Algeria, 2016, p. 136.

<sup>34</sup>. Nou El-Din Ben Cheikh, Op. Cit., p. 210.

### **C – Attempted embezzlement:**

The concept of an attempt is not applicable in this context because it involves a change in the intention of possession<sup>35</sup>. This change can either result in a completed crime or not occur at all. There is no middle ground between these two situations. The intention can be directed towards acquiring ownership of the property, thus completing the crime, or it can be absent, in which case the crime does not occur.

In other words, any act that clearly indicates an intention to acquire full possession constitutes a completed crime. If such an act lacks this implication, the crime is not committed. This is one of the peculiarities of the crime of embezzlement, consistent with its unique nature, which requires prior possession before the crime can be committed. This intention must manifest itself in a clear act: the crime either occurs as a complete act, or it takes on a different description.

Embezzlement occurs when the intention to possess changes, which happens when execution begins. As the perpetrator is initially in possession of the property, it is difficult to identify the act that marks the beginning of execution. As the perpetrator holds the property legitimately by virtue of their position, it is inconceivable that they would commit an act of ‘taking’, which implies seizing someone else’s property without their consent, as in the case of theft.

Therefore, taking or possession cannot be used to claim that an attempt has occurred, since the individual is authorised to take and possess the property. Therefore, intention becomes the appropriate criterion for establishing criminal behaviour. As intention must be complete, it is impossible to conceive of an attempt in this crime. Embezzlement occurs as soon as the employee acts as the owner of the entrusted property, intending to deprive the rightful owner of it. This consists of a material act — managing the property — and a mental act associated with it: the intention to misappropriate the property<sup>36</sup>.

### **Thirdly, the moral element of the crime of banking embezzlement:**

Embezzlement is classified as an intentional crime because it involves an intention that does not align with negligence or carelessness, even gross negligence. Embezzlement consists of a composite act involving a material action and the intention to possess; this intention must manifest itself in a clear act. Otherwise, it remains merely an idea in the perpetrator’s mind, which is far from criminalisation and punishment in this case.

For embezzlement to occur, criminal intent is required, consisting of two elements: knowledge and management. The perpetrator must be aware that they have incomplete possession of the property, that this possession is by virtue of their position, that they do not own it, and that the law does not permit them to act towards it as they have. They must also understand that their actions constitute a crime punishable by law. They must also be aware that the property in question was entrusted to them for management within a specific legal framework, either for the benefit of the public or as private property belonging to their employer, and that it was given to them in trust.

Nevertheless, their intention is to embezzle, waste, retain or destroy it, which constitutes general criminal intent.

There must also be a specific criminal intent, namely the intention to possess. If the perpetrator intends to retain the property for personal use and then return it, this constitutes the crime of unlawful use of property<sup>37</sup>. They must also intend to achieve the result of their actions, which involves violating a right protected by law and retaining the property with the intention of owning it. In the case of embezzlement, this right relates to the community’s interest in ensuring the safety of its funds.

The mere occurrence of the act without intention of the result is insufficient to establish the moral element; embezzlement and criminal intent are intertwined. If embezzlement implies that the perpetrator behaves towards the property as an owner would, then their intention must necessarily be

<sup>35</sup> Kamel Al-Saeed, Op. Cit., p. 516.

<sup>36</sup> Nail Al-Tawil Saleh Al-Tawil and Najeh Dawood Rabeh, Op. Cit., p. 216.

<sup>37</sup> Ahsen Bouskiah, Op. Cit., p. 31.

directed towards this behaviour, which specifically signifies the special criminal intent required for this crime<sup>38</sup>.

**Fourth: the penalty for the crime of banking embezzlement.**

The Algerian legislator has specified the crimes of embezzlement, waste or unlawful retention in Articles 132 and 133 of Order 03/11 (the Law on Currency and Credit), which particularly address waste by presidents, board members or general managers of banks. Additionally, Article 29 of Order 06/01, which concerns the prevention and combating of corruption, stipulates penalties for public employees who commit these crimes, without specifying any particular individual. ‘Any public employee who embezzles, wastes, retains without just cause, or unlawfully uses for their own benefit, or for the benefit of another person or entity, any property, funds, public or private financial securities, or any other items of value entrusted to them by virtue of their position, shall be punished.’

This raises the question of which legal text should be applied: Article 29 of the Anti-Corruption Law or Articles 132 and 133 of Order 03/11? In practice, the applicable text varies depending on the value of the embezzled, wasted or unlawfully retained funds. Article 29 of Order 06/01 applies if the value is less than 10,000,000 DZD. However, if the value equals or exceeds 10,000,000 DZD, then Article 132 of Order 03/11 applies. Consequently, it is necessary to refer to Article 32 of the Penal Code, which states: ‘A single act that carries several descriptions shall be described by the most severe of them.’ Article 133 of Order 03/11 also stipulates that ‘in cases covered by Articles 131 and 132, if the value of the embezzled, wasted or intentionally retained funds equals or exceeds ten million DZD, the penalty is life imprisonment and a fine ranging from twenty to fifty million DZD.’

If the bank is a public entity affiliated with the state, the penalty intensifies to imprisonment for 2–10 years and a fine ranging from 200,000 to 1,000,000 DZD. However, according to Article 41 of Order 06/01, if the embezzlement occurs in the private sector, the penalty ranges from six months to five years’ imprisonment and a fine ranging from 50,000 to 500,000 DZD. The legislator has equated the penalties for bribery and embezzlement affecting the private sector.

According to Article 6 bis of the Code of Criminal Procedure, the legislator has stipulated a condition for complaints regarding crimes committed by managers of public economic institutions. By contrast, public prosecution is not required for the crime of embezzlement in the private sector without a complaint from either a natural or legal person<sup>39</sup>.

Thus, despite the fact that banking embezzlement is regulated under the Law on Currency and Credit, which intensifies the penalties for embezzlement committed in banks and financial institutions — where the penalty can be life imprisonment if the value of the crime equals or exceeds 10 million DZD — the reality is that this provision is not applied, with judges relying on general rules instead. While the Anti-Corruption Law altered the nature of the penalties for embezzlement, replacing them with misdemeanour penalties under Article 29, the financial penalty remains severe, particularly in terms of protecting trust and credit in banking performance.

Furthermore, Article 133 regulates the threshold for embezzled funds, ensuring that no loophole is left that could undermine credit. Notably, Article 29 of the Law on the Prevention and Combating of Corruption applies to acts that occurred prior to its issuance. This was upheld by the Supreme Court in a ruling issued by the Criminal Chamber on 21 March 2007, which stated: ‘It is established from Law 06/01 concerning the prevention and combating of corruption that the provisions of Article 119 of the Penal Code are repealed and replaced by the provisions of Article 29 of Law 06/01, which penalises the same act of embezzlement of public funds with imprisonment of between two and ten years.’

<sup>38</sup> Kamel Al-Saeed, Op. Cit., p. 5109.

<sup>39</sup> Badr Eddine Haj Ali, Op. Cit., p. 251.

Therefore, even though the facts occurred under the old law, the retroactive effect applies as long as the new legal text is more favourable to the accused.<sup>40</sup>

## **Section Two: Bribery in the Banking Sector**

### **First – definition of the crime of bribery**

Linguistically, bribery derives from the Arabic word “رِشَاء” (rasha), meaning ‘rope’, which figuratively represents the path to an objective through the allure of money. Legally, it refers to something given to invalidate a right or affirm a falsehood<sup>41</sup>; it may involve money or benefits. Fundamentally, bribery is based on the concept of trading public office: a public employee or someone in a similar position performs or refrains from performing an official duty in exchange for a private benefit for themselves or others<sup>42</sup>. This could involve requesting or accepting gifts, promises, donations or other advantages in return for carrying out or avoiding actions related to their official duties, whether lawful or unlawful.

Even if the action is outside their personal competencies, their position may facilitate its execution. Thus, bribery entails a deviation from performing official duties for the intended purpose of serving the public interest, in favor of achieving personal goals, which results in illicit gains from the position. The focus is on the behavior of the public employee, not on the actions of the other party, who has an interest<sup>43</sup>.

Broadly speaking, bribery essentially constitutes an agreement between an employee and an interested party whereby the employee receives a material or moral benefit for themselves or another person, provided that the work falls within the scope of their duties or responsibilities<sup>44</sup>. Alternatively, it can be defined as an agreement whereby an employee promises to fulfil the desires of an interested party by performing or refraining from an action in exchange for such benefits. Thus, it represents a reciprocal relationship of give-and-take between the employee and the interested party. At its core, bribery is the commercialisation of public service, which the employee offers as a commodity in exchange for payment. This definition inherently assumes that the briber has the authority to provide the service to the payer and that the bribed employee is competent in their official duties.

As Professor<sup>45</sup> Fadia Qassem Baydoun expressed, bribery corrupts the relationship between the state and its citizens, undermining its significance and transforming the position into a business. The service offered becomes a commodity, leading to the employee's unlawful enrichment at the citizen's expense. The crux of this crime lies in the trading of public office, which grants the employee authority within their jurisdiction that they are expected to fulfil with integrity to serve the public interest. However, they often deviate from normal public administrative operations, inevitably harming the public interest. Bribery can only be committed when the perpetrator possesses the legal qualifications required<sup>46</sup>.

### **Second: Elements of the Crime of Bribery**

The crime of bribery is based on three essential elements: the status of the briber or someone considered equivalent; the material element, represented by the act of taking, accepting or requesting; and the moral element of criminal intent, since bribery is an intentional crime.

**The presumed element:** The status of the perpetrator and their competence in official duties.

<sup>40</sup>- Supreme Court, March 21, 2007, File No. 436871, cited from Jalila Masour, Op. Cit., p. 378.

<sup>41</sup>- Mohamed Sobhi Najm, Op. Cit., p. 02.

<sup>42</sup>- Zohair Mohamed Abu Al-Izz, Criminal Responsibility for Banking Acts, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2013, Op. Cit., p. 182.

<sup>43</sup>- Mohamed Sobhi Najm, Op. Cit., p. 08.

<sup>44</sup>- Cf. Jean Claude Soyer, Criminal Law and Criminal Procedure, 12th Edition, L.G.D.J, Paris, 1998, p. 84.

<sup>45</sup>- Badr Eddine Haj Ali, Op. Cit., p. 195.

<sup>46</sup>- Karima Belqadi, The Role of the Offender in the Crime of Bribery and Its Spread, Mechanisms for Protecting Public Funds and Combating Corruption, Second National Conference, Faculty of Law, Dr. Yahi Faris University in Médéa, Algeria, 2009, p. 01.

The perpetrator of the crime of bribery must be a public employee, but this status alone is insufficient. Not all public employees can commit this crime; they must be functionally competent in the service for which they received the benefit<sup>47</sup>. These two elements determine the status of the briber necessary for the crime to be committed<sup>48</sup>, regardless of whether the bank is public or private. Criminal law does not define a public employee.

Administrative law defines a public employee as 'any person entrusted with specific authority to perform a permanent function within a public facility managed through direct exploitation'. Furthermore, the legal scholar<sup>49</sup> André Horiot defines it as 'any person appointed by the competent public authority within the permanent framework of a state-managed facility or one of its affiliated administrations'. This includes any individual appointed by the competent authority for continuous work, or characterised by elements of continuity within administrative frameworks organised for the operation of public facilities. Public employees generally work on a permanent, regular and continuous basis in the service of a public facility managed by the state or administrative bodies, such as public institutions.

According to the Law on the Prevention and Combating of Corruption, Article 2 of Order No. 6/01 defines a public employee as follows:

Any person holding a legislative, executive, administrative or judicial position; or a member of any elected local council; whether appointed or elected; permanently or temporarily; paid or unpaid; regardless of their rank or seniority.

Any person who temporarily holds a position or agency, with or without pay, and who contributes to the service of a public authority, public institution or any other institution in which the state owns all or part of the capital, or any other entity providing a public service.

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

Although the Algerian legislator adopted the administrative law definition of a public employee, this definition was expanded due to its narrowness in the criminal context. According to Article 2 of Law 6/1, the individuals referred to in the first paragraph are considered public employees in accordance with administrative law. The second paragraph pertains to any person who holds a position, even temporarily, and contributes to the performance of a specific task or responsibilities within these entities. This includes individuals representing workers who have been elected to sit on the board of directors of certain public institutions that have administrative, industrial or commercial characteristics. A similar situation applies when a person holds a position or agency in any institution in which the state owns all or part of the capital, such as commercial companies in which the state holds all or part of the capital and operates within the framework of joint-stock companies. The third paragraph of the same article stipulates that any other person defined as a public employee or equivalent under applicable legislation and regulations is defined by administrative law, specifically the repealed Basic Law of Public Service. This law provided an accurate definition of a public employee and included those in similar positions, such as experts, doctors or employees in private institutions<sup>50</sup>.

In addition to being a public employee, the briber must also be competent in their official duties. In the context of the crime of bribery, it is not enough for the briber to be a public employee or someone considered equivalent<sup>51</sup>; they must also have the necessary competence to perform the required action or omission in exchange for what they receive. Competence refers to direct authority to perform a

<sup>47</sup>- Fattouh Abdullah Al-Shadhili, *Explanation of the Penal Code, Special Section, Book One: Crimes Harmful to Public Interest*, University Publications House, Alexandria, Egypt, 2001, p. 31.

<sup>48</sup>- Karima Belqadi, *Op. Cit.*, p. 01.

<sup>49</sup>- Cited from Fattouh Abdullah Al-Shadhili, *Op. Cit.*, p. 62.

<sup>50</sup>- Karima Belqadi, *Op. Cit.*, p. 05.

<sup>51</sup>- Fattouh Abdullah Al-Shadhili, *Op. Cit.*, p. 56.

specific task, and laws and regulations define tasks based on valid delegation from superiors<sup>52</sup>, within each employee's jurisdiction. One employee does not need to be solely responsible for all official duties; it is sufficient for them to contribute to the work in some way, and they only need to be competent in part of the task, as it is rare for a single employee to be responsible for all stages of an official duty.

This can be inferred from the provisions of the second paragraph of Article 25 of the Anti-Corruption Law if the bank is public. In the private sector, considering banks as commercial companies, Article 40 of Order 06/01 applies. This states that, in the private sector, the perpetrator manages or works for an entity belonging to this sector.

### **The material element:**

For a bribe to be considered as such, the perpetrator must request, accept or receive an undue advantage, promise<sup>53</sup>, gift or any other benefit in exchange for performing or refraining from performing an official duty. This advantage can take the form of material items such as cash, cheques, promissory notes, a bank account opened for the benefit of the bribed employee, payment of a debt, or a specific item such as gold or a car. A moral advantage encompasses all cases where the briber's status is improved as a result of their efforts, such as the bribed employee receiving a promotion or securing a job for a relative, regardless of whether the benefit is apparent or concealed<sup>54</sup>.

The act must also fall within the jurisdiction of the bribed party, although compliance with the law is not required; non-compliance does not diminish any of the elements of bribery<sup>55</sup>.

The material element consists of three fundamental components: the criminal activity; the subject of this activity; and the purpose of the bribery.

#### **1. The criminal activity:**

This is represented in one of two forms: request and acceptance. The request is the bank employee's unilateral expression of their intention to seek a benefit in exchange for performing their duties or services. In this context, mere solicitation constitutes a completed crime and an attempt is not distinguishable from a completed crime. This is because the request itself reveals the nature of trading on the position and exploiting the service. The request may be verbal or written, and explicit or implicit. It is irrelevant whether the perpetrator makes the request themselves or if another person acts on their behalf.

Acceptance assumes a serious and genuine offer from an interested party to provide a gift or benefit in exchange for something they want. The crime is realised in both acceptance and request, regardless of the outcome. Therefore, it does not matter if the perpetrator voluntarily refrains from fulfilling their promise, or if they are prevented from doing so by circumstances beyond their control<sup>56</sup>.

Therefore, it is impossible to conceive of an attempted bribery in the form of acceptance; the crime is either complete or in the preparatory phase. However, an attempt is conceivable in the form of a request, as a request is not considered valid unless it comes to the attention of the interested party. An attempt in the form of a request is realised when the briber drafts a message outlining what they wish to receive in terms of money or benefits in exchange for performing a specific action and, when they are about to deliver it to the interested party, their scheme is discovered.

#### **2. Subject of the Criminal Activity:**

This refers to the object on which the briber focuses their activity, represented by a gift, promise, donation or any other benefit that the briber receives, whether material or moral, lawful or unlawful, specific or unspecified, for themselves or others. In all cases, it is essential for the judges to highlight

<sup>52</sup>- Karima Belqadi, Op. Cit., p. 06.

<sup>53</sup>- Ahsen Bouskiah, Summary of Special Criminal Law, Crimes of Officials, Business Crimes, Forgery Crimes, Dar Houma, Part Two, 2003, p. 38.

<sup>54</sup>- In this context, Article 432-11 of the new French Penal Code considers all types of offers, promises, gifts, money, or advantages, regardless of their nature, as a form of consideration in the crime of bribery.

<sup>55</sup>- Ahsen Bouskiah, Op. Cit., p. 65.

<sup>56</sup>- Same reference, p. 39.

the elements of the crime in the conviction ruling; otherwise, their decision may be considered deficient in reasoning and annulled. A ruling has therefore been annulled if it does not specify who the briber is, what gift or favour was requested or received, and the nature of the action performed by the briber in return<sup>57</sup>.

### **3. Purpose of the bribery:**

This is outlined in Article 25, Paragraph 2 of Order 6/1, as amended and supplemented, which states that any public employee who requests or accepts, directly or indirectly, an undue advantage, whether for themselves or for the benefit of another person or entity, in exchange for performing or refraining from performing a duty, is committing bribery.

#### **The moral element:**

Bribery is classified as an intentional crime, which requires the presence of general criminal intent, specifically the elements of knowledge and intention. This means that the perpetrator must be aware of all the elements of the crime and understand that requesting or accepting an undue advantage is contrary to the principles of integrity when performing their duties. For example, if they have not yet been informed of the outcome of their job application or believe they have been dismissed based on a forged notice, then intent is not considered present.

The law requires that the perpetrator knows they are a public employee, is competent to perform the required work and that the benefit requested or accepted in exchange for performing this official duty is undeserved. Additionally, the perpetrator must intentionally commit the criminal act, being aware that it is punishable by law, and have the intent to exploit their position for personal gain. If either element of knowledge or intent is absent, criminal intent is negated, meaning that errors arising from negligence or carelessness are insufficient to establish this crime.

Therefore, a specific criminal intent is not necessary for this crime, as the legislator does not consider the perpetrator's motives. The intention to exploit their position by trading it is an inherent part of the nature of the crime and the rationale behind its criminalisation, even though it is not a legal component of its formation<sup>58</sup>, as the legislator does not require any specific intent for its establishment.

#### **Third – The prescribed penalty:**

Any public employee who requests or accepts, directly or indirectly, an undue advantage for themselves or another person or entity, in exchange for performing or refraining from performing their duties, will be imprisoned for two to ten years and fined between 200,000 and 1,000,000 DZD. Bribery is also criminalised in the private sector, as stated in Article 40 of the same order, which stipulates: 'Any person managing or working for an entity in the private sector who requests or accepts, directly or indirectly, an undue advantage in order to perform or refrain from performing an act that constitutes a breach of their duties shall be punished with imprisonment for a term of six months to five years and a fine ranging from 50,000 to 500,000 DZD.'

It is noteworthy that the crime of bribery is distinguished from other crimes by two features<sup>59</sup>. Firstly, the statute of limitations for public prosecution applies to bribery in all its forms, as specified in Article 50 of the Law on the Prevention of Corruption. This states that public prosecution for corruption crimes does not become time-barred if the proceeds of the crime are transferred abroad. In all other cases, the provisions of the Code of Criminal Procedure apply, particularly Article 8 bis, which states that public prosecution does not expire for felonies and misdemeanours relating to bribery. Therefore, the crime of bribery is not subject to statutory limitations.

The second distinguishing feature of bribery, compared to other corruption crimes, is that the penalties imposed are also not subject to limitations, as stipulated in Article 612 bis of the Code of Criminal Procedure.

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<sup>57</sup>- Supreme Court, October 27, 1987, Judicial Journal of the Supreme Court, 1990, Issue 04, cited from Ahsen Bouskiah, Op. Cit., p. 48.

<sup>58</sup>- Fattouh Abdullah Al-Shadhili, Op. Cit., p. 94.

<sup>59</sup>- Badr Eddine Haj Ali, Op. Cit., p. 204.

## Conclusion

Despite the regulation of banking embezzlement under the Law on Currency and Credit, which has intensified penalties for embezzlement in banks and financial institutions — where the penalty can be life imprisonment if the value of the crime is 10 million DZD or more — the reality is that this provision is rarely applied, with judges relying on general rules instead. While the Anti-Corruption Law has amended the nature of penalties for embezzlement, replacing them with misdemeanour penalties under Article 29, financial penalties remain stringent, particularly with regard to safeguarding trust and credit in banking performance and setting the threshold for embezzled funds as outlined in Article 133. This ensures that no loophole exists that could undermine credit, even though Article 29 of the Law on the Prevention and Combating of Corruption applies to acts that occurred prior to its issuance. This was affirmed by the Supreme Court in a ruling issued by the Criminal Chamber on 21 March 2007, which stated: 'It is established by Law 06/01 on the prevention and combating of corruption that the provisions of Article 119 of the Penal Code are repealed and replaced by the provisions of Article 29 of Law 06/01, which penalises the same act of embezzlement of public funds with imprisonment of between two and ten years.' Therefore, even though the facts occurred under the old law, the retroactive effect applies as long as the new legal text is more favourable to the accused.<sup>60</sup>

The crime of bribery is distinguished from other crimes by two features<sup>61</sup>. Firstly, the statute of limitations for public prosecution applies to bribery in all its forms, as specified in Article 50 of the Law on the Prevention of Corruption. This states that public prosecution for corruption crimes is not subject to time limits if the proceeds of the crime are transferred abroad. In all other cases, the provisions of the Code of Criminal Procedure apply, particularly Article 8 bis, which states that public prosecution does not expire for bribery-related felonies and misdemeanours. Consequently, the crime of bribery is not subject to statutory limitations. Secondly, compared to other corruption crimes, the penalties imposed for bribery are also not subject to limitations, as stipulated in Article 612 bis of the Code of Criminal Procedure.

## Recommendations:

- Similar to other courts, establish specialised banking courts to regulate banking activities, which are characterised by speed, flexibility, and trust, given the inherent risks of the banking profession. This should include specialised training for judges in economic cases, continuous training and regular international knowledge exchange, to ensure the proper application of the law in both letter and spirit, particularly with regard to transnational crimes.
- Enhance international cooperation by seeking Algeria's accession to international working groups, concluding bilateral and multilateral agreements and expanding judicial cooperation agreements to include collaboration among bodies responsible for exercising judicial police powers. This will allow us to benefit from the experiences of developed countries in combating this phenomenon.
- Provide continuous training and effective development opportunities for bank personnel to enhance their capabilities, raise awareness of updates and changes to electronic banking services and facilitate the exchange of legal and financial knowledge in this regard, providing the most effective material, methods and legal tools.

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