The legislative track to combating corruption in Tunisia after the revolution... Approaches and results

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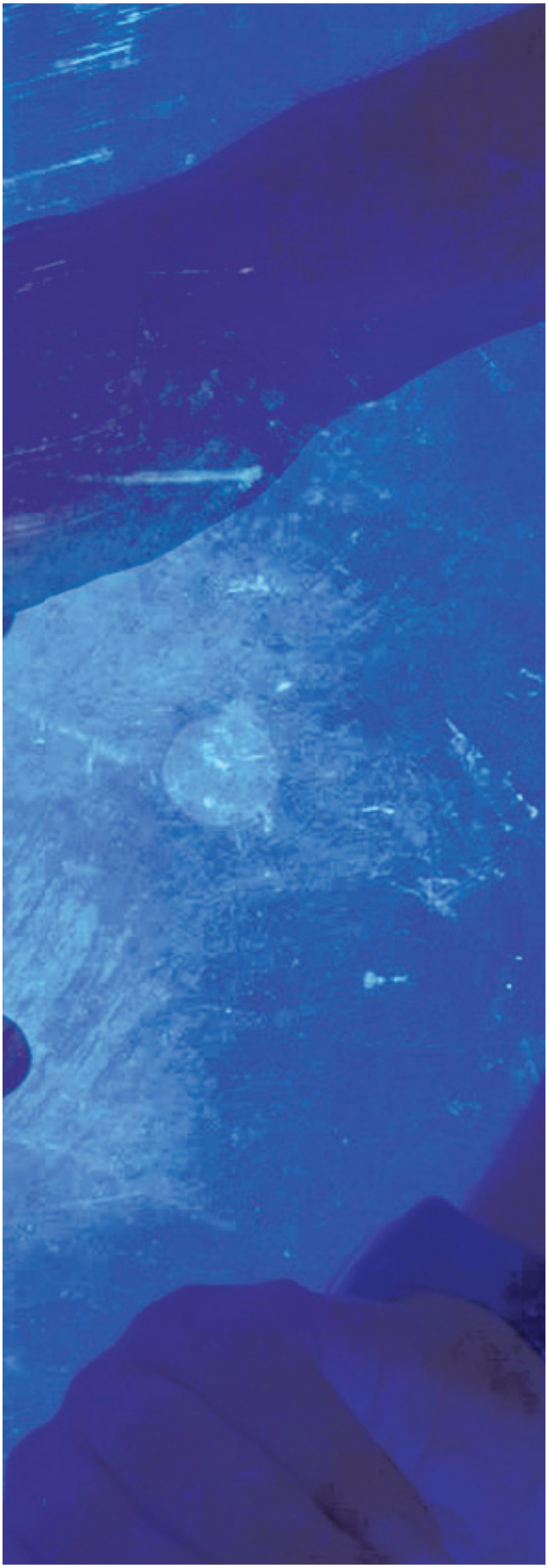

Introduction:

There is no doubt that corruption was one of the main causes of the Tunisian revolution as everybody was talking about ruling family mafias, affinity relationships, well-connected families of the former regime, and senior officials both in the ruling party and in the state who are related to them due to their reconciled common interests.

So, it is no coincidence that the revolution's slogans that the demonstrators all over the country used to raise and repeat reflected a clear indignation from this scourge which eroded the national economy and made the country's capabilities exclusive to a group of influential hypocrites, so slogans as "Bread, Freedom, Social justice" or "Bread, Freedom, National dignity " and " Employment is a right... you gang of thieves" has become a reflection of complaining about corruption and thus combating corruption has become a national and popular request.

And perhaps the political response was not too late in responding voluntarily or involuntarily to this popular demand to achieve that after the revolution as it came only in months after the regime's collapse as the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and

Democratic Transition (Which was the only consensual political reference tool in that period) requested the issuance of decree number 7 for the year 2011 " of 18 February/January 2011" on The National Commission on Investigating Cases of Corruption and Bribery" which was entrusted –in its first stage- to research and investigate suspicions of corruption related to the former regime.

The trend of accelerating this committee's formation didn't obstruct the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition's intention to adopt a long term policy that is based primarily on reconsidering rebuilding the whole political system, and there was a consensus among the Authority on the fact that the predominance and full control of the executive branch over various aspects of political life and all state's authorities was a major point of weakness for the Tunisian political system that defected powers' balance and distribution, the fact that led to the judicial and legislature's authorities' lack of autonomy.

This predominance of the executive body on the expense of the other state's authorities was the corner stone for unilateral ruling and tyranny, and thus it was essential to think deep to come up with a methodology to create the necessary guarantees so as not to repeat this horrible experience, and from this point the idea of creating higher independent authorities began to emerge, to work as modifying authorities that has some of the powers that the executive branch was exclusively controlling and at the same time have general authorities independent from the executive branch approval even if they disagreed.

The major concept then in combating corruption is that it is a task exercised by the executive branch of authority through a combination of regulatory and restraining mechanisms which is mainly the following:

First: Supervisory bodies of an administrative nature:

Public inspections:

- Public Control Authority for Public Interests:

It was established under Chapter 86 of Law No. 100 of 1981, dated 31 December 1981, concerning the financial law of 1982, which was issued in implementation of Order No. 6 of 1982, dated 5 January / January 1982, on the Basic Law on members of the Public Control Authority for Public Interests, which canceled the public inspection for administrative interests.

- State Comptrollers Authority:

This body was established according to Order No. 2131 of the year 2002/ 30 September 2002 concerning the creation of the prime ministry's structures.

- Public Finance Control Authority (CGF Ministry of Finance):

This body was established according to Order number 7 of 1982/ 5 January 1982, which was signed under review Order No. 2886 of 2000/ December 7, 2000, on the organization of Public Finance Control Authority and its working procedures.

- The Public Control Authority of State Domains and Land Affairs (Ministry of State Domains):

The Public Control Authority of State Domains and Land Affairs was established under the provisions of Chapter 6 of Order No. 1070 of 1990 /18 June 1990 on the organization of Ministry of State Domains and land affairs.

- High Administrative and Financial Control Committee:

The President's High Administrative and Financial Control Committee was established according to Order No. 906 of 1993/ 19 April / May 1993, before being subject to Law No. 50 of 1993/ 3 May 1993.

Second: Bodies of judicial nature:

- Court of Audit:

The Court of Audit was established pursuant to the provisions of the First Republic's Constitution of 1959, which stated in

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article 69 and revised by the constitutional law number 65 of 1997/ 27 October 1997, that: "The State Council is composed of two bodies:

1) The Administrative Court,

2) The Audit Office

The organization of the State Council and its two bodies are set by law, as well as the jurisdiction of these bodies and the procedures applicable before them».

The Court of Audit or "The Audit Office" was established according to Law No. 8 of 8 March 1968, on the organization of the Court of Audits and according to the revised and supplementary Law number 7 of 20 April / May 1970, Organic Law number 82 of 29 October 1990, Organic Law No. 75 of 17 July 2001, and Organic law number 3 of 29 January 2008, and it has the form of a supreme control body that ensure the proper management of public funds through judicial and modifying tasks and also handles assembly permits to honor the gains for some staff categories.

- The court of financial discipline:

This circuit was established according to Law No. 74 of 1985/ 20 July 1085 concerning the determination of the errors of conduct committed against the State and administrative public institutions, local public groups and public enterprises and the control of the penalties applicable thereto and the establishment of the financial discipline circuit.

Despite the importance of the theoretical and hypothetical roles of these different bodies but their results in combating corruption in the public sector remained limited and remained a captive of the ruling political system as it was only a tool to eliminate staff undisciplined staff opponents who refuse to carry out high rank officials instructions, it is also noted to be said that the material and human resources of these bodies was never sufficient for them to carry out their required observatory role, and thus these bodies' role turned into gathering news and information and provide them to officials to address and confront the phenomena of corruption in public section especially that they are not bound to publish their reports to the public, for example, the Audit Bureau which was established in 1968 published its first report in 2013.

According to this, the members of "Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition" decided to give the fight against corruption the attention needed

through establishing an independent body to full the Tunisian State's obligation that it was committed by when it ratified the UN Convention against Corruption in 2008, the convention on which the National Fact-finding Committee on Bribery and Corruption missions were based on, the very Commission which has taken the convention's approaches and put them into effect by proposing a bill for establishing the Independent Commission Against Corruption (ICAC) which was subsequently according to Decree No. 120 of 14 November 2011.

"Corruption: Any conduct committed that is contrary to the law and regulations in force prejudicial or likely to prejudice the general interest, any act that contains abuse of power, influence or function for personal benefit, that include all forms of bribery in public and private sector, embezzlement, misappropriation or wasting of public funds, abuse of power and trading in influence, all cases of illicit enrichment cases, dishonesty, misappropriation of juridical person's property, money laundry, conflict of Interest, insider trading, tax evasion, obstruction of justice, and all acts that threaten public health, safety or the environment" Organic Law No. 10 of 2017

The principle and the heart of the matter is therefore, in establishing an independent anti-corruption body, to establish it far away from the executive branch and assign this national task to a body that is totally independent from the executive branch's control to carry it out and be responsible for identifying its functions, requirements , objectives and strategies. And this is not as easy as we can imagine as in this case not only would the executive branch no longer has the power and mechanisms for combating corruption but also it would become subject to the Commission's authority to monitor, investigate and thus they would be obliged to comply with the law.

However, as we will try to make it clear through this study, the executive branch and its deep state management have not only stood by and watch this flood of laws and legislative measures that attempt to detect and combat corruption, laws which found its best support in the current revolutionary tide, but instead they had attempts and efforts in manipulating and deactivating laws, rebelling against applying them and even pushing toward issuing laws that are against the overall orientation of combating corruption.

All this, of course, should not be concealing, the citizen's dealing with the problem of fighting corruption, nor the judiciary's dealing with the same issue.

But before addressing all this, let us reflect first on the definition of corruption as a concept in Tunisian law as this definition has evolved since 2011, the first definition we had for corruption was in Article 2 of Decree-law 120 of 2011 as it stated that: "Corruption: Abuse of power, influence or function in order to obtain a personal advantage. Corruption particularly includes all forms of offenses in public and private sectors, embezzlement, mismanagement or wasting of public funds, abuse of authority, illicit enrichment, dishonesty, squandering people's funds or juridical person's money and money laundering"

Another definition was provided by Organic Law No. 10 of 2017, dated 7 March 2017 relating to the reporting of corruption and the protection of whistleblowers in its Article 2 when it stated that: "Corruption: Any conduct committed that is contrary to the law and regulations in force prejudicial or likely to prejudice the general interest, any act that contains abuse of power, influence or function for personal benefit, that include all forms of bribery in public and private sector, embezzlement, misappropriation or wasting of public funds, abuse of power and trading in influence, all cases of illicit enrichment cases, dishonesty, misappropriation of juridical person's property, money laundry, conflict of Interest, insider trading, tax evasion, obstruction of justice, and all acts that threaten public health, safety or the environment"

Undoubtedly, The second definition i more comprehensive and precise than the first one that was mentioned in Decree-law no. 120, and it also

was included in a higher-value legal text than the Decree, but nevertheless we observed the following :

1. The issue of corruption in the private sector remains a blurred one, especially since it is known that the crime of giving and conceiving bribes is only applicable in the public sector and is not considered an offense if it comes to private sector.

2. Acts that may constitute corruption in accordance with the definition requirements mentioned may not be actually crimes or not fall within the scope of criminalization. In this sense, the Anti-Corruption Authority may find it difficult to deal with them outside the framework of amendment proposals provided to the administration.

3. The legislature did not address the issue of funding political parties and electoral campaigns, although it is one of the most complicated problems of political corruption.

Let us therefore try to mention the most important legislative texts on combating corruption, which can be summarized according to their time line as follows:

- Decree No. 120 of 2011, dated 14 November 2011.

- Decree No. 2012-1425 dated 31 August 2012, amending and completing decree n° 2010-3080 dated 1st December 2010, establishing Higher Advisory councils.

- The Constitution of 27 January 2014.

- Organic law No. 2016-77 of 6 December 2016, relating to the economic and financial judiciary pole

- Organic law No. 2017-10 of March 7, 2017, relating to the reporting of acts of corruption and the protection of whistleblowers

- Organic Law No. 2017-59 of August 24, 2017, on the Constitutional Commission for good Governance and Anti-Corruption.

- Organic law No. 2017-62 dated 24 October 2017, relating to the reconciliation in the administrative field.

- Law No. 2018-46 of 01 August 2018, on the authorization of gains and interests, the fight against illicit enrichment and conflicts of interest.

- Organic law No. 2018-47 of 7 August 2018, relating to provisions common to independent constitutional bodies

We will address the laws referred to above in the context of series fundamental questions that will be specific to legislative strategies of combating corruption and, therefore, in the light of these texts, we will study carefully the following detailed issues:

1- The legislative initiative relating to combating corruption

2- The financial issue

3- The limits of investigation into corruption suspicions

4- The problem of not enforcing laws

5- Legislating laws that conflict with the philosophy of combating corruption

First: legislative initiatives to combat corruption

However, the legislative initiative cannot be reduced to the technical and procedural data when submitted to the Assembly of the Representatives of the People, but they shall be necessarily subject to indispensable logic, namely applying policies adopted by the legislatures of the Constitution itself who definitely wanted to provide constitutional bodies-including the Constitutional Commission for good governance and anti-corruption- the necessary independence and mechanisms to conduct surveillance on administrations, the executive branch in particular.

Perhaps the biggest proof of that is what the Organic law for reporting corruption and protection of whistleblowers provided as its second article stated –among others- identified the public structures that are subject to the oversight authority of the Anti-corruption committee and that included, inter alia, the Presidency of the Republic and its affiliated institutions and the Prime ministry and various structures that are under its control internally and abroad.

The issue then relates to the Anti-corruption committee scope of intervention to monitor the proper functioning of the executive branch and suspicions of corruption that might arise within its administrations, which means that the executive branch of the State, which is primarily responsible for combating corruption became after concluding the constitution of 2014 and after the legislature's intervention with in the frame of the law for reporting corruption and protection of whistleblowers subject to mo-

nitoring and following up investigations which is one of the powers of the independent authority.

According to this logic, which requires referral of the executive branch's powers to the independent authority we cannot imagine that the initiator of legislating laws could be the same body that would theoretically be affected by those laws by having some of its powers taken from

It is well - known also that the initiator has a great control on presenting its point of views and protecting their interests and powers as it is the one that draw the line and set the philosophy

And it is strange that this is exactly what happened, as all legislative initiatives related to combating corruption was submitted by the executive branch and that of course opened the door for making legal traps in the legislated proposed texts so they can keep the upper hand in controlling the fight against corruption and be sure that whatever they lose can easily retrieve

Second: the financial issue

It is known that business is based on money, and thus we cannot imagine an independent structure that is entitled to fight corruption withal its aspects and dimensions without having a budget that enables it from assigning human resources and applying its strategies and objectives.

And perhaps the mere declaration of adopting the principle of administrative and financial autonomy is not sufficient to achieve this independence and au

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tonomy, as financial autonomy as stated in the UN Convention against Corruption and reinforced by a series of comparative experiences requires first that discussing the budget terms of the Commission be isolated from the impact of the executive branch, as it is pointless when the executive branch can identify the Commission's budget terms through the minister of finance, and that issue was subject to a heated debate when the law of common provisions of constitutional bodies was discussed before the Assembly of the Representatives of the People when the Commission's representatives insisted on applying on of two choices before the parliamentary committee :

. Either thinking about assigning valuable resources for the Commission that shall be taken as a percentage from the total funds that the Commission shall help in its retrieval for the benefit of the nation or any other valuable resources similar to what is applied in Italy as percentages normally got taken from public transactions.

. Or to discuss the budget directly with the Head of the competent Parliamentary Committee and decide the budget without any interference from the Executive branch.

Of course, this position taken by the Commission was strongly confronted by the government which insisted on what it considered as the necessities of taking into account the country's capabilities and the principal of budget unity and thus decided imposing its legislative initiative which is that the Commission's budget should be discussed by the Minister of Finance after a proposal made by the Commission that includes a proposed budget and a detailed program for its disbursement and then it should be referred to the Assembly for approval and inclusion in the general budget.

What is clearly known then through what we have mentioned here, is that the Executive Branch does not only has full unilateral control over legislative initiatives related to combating corruption but controls as well determining the budget of the independent entity and how it should be spent, in the same context the budget is subject to a governmental body which can pay in installments or stall in paying endlessly

The Report of Council of Europe noted this dilemma 14 June 2017 as it stated that:

In Europe, anti-corruption agencies are generally attached to another body (*the Ministry of Justice or the Ministry of the Economy, Finance and Budget*) and thus have its financial resources from the budget of the state. This can sometimes pose problems in terms of budgetary independence

since certain politicians fear investigating these agencies or persons that can limit their budget and their possibilities of action.

En Europe, les agences de lutte contre la corruption sont en général rattachées à un autre organisme (le ministère de la justice ou le ministère de l'économie, des finances et du budget) et ont ainsi des ressources financière provenant du budget de l ' etat. Ceci peut parfois poser des problèmes en matière d'indépendance budgétaire puisque certains hommes politiques craignant les investigations de ces agences contre leur personne peuvent être tentés de limiter leur budget pour limiter leurs possibilités d'action}.

Third: limits of the investigation mechanisms and investigating suspicions of corruption

Everyone agrees about the importance of investigation and oversight missions on suspicions of corruption crimes as an effective mechanism for combating corruption and non- impunity assurance that are assumed by an independent structure made especially for that purpose, and the Tunisian legislative course has known two phases, the first was framed by Decree 120 relating to organizing the work of the Anti-Corruption National Commission, and the second was formed by Organic Law no.59 relating to regulating the Work of the Constitutional Commission for good governance and the fight against corruption

Phase I: Investigation under Decree 120

The Decree provided the newly formed Anti-Corruption National Commission a special body called the special authority for prevention and investigation which was regulated according to Articles 22 to 33, the mission of the authority especially as set forth in Article 31 is as the following:

"The Prevention and Investigation Authority is responsible for investigating corruption crimes, and shall in this context, collect information, documents and certificates that shall enable it from revealing the truth about suspicions related to committing corruption crimes by any natural or juridical person, public or private or any organization, association or commission, whatever its nature is, and shall enable it also form confirming the validity of this information and collected documents before referring them to the competent judicial authority to prosecute the perpetrators. It also has the authority to carry out inspection missions, seizure and confiscation of documents and properties for all professions even the private ones if it views that it needs to be inspected without any other procedures to be made. And the transcripts and reports issued by the Prevention and Investigation Au

thority is considered to be legal evidence that cannot be challenged except by allegation of forgery"

What is really relieving at this level is that Decree no.120 was clear in enabling the Investigation Authority affiliated to the Anti-Corruption Commission from all the judicial mechanisms that facilitate its work and duties in investigating and configuring files, and it even gave its reports a legal effect as a proof that can only be challenged through allegation of forgery, and even more importantly in my estimation, is that it made it not functionally subject to Public Prosecution when it gave it an equivalent judicial power which with it, it can carry out all investigative tasks needed, including arrests and inspection and thus referring the file in its complete form to Public Prosecution to do whatever it views necessary, referring it the Judicial authority or archiving it

But at the same time, it is a sad fact that this Authority that is supposed to be established by a governmental order according to Article 22 of the Decree was not established till the very moment of writing these letters despite having more than 7 governments in power and despite the several demands made by The Anti-Corruption National Commission on several occasions.

Phase II: Investigation under the provisions of Organic Law no. 59 on Good governance and Anti-Corruption Commission

This law has witnessed a serious setback since the issuance of the first draft that blew up all the possible independence for the Commission towards the executive branch as it gave the anti-corruption department agents a subsidiary judicial power and the direct supervision of the Public Prosecution whose members are nothing but obedient employees for the Minister of Justice, a member of the supposedly monitored government.

This situation is already chaotic, as Article 19 stated that when anti-corruption department agents exercise their duties have the right to exercise judicial powers in accordance with the Code of Criminal Procedure and the provisions of this law , and they have the authority receive testimonies, gather information and evidence, carry out inspections, archive documents, seize portable properties and equipment, issuing transcripts and reports with the possibility of using the help of public force, and the agents of this department have the authority while investigating an issue if any corruption suspicions arises while investigating that issue about another issue, to investigate the later and to make an arrest after taking the permission form the judiciary.

So, What it is clear is that the hypothetical Commission's independent investigation authority vanished by the power of the new law and despite the fact that it is being challenged on the basis of unconstitutionality for breaching the principle of independence, the Provisional body responsible for checking the constitutionality of bills considered that this law is valid and it considered that the judiciary is the only protector of the rights and freedoms and therefore there is no room for investigation whatsoever out of its scope of authority, and as a consequence, agents of the Commission's implementation department would carry out their tasks as law enforcement forces as stipulated on Article 9 of the Code of Criminal Procedure

And that is Disastrous especially that the Public Prosecution Authority suffers from great problems that can be summarized as follows:

The case of Article 20 M E C

Revealing the truth about corruption and crimes surrounding it, is an essential part of Public Prosecution's work in instituting proceedings and this falls exclusively within the Public Prosecution's jurisdiction as it is well known that public prosecutors institute and manage cases proceedings according to (Article 20), they are the holders of that power whether it was preceded by a complaint or a flagrante delicto.

A power that is bounded only what the legislature provided for the aggrieved do on the responsibility when a decision of archiving the issue is taken, i.e., the public prosecutor as the original holder of monitoring authority has the right to refer to the investigation department or other felony circuits as well as the authority to archive the whole issue.

In the first case, i.e. referring the investigation, the victim has the right to initiate proceedings to protect his/her personal and civil right before competent judicial circuits.

In the second case, i.e. archiving the issue and not initiating proceedings, the victim exercises his personal right by revitalizing the issue on his own responsibility, as in in this case and despite of the archiving decision by the public prosecutor, the proceedings and the case would continue to be considered by the judiciary regardless of this decision.

But the question arises when the public prosecutor chooses to negatively refrain from issuing any order or take a position towards the case, as in this case the investigation would not be carried out and issue would not be even archived so as to let the victim revitalize it and initiate proceedings on his own responsibility.

The Tunisian Code of Criminal Procedure did not explicitly stated how to deal with the public prosecutor's negative decision of refraining to take a decision or issue an order, as the law did not bind the Prosecution to issue its order in a specific time limit and did not state a way to challenge it by an objection or appeal or a reconsider petitions or any other way.

The prosecutor as the original holder of investigation authority towards perpetrators can open the gate for them to impunity in a legal way through not investigating the issue, as the investigation is not bound by a legal time limit while the crime itself has a limitation and could be time barred for failure of complaining and investigating within the time limit (Article 6 E C)

Some comparative penal legislation noticed this imbalance in procedures so it restricted the prosecution's authority to initiate proceedings with in a time limit of 6 months or year from the date of filing a complaint or a petition , and thus if the public prosecutor didn't take any action or investigate or archived it, the victim has the right to directly initiate proceedings of a case on his own responsibility and end any opportunity of impunity.

The case of Article 31

The Tunisian punitive system has chosen to enable the Public Prosecution to initiate investigation through "an investigation judge" without carrying out a whole legal investigation when entitled with case that is vague or committed by an unknown suspect, as Article 31 considered that " Public Prosecutors has the authority, if the complaint did not amount to enough reasoning or justification to request a temporary investigation by an "Investigation Judge" until the time of charging a person or where appropriate requests are made against a particular person"

Usually, the prosecutor initiates an investigation and refers it to one of the investigation judges those who are entitled to those missions, and from the moment of the referral they become totally free to take any decision whether to initiate hearings, investigations, seizure, inspections, referral or archiving, and that was stated in Article 51 m e c " Cases are ultimately and irreversibly entitled to an investigation judge according to an investigative order"

And the difference between the cases stated in Article 31 and Article 51 that the investigation judge in the first has a restricted authority and subject to the public prosecutor while the second case he has an absolute authority after the issue gets irreversibly referred to him.

Article 31 M E C can be considered an open door for legislative

impunity for the following reasons

Investigations are temporary and against unknown persons, i.e., the investigation judge has no authority to identify the accused or the charges, as he act under the authority of the public prosecutor as one of his assistants.

The investigation order does not include specific charges against defendants, and this render the Criminal Proceedings law meaningless specially to legal statuses as there is no charged persons or a victim or a legal case. In another words, the complaint that was filed by specific person against specific perpetrators eventually ended, no longer has a legal effect and tuned eventually into some papers with another legal file, i.e., it does not give its filers the right to access investigations, testimonies and supporting evidences.

_ Article 31 protects defendants as it turns them into witnesses before the investigation judge who does not has the right according to Article 31 to question them as defendants.

_ The investigation judge is not bound by a time limit to carry out his duties and return it to Public Prosecution and thus this initiative investigations could take years without reaching any result. And as long as the public prosecutors do not have the right to provide documents or hear witnesses or make demands most of these cases are archived with no further investigations to be made.

The case of Article 49

According to Article 49 M E C, the Pu

Perhaps the biggest proof of that is what the Organic law for reporting corruption and protection of whistleblowers provided as its second article stated –among others- identified the public structures that are subject to the oversight authority of the Anti-corruption committee and that included

blic Prosecution is an authority has an unrestricted authority to choose one of the existing investigation judges in their circuit to carry out the investigations. And this unrestricted authority to choose cannot be challenged in any way except in two cases:

_ If the case is being viewed by an exceptional court, The investigation judge reviews the assured work done and then take a decision (VQ 2 p-52)

_ if the case was challenged on the basis of the court's jurisdiction, which is a rare case stated in Article 75 of this law.

So, the rule here is that the public prosecutor is free to choose the investigation judge, and if there is a case that an investigation judge has already taken charge of and is related to another case that was referred to another investigation judge, his work in his would remain incomplete as the truth has been fragmented and divided on a number of investigation judges, and there is no procedural rule that regulates automatic reviewing other investigation judges work so would be aware with all the facts in ongoing cases.

And thus we can consider that the Public Prosecutor's absolute authority to choose investigation judges an open door for impunity.

Fourth: the dilemma of not activating laws

We have already aforementioned to the ultimate dilemma which is the reluctance of successive governments after the revolution to issue an order to appoint members of the investigation authority stated in Article 22 of Decree 120 that regulates the Commission's work which is still in force until now, which restricted the Commission powers and made it unable to carry out any effective serious investigation that would reveal corruption or prepare files that would include official clues and evidences that would amount eventually in forcing the Public Prosecution to refer them to judicial circuits(investigation or trial according to the characterization of the alleged acts of suspects), but instead as a consequence of this , The Commission only initiate investigations according to its procedural allowed capabilities , i.e., The Commission now operates under the limits mentioned in Article 30 of Criminal Procedures Code which stated that "The public prosecutor strives to reach a conclusion towards complaints and notifications he/she receives" , it became in the same legal rank of any natural person's knowledge of a committed crime and he/she reported it and thus all legal procedures became exclusively an authority of the Public Prosecution to initiate legal proceedings and manage it as it views.

However, the issue of non-activation of laws is not just an isolated in-

cident, as other examples can lead us to the assertion that it comes in a systematic policy of trimming nails and controlling the layout and results.

Decree No. 2012-1425 dated 31 August 2012, amending and completing decree n° 2010-3080 dated 1st December 2010, establishing Higher Advisory councils

This decree invented a government advisory board called "The Higher Council for Fight against Corruption, the Recovery and Management of the Assets and Property of State" it is of a high rank combination constituted of the government (7 Ministers), concerned bodies and committees with the possibility of appointing members from civil society organizations, and that exactly was stated in Article 25 ter, which identified the Council's composition as follows:

-The Minister to the Head of Government in charge of governance and the fight against corruption,

- The Minister of Justice,
- The Minister of the Interior,
- The Minister of Foreign Affairs,
- The Minister in charge of Human Rights and Transitional Justice,
- The Minister in charge of State Property and Land Affairs,
- The Minister of Finance,
- The chairman of the national authority for fight against corruption,
- The chairman of the national com

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mittee for the recovery of ill-gotten assets existing abroad,

- The chairman of the national commission for the confiscation of the assets and moveable and immoveable property,

- The chairman of the national commission for the management of the assets and property subject to confiscation or recovery in favor of State,

- Five members of the assembly vested with legislative power, appointed on its proposal,

The chairman of the council may, if necessary, invite any person whose presence he deems useful to the works of the councils. He may also invite any authority, organization or association on a proposal from the Minister in charge of their activity sector.

And it was assigned to carry out a number of tasks according Article 25 bis as follows:

The higher council for fight against corruption, the recovery and management of the assets and property of State is notably in charge of the following:

- The follow-up and coordination of the works of the different commissions and national bodies in charge of the confiscation, recovery and management of the ill-gotten assets and moveable and immoveable property attributable to the State, existing either inside or outside the country,

- The follow-up of the results of the works of the national authority for fight against corruption,

- Proposing legal mechanisms to facilitate the tasks of these commissions and bodies and provide the necessary support to accelerate the pace of their work within the framework of efficiency and effectiveness,

- Providing the necessary guidelines and recommendations in order to develop their performances within the framework of the missions entrusted to each of them.

- Proposing solutions ensuring the good management of the confiscated assets and property, concerning the transfer of their

ownership and exploitation or the development of their investment.

The council, which was entrusted with the task of coordinating the efforts of all actors in this important file, remained regrettably ineffective and did not hold except two meetings the last of which was in 2013, and did not issue any reports or recommendations which means the unwillingness of the executive branch to activate this board.

Organic law No. 2016-77 of 6 December 2016, relating to the economic and financial judiciary pole

This law is an urgent requirement for all those who are involved in the fight against corruption because fiscal corruption crimes specifically are of a complicated nature and transboundary and need multiple competencies and specialization in order to dismantle, decode it and prepare its judicial cases in addition of taking acre of the financial revenues of these cases

And the Organic law relating to the economic and financial judiciary pole has stipulated explicitly on this approach in Article 1 " a Department in Tunis Court of Appeal an economic and financial judicial pole is established to be responsible for investigation, prosecution and judgment at first instance and on appeal of complicated economic and financial offenses within the meaning of this law and its related offenses"

What is important in this law is compiling serious cases of financial corruption in the judicial pole and made investigation judges exclusively entitled with the , and what is even more important is what was stated in Article 7:

"The economic and financial judicial pole includes a technical section made up of specialized technical assistants. The technical specialties of the specialized technical assistants as well as the conditions and procedures for their recruitment and their remuneration are determined by government decree."

This accumulative legislation is the most successful in addressing economic crimes, in an economy that more of its real half percentage is a parallel economy that is based on smuggling and tax evasion and thus it was conceived with great welcoming from Civil society, as judges will finally have a specialized department for taxes, accounting issues and international trade.

It will necessarily accelerate the decision on files and investigations, but until now the necessary needed governmental decree was not issued yet

in order to initiate forming the technical department which without its existences no real change will occur in cases that involve high rank perpetrators.

3. Organic Law No. 10 of 2017, dated 7 March 2017 relating to the reporting of corruption and the protection of whistleblowers

In addition to not issuing the two governmental decrees included in this law namely:

- Article 3: Related to special governmental decree that specifies conditions and incentives provided for public structures which responds to best practices recognized nationally and internationally in the field of preventing corruption.

- Article 29: Related to special governmental decree which defines, formulas and criteria for rewarding whistleblowers and which is a clear evidence that the Executive branch is has no real desire to encourage anti-corruption measures

This law cannot have any effectiveness unless the entire administration i.e. all involved departments referred exclusively in Article 2 be committed to deal with independent Anti-Corruption Commission and apply Article 7 which provides as follows:

"Each public structure subject to the provisions of this law must designate an administrative structure within it to receive and investigate complaints of suspected corruption which are referred to it by the Commission, hereinafter referred to as "the competent administrative structure"

And every public structure subject to the provisions of this law within two months from the date of publication of this law in the Official Gazette of the Republic of Tunisia is entitled to send to the Commission telephone and fax numbers and an e-mail and publish it through its official website.

The aforementioned article 7 is considered the heart of this law, as the dealing of the Commission with the complaints it receives inevitably passes through the stage of enabling the competent public structure or administration to investigate the alleged corruption suspicions according to procedures and timelines mentioned in the law, however, practical experience proved an undoubted mutiny of administrations against complying with Article 7's requirements as within more than 1,200 structure the Anti-Corruption Commission received only 78 correspondents that specify the competent department within administrations specialized in receiving cor-

ruption complaints and investigating them.

And perhaps it is surprising to note the executive branch's silence and negligence toward this problem, specially the prime ministry which is entitled to implement the law, as it appears that they don't encourage their subordinates of public structures to apply the law, despite the fact that the Commission has demanded repeatedly to take measures to activate Article 7, especially that Article 15 of the Constitution of January 2014 stated that: " Public administration is at the service of the citizens and the common good. It is organized and operates in accordance with the principles of impartiality, equality and the continuity of public services, and in conformity with the rules of transparency, integrity, efficiency and accountability"

It is worth to note also that what serious lack of special protection measures the law raised as it cut off whistleblowers relation with their profession as there is no coordination between whistleblowers law and labor law or public professions law, and the time limits and deadlines provided for in the law is too short too and thus this heavily burdens public structures as they have other tasks to carry out.

The result is therefore, the protection of whistleblowers and reports of corruption suspicions is weak and inadequate.

Law No. 2018-46 of 01 August 2018, on the authorization of gains and interests, the fight against illicit enrichment and conflicts of interest.

I have already written an article that was published on DAAM's website on this law in particular, which in turn included a number of government decrees that are supposed to be issued in a reasonable period of time following the publication of this law in the Official Gazette

And we should not criticize or comment now, we should wait in order to judge on the subject of activating this law, but we can say that the structure stated in the law of Constitutional body for good governance and anti-corruption will encounter many difficulties in order to be applied by the looks of the complicated missions and tasks it is supposed to carry out, especially by the look of the enormous numbers waiting to have authorizations for gains and interests, please review our published article that goes by the title of " Law of revealing sources of money and assets(The Law of where did you got that from?) ..... between achievements and miracles)

Fifth: Legislating laws that contradicts with the philosophy

of combating corruption:

Whoever reflects on the Tunisian situation in combating corruption can easily understand the executive branch's reluctance to issue laws that frames the economic system, addresses smuggling, tax evasion and parallel economy in the form of a law that adopt open governance and e-government, in which databases are compiled to support transparency of public utility, develop monitoring measures or a law that change the current currency and reduce financial transactions in cash and other laws that are adopted by most of democracies around the globe to reduce the phenomenon of corruption, but we find difficulty in understanding – especially when the executive branch bragging about combating corruption- is the issuance of "Administrative reconciliation law" or Organic Law No. 62 of 24 October 2017 on Reconciliation in the Administrative Field Law, which can be considered a legal amnesty for public officials and whoever hold a similar position who were involved in the crimes stated from Articles 82 to 96 in the Criminal Code and includes those who are under investigation as well as those who were tried and a final judgment of conviction was issued against them.

And Article 1 of the law justified its issuance by saying that it is restoring trust in the Administration, promotes the national economy and achieves reconciliation while actually it will destroy the transitional justice course stated in the constitution and shall promote impunity and interfere in the judiciary's job.

And despite the fact that 40 Members challenged that law on basis of unconsti-

So, we can say, that the road for the Tunisian legislative system to become up to the level of the declared war on corruption is still long and full of .impediments

tutionality and justified that by stating that the law violates Article 13 of the Constitution, The Temporary Commission for Monitoring the Constitutionality of Laws refrained from deciding the issue stating that the needed majority to issue their decision is not available and thus they referred the whole matter to the President of the Republic who ratified and sealed it despite the wide range condemnation and rejection of this law by civil society organization. The Conclusion then, according to the aforementioned is that the Executive Branch and its heads whether the Prime Minister or The President has always sought to have the upper hand in the issue of combating corruption despite the inclusion of their speeches the subject of combating corruption as a priority, the devil is in the details, as when we reflect on the legislative course after the revolution we find that law texts was intentionally full of traps in a way that makes them a media advertisement more that effective laws that are successful in combating corruption.

So, we can say, that the road for the Tunisian legislative system to become up to the level of the declared war on corruption is still long and full of impediments.