

Financial and Administrative Corruption Crimes and a Means of Combating These Crimes in Iraq as a Model

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The phenomenon of committing crimes of financial and administrative corruption is not new, but it exists in all countries. However, the issue of its spread is relatively small in some countries with only a few particular cases of committing them, yet in other countries, the issue has spread like a disease that is ravaging the body. Corruption in Iraq has a deep-rooted origin in society since the existence of the Ottoman Empire, but it exists even after the formation of the modern Iraqi state founded in 1921. The cases of administrative and financial corruption continued to spread in most state institutions until those worsened. The phenomenon became a larger issue after the economic embargo imposed on Iraq in the 1990s. It spread alarmingly after the international occupation of Iraq led by the United States of America, as the atmosphere that existed after the occupation. This contributed to creating the right environment to exacerbate this phenomenon worthy of follow-up, observation, and study, because the aggravation of this dangerous phenomenon stands in the way of progress practical and development of the country and at all levels. In order to thoroughly research the subject, the researchers will follow the analytical approach of the legal texts and the inductive approach to develop solutions to the problem of research.

Key words: *Financial corruption, Iraqi state, Economic Sanction, Serious phenomenon.*



Introduction

The First Research

The concept of corruption, corruption, money and administrative crimes. To illustrate the concept of crimes of financial and administrative corruption must be addressed to define them, and to identify their types, and this is what we will explain in two demands as follows:

The First Requirement

Definition of Financial and Administrative Corruption Crimes and Types

The need for scientific research requires a definition of crimes of financial and administrative corruption in language and terminology.

The First Branch

Definition of Crimes of Financial and Administrative Corruption in Language

The term crimes of financial and administrative corruption is composed of several words, and to understand the meaning of the word as a whole, the meaning of the words that make up the term must be clarified as follows:

1. Crimes: is a collection and its singularity is a crime, and the latter means guilt or felony (Mohammed, 1990).
2. Corruption: means the opposite of goodness, and it is said that a thing is corrupted if it malfunctions. Corruption is the opposite of interest, and corruption may come in the sense of sin, injustice, or extravagance.
3. Financial: the origin of this word is attributable to money, and the latter is the possession of the property or money of the individual or group.
4. Administrative: This word is derived from the verb manage, manages.
5. Having made the meaning of the words clear separately, it becomes apparent that the meaning of this term in linguistic terms is: crimes associated with financial corruption, whether in kind or in cash, and the return of the circles, institutions and perpetrators associated with those services or institutions.

The Second Branch

Definition of Crimes of Financial and Administrative Corruption in the Term

The researchers have not found a specific legal definition of the crimes of financial and administrative corruption in Iraqi laws, as well as in the decisions of the Iraqi judiciary (according to the researcher). For this reason, the researchers will limit themselves to stating the doctrinal definitions of these crimes (Ibrahim and others, 1971).

Crimes of financial and administrative corruption were defined (Ibrahim and others, 1971) by the researchers as "breaking laws and regulations or exploiting their absence, in order to achieve political, economic, financial, commercial, or social interests for the benefit of an individual or a particular group with which the individual has personal interests", and another (Ibrahim and others, 1971) defined them as "acts that are carried out by any individual" (Name, Date). Defined it as "abuse of power and exploitation for private gain"(Name, Date). While another (Ibrahim and others, 1971) researcher defined the term as "trafficking in the public service and abuse of power". Amir (2010) defines crimes of financial and administrative corruption as a public assault on public money or negligence in the protection and maintenance of public money and the interests and rights of the state (Amir, 2010).

From the foregoing, the researchers can define crimes of financial and administrative corruption as any positive or negative conduct committed by a legislator who is responsible for public service by exploiting his influence or authority under the law, regulations or instructions to attack public funds (Ahmed, 2011).

It is clear that the term crimes of financial and administrative corruption includes many of the behaviours and acts that the Iraqi legislator has criminalised in its penal laws. Notably the Penal Code No. (111) of the year (1969) in force, including: bribery, embezzlement and crimes related to embezzlement, abuse of power, waste of public money, mediation, damage to public funds, breach of government tenders and auctions, and many other crimes.

It should be noted that corruption is not only present in the public sector, but also in the private sector and in civil society institutions.

The Second Requirement

Types of Corruption

The spread of the phenomenon of financial and administrative corruption crimes is apparent and serious in underdeveloped countries, including Iraq, because of its significant negative impact on the country's progress and development.

Corruption in general has several types that can be used as follows:

- 1- Financial and administrative corruption (which is the focus of our research), financial and administrative corruption is a criminal behaviour aimed at achieving personal goals and benefits without right (Mbaraa, 2011), by means of fraud. This includes breaking laws and the exploitation of the public service (Razak, 2017).
2. Corruption in terms of size: Corruption in terms of size is divided into large and small corruption relative to the groups that commit it (Amir, 2010).
- 3- Political corruption is intended corruption committed by the political structures of the state. This occurs through the abuse of public power for illegal and secretive purposes, for personal gain, which is the most dangerous kind of corruption for societies and states (Al-Fatlawi, 2017).
- 4- Small, administrative, bureaucratic, or limited corruption (Fares, 2016) such as the practice of corrupt transactions in administration includes the exchange of cash or secondary benefits. This may be in the form of paying bribes to promote or speed up certain transactions and employ relatives or friends in non-leadership positions. This is less dangerous than major corruption, but the number of its operations is very large compared to the number of large corruption operations. It may occur in one day thousands of times and a large number of employees and citizens such as paying bribes in police stations, real estate registration departments, in the courts, in the tax departments, in civil service or passports or Social welfare and others (the annual reports).

The Second Requirement

Reasons for the Spread of Financial and Administrative Corruption Offences

There are a number of reasons for the spread of the phenomenon of financial and administrative corruption crimes, and their availability creates an environment suitable for the spread of such crimes, the most important of which are:

- 1- Political reasons: political reasons are so important that their effects on the spread of the phenomenon in question cannot be overlooked (Sweilm, 2011). The corruption of the political system and the corruption of political leaders is attributed to their lack of respect for the

constitution and laws of the state, weak loyalty to their homeland and their dependence on foreign countries, and their primacy for its partisan and individual interests over the public interest (Faris, 2016). These factors contribute to the spread of this phenomenon and its significant increase.

2- Economic reasons: the deterioration and poor economic conditions, low per capita income, widespread unemployment, lack of equal opportunities for workers and the lack of equitable distribution of wealth by the people contributes to the spread of this phenomenon.

3- Legal reasons: the existence of unfair laws and the absence of social justice in the state, weak oversight and real accountability, and a lack of effective accountability of the most corrupt. The existence of immunity systems for corrupt leaders, and not being held accountable, all contribute to the spread of corruption.

4- Social and cultural causes: The weakness of moral, religious, and national motives, the moral system being ratified within society, the spread of the concept of clan, tribe, region and category at the expense of the public interest. Additionally, the spread of negative ideas, the prevalence of extremism and intolerance among the people of the one nation and a vengeful feeling on the rich from the poor are also among the reasons behind this phenomenon (Al-Fatlawi, 2017); (Taha, 2016).

The Second Research

Methods of Fighting Financial and Administrative Corruption

In this requirement, we will discuss anti-corruption methods as follows:

The First Requirement

Legal Methods to Combat Financial and Administrative Corruption

There are many methods that can limit the spread of the phenomenon of financial and administrative corruption, including legal methods, and the most important of them are as follows:

First: Criminal Legal Methods: They are the most important anti-corruption means that contribute to reducing this issue and depend on criminalising laws for criminal behaviours related to financial and administrative corruption through the penal laws, as well as procedural laws to prosecute their perpetrators by investigators under the supervision of investigating judges (Hassoun, 2019). The efficacy of this method or method is based on the following: -

A- Absorbing national punitive texts and criminalising as many forms of corruption as possible, whether this is administrative or political, but the legislation most often does not include all

forms of corruption. It neglects many important aspects despite Iraq's ratification of the United Nations Convention to Combat Corruption of 2003. Its law does not criminalise bribery within the framework of the private sector that the aforementioned convention calls to criminalise, (Ali Razak, 2017) nor does it criminalise illicit enrichment or what is known as the aforementioned convention also calls to criminalise (Houria, 2016).

B- The competence of investigators pursuing corruption crimes and their ability to collect sufficient evidence to convict offenders by the courts. In Iraq, the investigation of corruption cases is transferred to police officers of the Ministry of the Interior, investigators of the Integrity Commission and to investigators of the Judicial Council. Most of these investigative bodies are either incompetent or corrupt.

C- The efficiency of the judiciary, its independence and impartiality, and preventing its influence or interference in its actions.

D- Non-interference by other authorities, including executive or legislative bodies in the criminal prosecution of offenders regardless of the justifications for the intervention and its reasons, whether the interference was by influencing the judiciary or the investigators or their administrative superiors (Al-Okaili, 2017).

Second: - Administrative Methods: Ben (2016) states that (Enas, 2017); (Inas, 2017): It is not enough in the application of this mechanism to combat corruption choosing the honest, as integrity is not enough (Abdul-Zahra, 2019), but it must meet in the right man the most important requirements:

1- High practical efficiency: It is not sufficient for a person to carry a scientific degree, even if it is high (Mahmoud, 2011), except that the lesson in addition to the certificate of personal scientific competence.

2- Specialisation: The person must be a specialist in the field of the position in which they have been appointed to a leadership position (Taha, 2016).

3- Practical experience: Certification is not sufficient, no matter how high it is, nor specialisation in assuming leadership positions. Rather, the person must be a candidate for a leadership position with practical experience and hold a deep understanding of their field of work to be an expert in their institution, (Mahmoud, 2011).

Third: Laws: This means is the most important means of combating corruption because legislation is the basis on which all joints and other anti-corruption means are built. Therefore, transparency cannot be approved and applied except by laws and legislations that regulate and impose them. To ensure conditions of integrity for the employee such as rewarding salaries, only the laws advance them. Reducing the role of the public sector is a project that the parliament does not carry out with legislation that regulates and limits its scope. The establishment of effective institutions in reducing corruption and eliminating some of its forms

does not occur except by legislation, and on the whole, the legislative authority must adopt the foundations. The following are within the limits of the subject facing corruption:

1- Working on issuing clear and precise legislations that blocks corruption outlets and its entrances. This requires conducting studies of some of the most prevalent forms of corruption and finding solutions to corruption. This includes translating this research into laws and studying the phenomenon of bribery, favouritism, and mediation in appointments. This includes finding a legislative solution to it which is nothing but a restructuring of the Public Service Council and limiting appointments to it by competitive methods. This is similar to the methods of public examinations in universities, and this is what was stipulated in the Permanent Constitution of 2005. Another method may be studying the mechanisms for referring public tenders and comparing them with what is the case in civilised countries of the world and translating them into a text-tight and specific law. the responsibilities in the study of bribery and extortion in the tax and real estate registration circles focus on the notary book, passports, and the resolution of their order of bribery in institutions to complete simple transactions. This is achieved by adopting a law requiring the executive authority to adopt a mechanism that prevents the employee from directly contacting the auditor whatever was possible (Sahbi, 2017).

2- Adopting a clear legislative strategy regarding all the means of corruption that envision important results in the fight against corruption, by issuing the necessary laws to adopt the means of fighting corruption. This includes the legislation on the right to access information and imposing transparency or approving a law for the work of the Procurement Committee in state institutions that still operate without a detailed law that sets out the mechanisms of their actions and procedures except with instructions and texts to issue laws necessary to criminalise all forms of corruption. This is especially pertinent for those that called for criminalisation of the United Nations Convention against Corruption of 2003, and the establishment of strict penalties and deterrent penalties for perpetrators of corruption crimes in general (Rahim, 2017).

3- Adopting a strategy that prevents and limits texts that give legal immunities from the criminal prosecution of perpetrators of corruption crimes, regardless of their position or the nature of their actions. The great importance of this means appears in its efficacy. This creates solutions that it finds suitable, and imposes it with a louder authority in the country. It is also a method suitable for dealing with all types of corruption, whether it is large and small corruption, unlike other means that may not be suitable. Except to combat one of the two types without the other, as is the case with increasing the salaries of employees. It is only suitable for combating small corruption, as it differs from other methods that are suitable for combating big and small corruption in that it sets solutions by binding general abstract rules and not by detailed individual rules or solutions as it is the case of criminal and investigative prosecution (Razaq, 2017).

Fourth: Disclosure of Financial Disclosure and Criminalisation of Graft: An important means of control is to compel senior state officials such as members of the legislative authority, the presidency of the republic, members of the cabinet, judges, governors, and those with ministerial ranks, among others, to disclose their money and that of their families if they take up a job in the public eye during and after the interruption of their relationship with them. This is important to monitor their wealth and the extent of their inflation during their assumption of public office. If it is proven that their money was inflated in a manner that is not commensurate with their known resources then the law must compel them to prove legitimate sources of this inflation. Otherwise, it is considered illicit money even if it is not proven with evidence that it was the result of bribery or corrupt practices of any form, and that should be criminalised and the employee who proves that his money is inflated in a manner inconsistent with their declared resources is punished with a penalty such as a fine or imprisonment in addition to confiscating the inflated amount of the said employee's money.

Fifth: The Contribution of Civil Society Institutions in Combating Corruption: Finding a means of cooperation between public sector institutions and civil society institutions is important to encourage and activate its role and support to spread a culture of integrity, awareness of the risks of corruption among the public, and evaluate the work of institutions.

Sixth: The Media: The media plays an important role in exposing corruption operations, spreading transparency, and evaluating the work of public institutions. However, it must be used in a suitable way that does not lead to damaging adverse results so that people lose their confidence in the public sector and its employees. Corruption must be exposed and evaluating the work of institutions and referring to corruption in them, without exposing the names of employees and exposing them on the mere charge, or for the purposes of political liquidations in order to win the support of some of the parties from the politicians, as happened in the policy of the Integrity Commission.

Seventh: Facilitating Work Procedures and Speeding the Completion of Transactions: Bureaucracy is a major source of the growing phenomenon of corruption. Therefore, facilitating administrative procedures is one of the best ways to cut opportunities for corruption. This reduces the employee's opportunities to delay transactions or fabricate obstacles and provides the citizen with more knowing what is required of an employee and how much time, documents and procedures his treatment requires (Younis, 2017).

The best way to adopt this method is to automate transactions and prevent communication between employees and auditors directly, which helps eliminate complexity and deliberate delays, and makes bribery seeking a minimum (Sahiham, 2017).

Eighth: Independence, Impartiality and Objectivity of the Judiciary: Independence of the judiciary has an effective and significant role in limiting the spread of financial and administrative corruption crimes. Punitive laws alone are not sufficient unless you find a neutral, courageous, and able authority to implement and put them into practice. Often corruption issues are not complicated and are subject to taking a response and require a great knowledge of backgrounds and legal precedents in addition to knowing a lot of information surrounding the case. Additionally, major corruption and bribery cases often involve some of the figures with strong influence in society, but the confinement leads to money. The time of junior officials - as is the case in the Integrity Commission cases - can produce counterproductive results because high-ranking corrupt people are convinced that they are immune from prosecution and that they are above the law. Therefore, the independence and courage of judges in addressing those with influence and authority in society are necessary to enforce laws anti-corruption, otherwise it will remain useless. A courageous, effective judiciary is essential to any strategy to fight corruption (Al-Okaili, 2017).

Conclusion

As a result of discussing the issue of the concept of crimes of financial and administrative corruption, the reasons for their spread and ways to reduce them, we reached a set of conclusions and recommendations as follows:

First: The Results

- 1- We can define the crimes of financial and administrative corruption as: Every positive or negative behaviour committed by the legislator committed by a public service by using influence or authority that they own according to the law, regulations, or instructions to assault public money.
- 2- Financial and administrative corruption has many forms and types, the most important of which are financial and administrative corruption, organisational corruption and political corruption which is one of the most important types of corruption because it is committed by the ruling political authority, which has negative effects on the entire country.
- 3- The spread of financial and administrative corruption crimes has multiple causes, foremost of which are legal, economic, social and cultural reasons, as well as political.

Secondly the Proposals

- 1- We suggest to the Iraqi legislator to legislate laws that limit the phenomenon of corruption, activate the legislator from it, increase its effectiveness and efficacy, and not to issue laws that forgive the perpetrators of these crimes, thereby emptying the laws of their real content.



- 2- Legislating laws that limit the privileges of officials in the state and reduce class differences between groups of society, such as laws that grant concessions to the House of Representatives, ministers, advisors, general managers, and others.
- 3- Legislating laws that limit and activate the administrative bureaucracy, and work to equal opportunities in public offices and eliminate the phenomenon of favouritism in appointments, to create trust between the government and citizens.
- 4- Unifying the supervisory agencies, defining their powers and duties, and providing them with the support to carry out their activities properly.
- 5- Educating citizens on a culture of integrity, preserving and caring for public money, and spreading the spirit of respecting laws and news about all or charged with a public service that commits crimes of financial and administrative corruption on the competent authorities.

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