

RESEARCH ARTICLE

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The High Authority for Transparency and the Prevention of Corruption as a Constitutional Mechanism to Combat Economic Crimes

Souad Ayadi

Associate Professor B

Institution: Faculty of Law and Political Sciences,

Mohammed El Bachir El Ibrahimi University, Bordj Bou Arreridj

Country: Algeria

Email: souad.ayadi@univ-bba.dz

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Abstract:

Economic crimes are among the most serious offenses that affect the state due to their devastating impact on its economy and financial rights, as well as their financial, political, and social repercussions. The Algerian legislator has given significant importance to combating corruption and economic crimes by establishing legal and institutional mechanisms, including the High Authority for Transparency, Prevention, and Combating of Corruption, created under the 2020 constitutional amendment. This authority is tasked with implementing the national strategy to combat corruption in its various forms, enshrining the principle of transparency in public administration, and preventing corruption before it occurs to protect public funds and achieve the state's economic security.

Keywords: Economic crimes, High Authority for Transparency, Corruption, Prevention

Introduction:

Economic crimes are among the most important topics that have attracted the attention of various countries and international organizations with different systems, as they seek to reduce and prevent these crimes. The danger of this type of crime lies in the fact that political and social security cannot be achieved without economic security, given the damage and losses these crimes cause to individuals and the state. These crimes are continuously

evolving, as national and international criminal networks have spread, leading to new types of crimes aimed at obtaining money.

Economic crimes are no longer a local matter but have become an international phenomenon affecting all societies and the global economy, threatening both national and international institutions and impacting the sovereignty of states and peoples. They pose a significant challenge to local development, especially in developing countries.

In Algeria, such crimes have spread extensively in various forms, including embezzlement of public funds, money laundering, bribery, and inflation of public contracts, which have harmed the national economy. To confront this growing phenomenon, states must intensify their efforts to combat such crimes, eliminate their causes, and mitigate their effects, through enacting additional laws and establishing mechanisms to reduce these crimes.

Like other countries, Algeria seeks to combat economic crimes. The legislator has attempted to combat this type of crime by enacting a set of laws and establishing several mechanisms, including the High Authority for Transparency and the Prevention and Combating of Corruption, within the framework of policies for preventing and combating corruption. This is a high constitutional institution that

undertakes oversight to prevent corruption, combat it, and fight economic crimes in all their forms.

Based on this, we formulated the following research question: What mechanisms does the High Authority for Transparency, Prevention, and Combating of Corruption use to protect public funds, reduce economic crimes, and prevent their negative effects?

To answer this question, we followed a descriptive-analytical approach by analyzing the provisions of the 2020 constitutional amendment related to the legal system of the High Authority for Transparency, examining Law No. 22-08 regulating this institution, analyzing concepts related to economic crimes, and identifying the main mechanisms used to combat these crimes.

Our study is organized into three axes: the first axis addresses the concept of economic crimes; the second axis discusses the concept of the High Authority for Transparency, Prevention, and Combating of Corruption; and the third axis identifies the main mechanisms this authority uses to combat economic crimes in all their forms.

Chapter One: Concept of Economic Crimes

Economic crimes have spread significantly due to technological development and rapid communication, making them one of the main challenges facing societies, especially developing countries, including Arab nations. These crimes threaten the state socially, politically, and economically, hindering development programs and state progress. This axis aims to define economic crime and present some of its characteristics and types.

First: Definition of Economic Crimes

Interest in economic crime began in the 19th century. It is linked to the field of economy and finance, as legal texts of an economic nature began to take their place in criminal legislation, leading to the emergence of economic penal law and business criminal law.¹

There is no universally agreed definition of economic crime, as it varies from country to country depending on the economic system. Its definition under a capitalist approach differs from that under a socialist or directed economy, making it difficult to have a comprehensive definition. What is considered a crime in one society may not be in another.

In language, it derives from the verb "jarama" (to commit a crime): a person who commits a wrongdoing.²

In terminology, economic crime generally refers to any crime committed against public funds or any act affecting the economy in general, including crimes targeting the national economy and causing damage, such as counterfeiting money or theft and embezzlement in economic establishments.³

Economic crime is conduct that violates laws regulating economic behavior and is punishable by law. It affects the national economy and includes any act or omission that undermines the economic structure of the state for financial gain, consistent with the Algerian economic system.⁴

The Algerian judiciary does not provide a definition of economic crime, but a Supreme Court decision attempted to define it as: anyone who intentionally causes or attempts to cause economic sabotage obstructing essential national economic functions or reducing economic capacity shall be punishable by 10 to 20 years' imprisonment.

Thus, the criteria used to define economic crime according to legal doctrine and law include any act affecting the state's economic policy that is legally prohibited.⁵ Based on what has been presented regarding the definition of economic crime, it can be said that the criteria used to establish a specific definition of economic crime, as agreed upon by jurisprudence and law, are any act or behavior that undermines the state's economic policy and is legally prohibited; in such a case, it constitutes an economic crime.⁶

Second: Characteristics and Features of Economic Crimes

Economic crimes have distinctive characteristics: they target public funds and the national economy, unlike ordinary crimes, which target individuals or private property. Key characteristics include:

- Economic crime has both a national and international dimension at the same time, as this type of crime, in the context of economic globalization and policies of economic and financial openness and liberalization, is no longer confined to the national level. Globalization has created a conducive environment for organized criminal activities that extend beyond the borders of the state; accordingly, it is classified as organized crime⁷
- Artificially created by law to protect the national economy rather than moral transgressions against individuals.
- Concealed and committed through premeditated plans, making detection and punishment difficult.
- Flexible and continuously evolving in response to economic developments.
- Often subject to severe penalties, including the death penalty, to deter their spread.
- In some jurisdictions, investigation and adjudication may be assigned to administrative committees rather than criminal courts.⁸
- Associated with “white-collar” crimes committed by economically high-status individuals during their professional duties⁹.

Third: Types of Economic Crimes

Economic crimes can be traditional or emerging, especially due to technological advances and globalization.

1. Traditional Economic Crimes:

- **Money laundering:** One of the most serious crimes, affecting national economy and state finances, often organized to conceal illegal earnings.

- **Corruption:** Illegal acts by public officials for personal gain, disrupting economic development, e.g., bribery, embezzlement, abuse of influence.
- **Customs crimes:** Acts or omissions violating customs laws to gain illicit profits, often organized through pre-planned schemes.

2. **Emerging Economic Crimes:**

- **Crimes against information systems:** Targeting IT infrastructure, including unauthorized access, data fraud, or misuse.
- **Intellectual property violations:** Cyber piracy affecting creative or production works, posing challenges to anti-corruption authorities.
- **E-commerce crimes:** Online fraud, including counterfeit products and illegal financial transactions.

Chapter Two: Conceptual Framework of the High Authority for Transparency, Prevention, and Combating of Corruption

Addressing economic and financial crimes is a key legislative concern, prompting laws and institutions to combat these crimes. The High Authority for Transparency, Prevention, and Combating of Corruption was established under the 2020 constitutional amendment to fight corruption and protect public funds.

First: Definition of the Authority

Article 204 of the 2020 constitutional amendment established the High Authority for Transparency within supervisory institutions to implement the national strategy for transparency and anti-corruption. Law No. 22-08 regulates its formation and powers.

Its legal basis also stems from the UN Convention Against Corruption (Article 6), which mandates that each state establish a body to prevent and combat corruption, with effective guarantees for independent operation.

The authority is an independent constitutional oversight institution responsible for promoting transparency, preventing corruption, and executing the national anti-corruption strategy, succeeding the former National Authority for Prevention and Combating Corruption. It operates independently, no longer under presidential control, enhancing its oversight role compared to the 2016 amendment.

Second: Characteristics of the Authority

The Authority has distinctive features:

- **Authority nature:** endowed with broad powers to take decisive measures due to the importance of its mission.
- **Constitutional status:** established in the constitution under supervisory institutions, with a dedicated chapter.
- **Independence:** not subordinate to any other body, especially the executive, facilitating its duties.
- **Oversight and administrative function:** independent administrative body, not under ministries, parliament, or judiciary, though within the executive framework.
- **Legal personality:** recognized by Articles 02 and 03 of Law 22-08, with a name, headquarters in Algiers, and the ability to litigate.
- **Considered a Direct Notification Body:** The High Authority for Transparency, Prevention, and Combating of Corruption is considered a notifying body to the Court of Accounts as well as to the competent judicial authorities, in order to exercise its powers in the field of financial oversight and combating financial corruption whenever it observes violations.

Chapter Three: The Role of the High Authority for Transparency in Confronting Economic Crimes

The High Authority for Transparency, Prevention, and Combating of Corruption enjoys broad powers to eliminate corruption

and economic-financial crime and to promote transparency. At times, it acts as a preventive mechanism by carrying out numerous preventive measures before a crime occurs, primarily through establishing the national strategy for the prevention and combating of corruption, and cooperating with various regional and national bodies specialized in combating corruption. It also serves as a deterrent mechanism in cases where violations and breaches of transparency rules are proven by notifying the relevant authorities, as stipulated in Article 205 of the 2020 constitutional amendment and Articles 4 to 15 of Law 22-08.

First: Preventive Powers of the High Authority for Transparency, Prevention, and Combating of Corruption

The 2020 constitutional amendment expanded the powers of this institution by granting a set of new responsibilities that were not available to the former National Authority for the Prevention and Combating of Corruption. These preventive powers aim at early detection of suspicious financial indicators, including:

1. Establishing a National Strategy for Transparency, Prevention, and Combating of Corruption:

The Authority determines the strategy it deems suitable to reinforce transparency, contribute to the prevention of corruption, and combat it. This strategy is binding on all concerned state entities, which must adhere to it. The Authority follows up, implements, and promotes a culture of transparency, prevention, and anti-corruption by collecting, centralizing, using, and publishing information and recommendations that assist public administration or any natural or legal person in preventing and detecting corruption. It also conducts periodic evaluations of legal instruments related to transparency and administrative measures, their effectiveness, and

proposes appropriate mechanisms for improvement.

2. **Receiving and Monitoring Asset Declarations:** The Authority receives asset declarations and ensures their processing and monitoring according to the law. This procedure is crucial to prevent public fund embezzlement by requiring public officials to declare their assets and wealth, allowing detection of illicit enrichment resulting from economic crimes.
3. **Strengthening Civil Society Capacities:** The Authority supports civil society and other actors in anti-corruption efforts, particularly by establishing an interactive network to engage civil society and unify and promote its transparency activities. The legislator expanded the Authority's remit to include charitable, religious, cultural, and sports activities in public and private institutions, as these activities are also susceptible to financial corruption.
4. **International Cooperation:** The Authority develops cooperation with international bodies and organizations specialized in combating corruption, protecting public funds, and fighting crimes affecting the national economy, through systematic information exchange, facilitating economic investigations, as stipulated in Article 4 of Law 22-08.
5. **Monitoring Compliance:** The Authority monitors the compliance of public administrations, local governments, public institutions, economic institutions, and associations with transparency and anti-corruption regulations, overseeing public procurement execution and wealth sources.
6. **Annual Reporting:** The Authority prepares an annual report on its activities, submits it to the President of the Republic, and informs the public.
7. **Mandatory Opinion on Relevant Legal Texts:** Draft laws or proposals related to transparency and anti-corruption must be sent to the Authority for its opinion before parliamentary review. The legislator did not specify the legal weight of this opinion, whether binding or consultative. Nevertheless, the Authority can propose legal amendments to close loopholes exploited by economic crime perpetrators.

Second: Powers in Research and Investigation

The Authority conducts administrative and financial investigations into unexplained enrichment of public officials, extending its asset declaration mandate to combat corruption within public institutions and safeguard public funds. Investigations can involve any person potentially linked to concealing a public official's unjustified wealth. If illicit enrichment is confirmed, the Authority submits a report to the public prosecutor at the Sidi Mohamed Court to take precautionary measures such as freezing bank accounts or seizing assets for three months via a judicial order from the court president, and initiates public prosecution for illicit enrichment, a financial crime affecting the national economy.

Third: Powers to Notify Competent Authorities of Corrupt Acts

Article 6 of Law 22-08 allows any natural or legal person with information, data, or evidence related to corrupt acts to notify the Authority. Notification must be written, signed, and contain elements related to corruption, including information about the notifier, excluding anonymous or phone reports. Protection is granted to the notifier. Upon receiving facts that may have criminal implications, the Authority notifies the competent regional public prosecutor and the Court of Accounts if the acts fall within its remit. This gives the Authority the power

of direct notification to the public prosecutor, a role previously handled by the National Authority, which notified the Minister of Justice, who decided whether to inform the public prosecutor. This enhances the Authority's role beyond advisory functions.

The Authority may, upon observing or being notified of breaches of integrity or quality standards in public institutions, administrations, associations, and other bodies, issue warnings. If responses are delayed, incomplete, or inaccurate, it issues an order to the concerned party and notifies the regional public prosecutor with all relevant information and documents.

committed by some officials inside or outside the administrative apparatus, aiming to achieve material or moral benefits through unlawful means at the expense of the public interest. These actions result in damages that hinder economic development, which has led all legislations to seek to combat them at both international and national levels. Among these crimes are bribery in its various forms, embezzlement of public property, and abuse of influence.

- **Customs crime:** This is any act or omission that violates customs laws administered by the customs authority. This type of crime seeks to achieve quick profit through illegal means and is considered organized because it is carried out according to a planned scheme to achieve the intended goal.

2- Newly emerging economic crimes: The widespread use of modern technology, especially the Internet, has led to the emergence of a new form of economic crimes committed via computers. Some examples include:

- **Crimes against information systems:** This type of crime targets the physical components of information systems. The Arab Convention on Combating Information Technology Crimes (2014) specified the forms of crimes targeting information technology. The Algerian legislator also dedicated a special section for these crimes in the Penal Code under the title "violations of automated data processing systems." These crimes include illegal access and unauthorized presence in information systems, information forgery and fraud, attacks on data integrity, and misuse of data.¹⁰
- **Cybercrimes related to intellectual property infringement:** Various forms of electronic piracy crimes

have emerged, whether in the field of intellectual or productive works, posing a significant challenge for anti-corruption bodies. Intellectual property has proven to be a driver of innovation, competitiveness, and economic development, as hackers steal intellectual property such as product designs from large companies or small institutions.¹¹

- E-commerce crimes: Among the global trade developments is the emergence of e-commerce, which includes stock trading and conducting banking operations via the Internet. Accordingly, in the context of this active e-commerce environment, electronic fraud via the Internet has been increasing through the creation of websites aimed at promoting and marketing counterfeit goods.¹²

Second Axis: Conceptual Framework of the High Authority for Transparency, Prevention, and Combating of Corruption. Addressing the phenomenon of economic and financial crimes is an important topic for legislators, who enact laws criminalizing such acts or establish mechanisms and bodies to combat this type of crime. On this basis, the High Authority for Transparency, Prevention, and Combating of Corruption was established under the 2020 constitutional amendment to combat corruption and the misappropriation of public funds. In this axis, we aim to understand this authority.

First: Definition of the High Authority for Transparency, Prevention, and Combating of Corruption. To implement the national strategy in the field of transparency and the prevention and combating of corruption, Article 204 of the 2020 constitutional amendment established the High Authority for Transparency among the supervisory institutions. This is an important measure to give a new and more effective role to this authority. The organization of the authority was also

defined under Law No. 22-08,¹³ specifying its formation and powers.

The High Authority for Transparency, Prevention, and Combating of Corruption also finds its legal basis in the United Nations Convention against Corruption. Article 6 of the UN Convention against Corruption stipulates that each state shall establish a body or agency responsible for combating and preventing corruption¹⁴, with effective guarantees enabling it to perform its duties independently, free from all pressures.

The High Authority for Transparency is defined as an independent constitutional supervisory institution tasked with embodying transparency in public life, preventing corruption, and combating it. It implements the national strategy for combating corruption, succeeding the National Authority for the Prevention and Combating of Corruption, and has become constitutional in nature rather than legislative. It is the primary authority in the country responsible for combating corruption and various crimes affecting the national economy by promoting transparency in the management of public funds.

The constitutional amendment attempted to establish a supervisory institution not subject to any other body, replacing the previous authority with the High Authority and upgrading it from an advisory body to a supervisory institution. Its independence in performing constitutional duties was strengthened by ensuring it is not subject to any other authority, unlike the 2016 constitutional amendment, which placed the authority under the President of the Republic.¹⁵

Second: Characteristics of the High Authority for Transparency, Prevention, and Combating of Corruption.

The task of combating corruption and eliminating economic crimes affecting state funds is complex. On this basis, the constitution granted this authority a set of characteristics that distinguish it from other authorities, including:

- Authoritative nature: The High Authority for Transparency is distinguished by this newly introduced characteristic due to the importance given by the Algerian legislator to this institution and the seriousness of its assigned tasks, reflected in the wide powers and authorities granted to make crucial decisions.¹⁶
- Constitutional nature: The High Authority for Transparency, Prevention, and Combating of Corruption is provided for by the constitutional founder in the constitution under Chapter Four, titled Supervisory Institutions, with a full section dedicated to the High Authority for Transparency, Prevention, and Combating of Corruption.
- Independence: The High Authority for Transparency is not affiliated with any entity, particularly the executive authority, nor is it subject to its supervision, facilitating the performance of its duties.
- Supervisory and administrative nature: Considering it an independent administrative authority, it is not subordinate to ministerial or governmental administrations, parliament, or the judiciary. However, it remains within the executive authority, despite being under the presidential or supervisory authority.¹⁷

- **Enjoyment of legal personality:** This is indicated in Articles 02 and 03 of Law 22-08. Among the manifestations of the Supreme Authority for Transparency enjoying legal personality is that it possesses a name, has a headquarters located in Algiers, and has the capacity to litigate.¹⁸
- **Considered a direct notifying body:** The Supreme Authority for

Transparency and the Prevention and Combating of Corruption is considered a notifying body for the Court of Auditors as well as for the competent judicial authorities in order to exercise its powers in the field of financial control and combating financial corruption whenever it observes violations.

Section Three: The Role of the Supreme Authority for Transparency in Confronting Economic Crimes

The Supreme Authority for Transparency and the Prevention and Combating of Corruption enjoys broad powers to eliminate corruption and financial-economic crime and to promote transparency. It sometimes acts as a preventive mechanism by undertaking numerous preventive measures before the crime occurs, primarily through developing the national strategy for preventing and combating corruption, and cooperating with various regional and national bodies specialized in anti-corruption. It also acts as a deterrent mechanism in cases of confirmed violations and breaches of transparency rules by notifying the relevant authorities, as stipulated in Article 205 of the 2020 Constitutional Amendment and Articles 4 to 15 of Law 22-08.

First: Preventive Powers of the Supreme Authority for Transparency and the Prevention and Combating of Corruption

The 2020 constitutional amendment expanded the powers of this institution by introducing a set of new competencies that the former National Anti-Corruption Authority did not possess. These are preventive powers aimed at the early detection of suspicious financial indicators. Among these powers are:

1. **Developing a national strategy for transparency and the prevention**

and combating of corruption: The Supreme Authority determines the strategy it deems appropriate to strengthen transparency and that contributes to the prevention and combat of corruption. This strategy is binding on all state bodies, which must adhere to it¹⁹. The Authority monitors, implements, and promotes a culture of transparency and anti-corruption, collecting, centralizing, utilizing, and publishing any information and recommendations that can help public administration or any natural or legal person prevent corruption and detect it. It also conducts periodic evaluations of legal instruments related to transparency, administrative measures, their effectiveness in transparency and anti-corruption, and proposes appropriate mechanisms to improve them.

2. **Receiving asset declarations and ensuring their processing and monitoring according to the law:** This is a very important measure to prevent the misappropriation of public funds by officials. Public officials are required to declare their assets, which helps detect illicit enrichment resulting from economic crimes.
3. **Contributing to strengthening the capacities of civil society and other actors in combating corruption:** This is particularly manifested through establishing an interactive network aimed at engaging civil society and unifying and enhancing its activities in transparency. The legislator has expanded the Authority's mandate to include charitable, religious, cultural, and sports activities in public and private institutions, as these areas have also become susceptible to financial corruption.²⁰
4. **Developing cooperation with various international bodies and organizations specialized in anti-corruption and protecting public funds:** This occurs through the exchange of information between the Supreme Authority and these bodies according to a pre-defined methodological framework to facilitate economic investigations, as stipulated in Article 04 of Law 22-08.
5. **Monitoring the compliance of public administrations, local authorities, public institutions, economic enterprises, and associations with transparency and anti-corruption regulations:** This includes tracking the implementation of public contracts and monitoring sources of wealth.
6. **Preparing an annual report on its activities, submitting it to the President of the Republic, and informing public opinion of its contents.**
7. **Providing mandatory opinions on legal texts within its jurisdiction:** Draft laws or proposals related to transparency and anti-corruption are not examined by Parliament until they are sent to the Supreme Authority for Transparency for its opinion. The legislator, however, did not specify the legal value of this opinion, whether binding or advisory. Regardless, the Authority can propose legal amendments to close loopholes exploited by economic crime perpetrators.

Second: Powers in Investigation and Inquiry

The Supreme Authority for Transparency is competent to conduct administrative and financial investigations into manifestations of illicit enrichment by public officials who cannot justify significant increases in their assets. This role extends its mandate of

receiving asset declarations to combat corruption within public institutions and protect public funds from misappropriation.

These investigations can involve any person potentially linked to concealing unjustified wealth of a public official if the latter is determined to be the real beneficiary. Upon confirming illicit enrichment, the Supreme Authority submits a report to the Public Prosecutor at the Sidi Mohammed Court to take precautionary measures to freeze bank transactions or seize assets for three months via a judicial order issued by the court president²¹, and to file a public lawsuit for illicit enrichment, considered a financial crime affecting the national economy.

Third: Powers to Notify Competent Authorities of Corruption Crimes
Article 6 of Law 22-08 permits any natural or legal person with information, data, or evidence of acts of corruption to notify the Supreme Authority. For a notification to be valid, it must be written, signed, and include elements regarding the acts of corruption and details about the notifier, excluding anonymous or phone notifications²². The law also protects the notifier.

Thus, when the Supreme Authority receives facts potentially constituting criminal acts, it notifies the competent regional Public Prosecutor and the Court of Auditors if the acts fall within its jurisdiction. This step is praised, as the current law grants the Supreme Authority the ability to notify the Public Prosecutor directly—a power the former National Authority did not have, as it had to notify the Minister of Justice, who then decided whether to alert the Prosecutor or close the case. This change enhances the Authority's role in combating corruption and economic crime beyond its advisory function.²³

Additionally, the Supreme Authority can, upon observing or being notified of breaches of integrity and quality rules within public institutions, administrations,

associations, and institutions regarding corruption prevention and combating economic crimes, issue warnings. If there is a delay, inadequacy, or absence of a response, the Authority issues a formal order to the concerned party and notifies the competent regional Public Prosecutor with all relevant information and documents.²⁴

Conclusion

This study demonstrates that the Algerian constitutional framework sought to expand the powers of the Supreme Authority for Transparency and the Prevention and Combating of Corruption, especially in preserving public funds and reducing economic crimes affecting the national economy, through preventive mechanisms protecting public funds and combating corruption before it occurs. It also provided remedial mechanisms after the occurrence of crimes. Key findings include:

- The Supreme Authority for Transparency is the competent body in Algeria for fighting corruption and all economic and financial crimes affecting state security across administrative and non-administrative bodies.
- The Authority's independence, both organizationally and functionally, is affirmed, and it is not subordinate to the executive branch.
- Its powers were reinforced by the 2020 constitutional amendment, granting previously non-existent powers such as developing the national strategy for corruption prevention and combat.
- The constitutional framework enables the Authority to notify judicial authorities and the Court of Auditors in case of violations, serving as a key guarantee in combating corruption as part of economic crime.
- The Authority's powers remain largely advisory through giving opinions, monitoring, participating,

and collecting information, as indicated by the legislator in both the constitutional amendment and Law 22-08, which are vague and do not grant actual enforcement powers.

- The Supreme Authority cannot impose penalties on violators without recourse to judicial authorities.

Although the legislator attempted to expand the Authority's powers, they remain incomplete and ineffective, requiring reassessment. Accordingly, the following recommendations are proposed to enhance its role in combating such crimes:

- Grant the Supreme Authority a coercive and deterrent role in protecting public funds and

imposing penalties for certain crimes.

- Grant the Authority powers to impose administrative penalties appropriate to its nature to avoid its functions being merely formal.
- Establish an official website to publish all activities of the Authority to raise societal awareness on protecting public funds and eradicating corruption.
- Require asset declaration filing to reinforce transparency and protect public funds from corruption by public officials.

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²² This is stipulated in Article 11 of Law 22-08.

²³ Ben Obeid, S. (2023). *Ibid.*, 349.

²⁴ Serbah, A., & Jebari, Z. D. (2023). *Ibid.*, 786.