

The New Criminalization Of The Crime Of Financial Corruption Within The Scope Of International Agreements

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Abstract

Financial corruption appears through financial deviations, violation of the rules and provisions governing the administrative and financial functioning of the State and its institutions, and violation of the instructions of financial control bodies such as the Central Organization for Financial Control, which is competent to examine and monitor the accounts and funds of the government, public bodies and institutions and companies.

The crime of bribery is no longer limited to the scope of the public service, but has extended to the facilities of the private sector, due to the increase in the latter's intervention in satisfying the needs of individuals, and its competition in providing services to the public, and the spread of the crime of bribery, whether in the public sector or the private sector, is a serious indicator that calls for concern; due to the vibration of the value system within society, the deviation of the rules of ethics and due to the spread of the crime of bribery in the private sector and convinced by those in charge of developing the United Nations Convention against Corruption.

Corruption is no longer a local affair, but rather an international phenomenon that affects all subjects of international law, so the responsibility to combat it lies with all States parties to the Convention, as Member States have tended to criminalize this type of bribery in binding international agreements. Indeed, the Iraqi legislator criminalized bribery in the private sector in implementation of its international obligations, after joining in 2007 to the United Nations Convention against Corruption, which was approved in 2003, in addition to achieving a high level. It is

in line with the system of international legislation, although this Convention did not oblige the States Parties to criminalize bribery in the private sector, but rather made it optional, is to limit it to bribery in the private sector in actions related to the public sector, whether national or foreign, which means that bribery committed in the private sector is permissible, and does not constitute any criminal accountability for its perpetrators, and it seems that this criminalization came because of the importance of the work of this sector in terms of its relation to the public sector, and in order to subjugate.

Keywords: Bribery In The Private Sector, Embezzlement Of Property, Abuse Of Office, Illicit Enrichment.

1 INTRODUCTION

Attempting to stabilize a nonlinear inverted pendulum is a significant problem for modern control theory. The complex Corruption is a devastating phenomenon in a cold manner, as specialists in combating corruption crimes agree that this type of crime constitutes one of the intertwined global problems that have made many international and local institutions and companies deal with it as an obstacle to reform, development, and proper investment, and its commission also results in distorting the image of integrity [1]. Public and loss of confidence among members of society, especially since it is committed by people who are at the forefront of society and represent role models for its children, and thus its perpetration and widespread spread leads to the creation of a society unable to produce good seeds capable of preserving national interests and achieving comprehensive development, so it should be combated by ways and means [2]. All of which come at the forefront of the penal legislation as the most effective legislation in combating these crimes, or rather combating this phenomenon, which is what the Iraqi legislator followed as he dealt with corruption crimes in the

Manuscript received on: 07.02.2024

Accepted on: 21.02.2024

Published on: 31.03.2024

Issue DOI: doi.org/10.52688/23

amended Iraqi Penal Code No. (111) of 1969 in the section on crimes that violate the duties of the job, as well as He established many specialized bodies to combat this phenomenon, in addition to ratifying the 2003 United Nations and 2010 Arab anti-corruption conventions [3]. The importance of the research: The importance of the research lies in the interest in combating the phenomenon of corruption that is carried out by illegal means from illegal sources, so that corruption has become one of the most important obstacles that stand in the way of preserving national interests and achieving comprehensive development [4]. Its importance also appears in particular to those interested in reviewing and reforming legislation related to anti-corruption.; This is due to the tremendous development that the world is witnessing, as combating corruption requires human resources with special specifications and characteristics capable of achieving the interests of society and protecting public money [5].

Research problem: The research problem revolves around the issue of the new criminalization of financial corruption in the international agreement on the following points: -

- 1- How effective is Iraqi criminal legislation in confronting the crime of financial corruption?
- 2- To what extent do penal legislation comply with the United Nations and Arab anti-corruption conventions ratified by the Republic of Iraq?
- 3- After Iraq's accession in 2003 and 2010, no new law was enacted, and no amendments were made to the amended provisions of the Penal Code (111) of 1969.

Research plan: To address all dimensions of the topic, the research plan will be divided into five demands as follows:

The first requirement: the crime of bribery in the private sector.

The second requirement: the crime of embezzlement of property in the private sector.

The third requirement: the crime of abuse of position.

Fourth requirement: illicit enrichment

The fifth requirement: The similarities and differences between the crimes of bribery, the crime of abuse of office, and the crime of embezzlement of property in the private sector.

The new criminalization of the crime of financial corruption within the scope of international agreements.

Financial corruption is defined as: profiting from public office to achieve private gains, whether or not in violation of laws, regulations, and instructions, and constitutes a criminal crime.

As it is known that Iraq's accession to and ratification of the United Nations Convention against Corruption, as well as the Arab Convention against Corruption, means that this country has become. From a legal standpoint, it is bound by their provisions, because ratification of an international treaty, by virtue of what is stipulated in constitutions and laws, especially since the effective Constitution of the Republic of Iraq for the year 2005 stipulates that "Iraq shall observe the principles of good neighborliness... and respect its international obligations," as it makes these The treaty is an integral part of the national legal system, and this entails the necessity of achieving legislative response and harmonization between the provisions of the treaty and the provisions contained in Iraqi legislation. The United Nations Convention against Corruption is the first legal document bearing the title of combating corruption, and it is a global agreement with strategic dimensions [1]. It combats and criminalizes acts of corruption and dedicates the principle of the rule of law and the protection of the public interest. This agreement was issued because corruption has become a dangerous phenomenon that is worsening and constitutes a major threat to the security of societies in general, including the construction and development process, as it entails risks that erode the economy and the financial and administrative capacity of any country, making it unable to face the challenges of reconstruction and building infrastructure. Corruption is a crime equivalent to what is committed. Of terrorist crimes in terms of their impact on society. Criminalized acts of corruption have been defined, including bribery, embezzlement, trading in influence, abuse of office, illicit enrichment, money laundering resulting from corruption crimes, and concealment of funds obtained from corruption crimes, and since the general principle of combating corruption is a matter governed by internal law, which is considered one of the basic means of guaranteeing human rights, because every legislation issued aims to protect a specific right that expresses the interest that the law recognizes and protects, especially in light of the ineffectiveness of international cooperation in combating corruption crimes, due to the complexity of procedures and countries' invocation of the principle of sovereignty, order

and security. General and the interests of states, and since Iraq has ratified this agreement under Law No. (53) of 2007, it is legally bound by the legislative and non-legislative provisions of the agreement and considering it as part of the legal system, as the general legal principle requires adapting the rules of internal law to the rules of International law by virtue of the principle that the provisions of international treaties are superior to internal laws, because the ratification of an international treaty by virtue of what is stipulated in constitutions and laws makes this treaty an integral part of the national legal system, and this entails the necessity of achieving legislative response and harmonization between what is included in the provisions of the treaty. Among the provisions contained in Iraqi legislation, the legislative framework of the United Nations and Arab anti-corruption conventions includes the criminalization of acts that we will address in the following demands.

2 THE FIRST REQUIREMENT BRIBERY CRIME IN THE PRIVATE SECTOR

It is known that bribery, in its usual and traditional sense, is limited to bribery of public officials who work in the state's departments, institutions, bodies, and other affiliated entities, in one way or another [4]. However, considering the free economic system, in which the private sector plays a greater role than before, as is the situation in Iraq after 2003, this necessitated criminalizing forms of bribery as it is considered the most important and dangerous corruption crimes in the private sector [5]. The United Nations Convention against Corruption, Article 21, is devoted to explaining the crime of bribery in the private sector.

Article 21 stipulates the following: "Each State Party shall consider adopting whatever legislative and other measures may be necessary to criminalize the following acts, when they are committed intentionally while carrying out economic, financial, or commercial activities [6].

(a) Promising, offering or granting an undue advantage to any person managing a private sector entity, or working for it in any capacity, directly or indirectly, whether for the person himself or for another person, in order for that person to do something or Refrains from doing something, which constitutes a breach of his duties.

(b) soliciting or accepting, directly or indirectly, an undue advantage from any person who manages or works for a private sector entity in any capacity, whether for the person himself or for another person, in order for that person to do something which constitutes a breach of his or her duties.

The elements of the crime mentioned in the text of the above article are:

First: The legal element: The legal element in the crime of bribery in the private sector is the basis of criminalization, and the basis for establishing the criminal responsibility of the bribe-taker. The legal element is the illegal character that the legislator attaches to the behavior and actions issued by individuals, and the crime is the same and is committed by the bribe-taker and he alone is considered to have done it. The briber is merely an accomplice. If a bribe is offered and rejected, the briber is not subject to the criminalization text. The Iraqi legislator limited the criminalization to individuals working in the private sector in work related to the public sector, and thus many categories fell out of the criminalization text.

Second: The presumed element: It is represented by the offender's character as a worker or employee in a private project, which includes that the person bribed in this crime is a worker or employee or any person who manages a company affiliated with the private sector, or that he works for a private company in any capacity. This characteristic necessitates the existence of a relationship of dependency between the person and the employer, whether this dependency is permanent or temporary, regardless of the work he performs, but it is required that this work be paid, regardless of its amount and method of payment [7].

Third: The material element: It is represented by the worker taking, accepting, or requesting a gift or benefit due to perform one of the tasks he is assigned to, or abstaining from it without the knowledge and consent of the employer. The employer's dissatisfaction is not accountable. The employer is responsible for this, and if the bribe is given to the worker without the consent or knowledge of the employer, there is no crime as long as the worker obtained the bribe after performing the work and that his obtaining it was not the result of a prior agreement with the interested party, which is lost in the agreement.

Fourth: The moral element: It is represented by intentionality, as the general criminal intent must be present, which is the tendency of the offender's will to request, accept, or take a

bribe in exchange for performing a job or abstaining from it without the knowledge and consent of the employer, despite his knowledge of the material nature of the crime. As for direct and indirect, it is through an intermediary, whether through positive bribery, i.e. accepting bribery (offer and acceptance), while passive bribery is abstention and refusal, and the subsequent crime is not criminalized, and the legal model for the crime of bribery in the private sector does not differ from the model for the crime of bribery in the public sector except in Where the character of the perpetrator is, bribery in the private sector occurs from any person who manages the entity affiliated with the private sector, in general, or works for it in any capacity whatsoever, while bribery in the field of public office is a crime that is only perpetrated by a person who has the status of a public employee or one charged with a public service. As stated by the United Nations and Arab anti-corruption conventions, except for this assumed condition, related to the character of the perpetrator, the legal model for bribery is the same for the two crimes stipulated in the two articles. 21 and 15 of the aforementioned United Nations Convention. It can be said that the crime of bribery in the private sector must include a breach of job duties, unlike traditional bribery, which involves doing or refraining from doing something even if that action does not constitute a breach of job duties.

As we stated previously, the Iraqi legislator dealt with the crime of bribery in the first chapter of Chapter Six in Articles (307-319) of the Iraqi Penal Code No. (111) of 1969, but the Iraqi legal system has never previously defined the crime of bribery in the private sector other than in the form of bribery. Nor in the form of bribery, as is the case with the Egyptian legislator, for example. He stipulated in the Egyptian Penal Code the criminalization of bribery in the private sector, and he added forms of it that were not mentioned in the United Nations and Arab anti-corruption conventions, which is that it brings an undeserved advantage or benefit. Without prior agreement, in the form of a subsequent reward for performing work, abstaining from it, or breaching job duties.

From this standpoint, we call on the Iraqi legislator to close this legislative loophole to prevent corruption crimes from occurring in the private sector. Especially since this type of crime constitutes a danger and is the most important form of corruption in the private sector, especially since Iraq, starting in 2003, is witnessing a change in economic philosophy. In view of the above, it is clear that the two United Nations anti-

corruption conventions have come with international legal texts that are binding on the countries that ratified them. Including Iraq, to protect the private sector from all acts that constitute a form of bribery crime in this sector, and this contributes significantly to developing the work of the private sector by reassuring its workers and those dealing with it that it is free from bribery, which represents The most dangerous pest in this sector.

3 THE SECOND REQUIREMENT: THE CRIME OF EMBEZZLEMENT OF PROPERTY IN THE PRIVATE SECTOR

The legislative framework of the two United Nations anti-corruption conventions includes criminalizing acts that represent the embezzlement of property and funds in the private sector, and it is considered one of the most important corruption crimes in the private sector because of the major role played by the entities of this sector in the field of economic development and because of the negative financial effects resulting from this crime of embezzlement. It represents a waste of money and private property, and the legal model for this crime is contained in Article (22) of the United Nations Convention, which says: Each State Party shall consider adopting whatever legislative measures, and other measures, may be necessary to criminalize the deliberate criminalization of a person who manages an entity affiliated with the private sector or works In any capacity, while carrying out an economic, financial or commercial activity, he embezzles any property, money, private securities, or any other things of value entrusted to him by virtue of his position [8].

The legal model for the crime of embezzlement of property in the private sector, mentioned in Article (22) of the United Nations Convention against Corruption, contains two material and moral elements, and the material element includes two elements, the first of which is the act of embezzlement, and the second is the subject of the embezzlement, and the element of embezzlement is represented by the acts of embezzlement. Associated with the intention of possession, while the moral element means that the act of embezzlement must occur intentionally, and thus

the elements of criminal intent are present in accordance with Article (22) mentioned above, and the term property is defined by paragraph (d) of Article 1 of the aforementioned United Nations Convention by saying: "The term property means assets of all kinds, whether tangible or intangible, movable or immovable, tangible or intangible, and the legal documents or instruments that prove ownership of those assets or the existence of a right to them. The reason for criminalizing acts that represent misappropriation of property in the private sector is that Broadcasting the content of these private internal documents, which may benefit the competitors of these institutions, with the special professional secrets they contain, and which may be the motive for publishing these documents, after their embezzlement, is due to an effort on the part of the employee of the institution, in whose possession these documents are or which he can obtain, A foreign party that aims to harm or compete by obtaining its confidential documents [10]. Hence, there is a need for free and fair competition between private sector institutions and companies, far from the aforementioned acts of embezzlement, which have been criminalized in a global international agreement (the United Nations Convention against Corruption, and another regional international agreement within the framework of the League of Arab States (the Arab Anti-Corruption Convention) [11]. There is no doubt that this matter encourages foreign private institutions, and even national ones, to invest in this sector, and they are reassured that competition in the field of the private sector, in Iraq and elsewhere, is based on the foundations of integrity, which has a positive impact on the development of private sector activity and its role in economic development [12].

The Iraqi legislator did not criminalize the act of embezzlement of property in the private sector, and thus the Iraqi legislator was not consistent with the United Nations and Arab anti-corruption conventions in this regard, unlike the Egyptian Penal Code, which criminalized the embezzlement of property in the private sector, as it allocated a special text to criminalize that crime and did not, he considers it merely theft or betrayal of trust [13]. Due to this legislative shortcoming or deficiency in relation to the Iraqi legislator, we call on the latter to devote a special text to the crime of embezzlement of property in the private sector, as the Egyptian legislator did, so that Iraqi legislation is more compatible with the United Nations and Arab conventions in this regard [14].

There are those who believe that the Iraqi legislator, although it did not stipulate the criminalization of embezzlement in... The private sector, except that the judge can adapt the incident according to the situation between it being a crime of theft, a crime of treason, or a crime of embezzlement in the private sector. This opinion holds that there is no objection to applying the same penalty that the Iraqi legislator mentioned for the crime of embezzlement in the public sector to the crime of embezzlement [15]. In the private sector. It is worth noting that the United Nations and Arab anti-corruption agreements did not include penalties for corruption crimes, which is normal, as that is left to internal legislation. This agreement provided the following text: "Every state party makes the commission of an act criminalized in accordance with this agreement subject to penalties that take into account the gravity of that crime" [16].

With regard to corruption crimes, the Iraqi legislator clarified the position of the Iraqi legislator and what was included in the United Nations and Arab anti-corruption conventions. We find that it was in principle consistent with the provisions of the two conventions, whether that was at the level of general laws or private laws, and did not deviate from them except in some cases in which the agreement stipulated It is necessary for the countries joining them to take the necessary measures to criminalize it within the framework of combating corruption [18]. Article (16) of the two agreements calls for the criminalization of bribery of a foreign employee or an international employee, as well as the crime of bribery within the framework of the private sector, which calls for its criminalization in Article (21) thereof. Both There is no similar legal text in Iraqi law that criminalizes the two acts. However, the legal model for the crime of bribery of a foreign employee or an international employee does not differ from the crime of bribery of a national public employee, except with regard to the character of the perpetrator in the crime of the briber, which is anyone who has the status of a foreign public employee [19]. Or the international employee, the intervention of the legislator and his criminalization of this act is not sufficient to achieve the desired goal of criminalization, which is to combat the crime of corruption, not because it is a national crime, but because it is a global crime [20]. This should be reinforced by making necessary amendments to two important topics. The first relates to the extension of regional jurisdiction to the Penal Code and the laws specializing in combating crimes. Corruption to include

anyone who committed one of these crimes outside Iraq, and this requires amending the text of Article (9) of the Penal Code. As the crime of bribery committed by a foreign employee or international employee is not limited to the territory of the state, but in most cases it is committed outside Iraq. The second is the need for the executive authority to intensify efforts to conclude agreements on the extradition of criminals and include in these agreements texts on the extradition of perpetrators of corruption crimes. We believe that merely criminalizing the act without amending it and concluding and activating the extradition agreements makes criminalizing the act meaningless and useless, especially if we know that international officials enjoy immunity, which constitutes another obstacle that prevents the effectiveness of criminalization. As for the crime of bribery within the framework of the private sector, which was mentioned in the two agreements and was not stipulated by the Iraqi legislator, on the basis that corruption is not limited only to the public sector, but may be more apparent in the private sector and in civil society institutions, a question has been raised about the extent to which the phenomenon has been achieved. Corruption in the private sector. Does this phenomenon occur within the scope of government departments and public sector activity only, or can it occur within the scope and activity of the private sector as well?

In order to answer this question, an opinion went to limit the phenomenon of corruption to deviations that occur in the public or government sector and not the private sector, meaning that this phenomenon is achieved by employees who produce administrative and financial deviations when they perform their assigned tasks in the government sector or while performing public service.

While a second opinion, which we support, stated that the phenomenon of corruption is not limited to administrative and financial deviations committed by an employee or person charged with a public service in state departments or the public sector, but it also includes deviations that occur within the activities of the private sector, with the aim of achieving illegal material or moral gains. For the same person or for others, corruption represented by administrative and financial deviations is not limited to the public sector, but can be achieved in the private sector and in civil society institutions as well, as long as corruption is not unique to a crime separate from other crimes. It is also an undeniable fact that corruption is also widespread in the private sector. In fact, the private

sector is involved in most cases of government corruption that involve misuse of money or seeking services for personal gain, abuse of official authority or influence in exchange for services, or breach of interest. public to gain special personal privileges [21].

4 THE THIRD REQUIREMENT: THE CRIME OF ABUSE OF POSITION

The accused may resort to means other than bribery and embezzlement, to make a profit from the work of the job. With the desire of the drafters of the agreement to achieve maximum protection for the public job and its integrity, and to enable it to perform community service, the agreement stipulated in Article (19) a new legal model that criminalizes the act of abuse of the job. The essence of this crime is with the intention of obtaining an undeserved advantage, which is represented by the employee working to achieve his own interest, despite the conflict between it and the public interest. This crime has special forms that are not found in the Penal Code, even in the text of Article (316), because the text of the article differs from the texts of the agreement in that it is limited to punishing those who exploit their position and seize the funds of the state and others, while the text of the agreement is broader on the one hand, that the employee intentionally exploits his position or His position for the purpose of obtaining an undeserved advantage for himself or for the benefit of another person or entity, is not limited to seizing the money of the state or others as found in the text of Article (316) Penalties [22]. Likewise, the legal model here is restricted by two conditions. The first is that it states that the first criminal act may The purpose is to abuse the position, which is to obtain a benefit, so it does not comply with the aforementioned text. The second is that the benefit is undeserved, and the absence of provisions in the Iraqi penal laws fully applies to what is stated in Article (19) of the United Nations Convention [23].

Based on the above, we call on the Iraqi legislator to adopt the criminalization of the above two acts so that the punishment extends to anyone who commits a crime of corruption, in addition to this making the Iraqi criminal legislation more compatible with what is stated in the United Nations Convention against Corruption.

On the other hand, we find that the Iraqi legislator also did not criminalize illicit enrichment in the manner that the two agreements called for criminalizing it in Article (20), as the Iraqi Law on Illicit Gain at the Expense of the People No. (15) of 1958 merely stated three forms of “unlawful gain.” The project stipulates in Article (4) thereof:

1- Any money obtained by any of those mentioned in Article One due to the work, influence, circumstances of his job or position, or due to the exploitation of any of these.

2- Any money obtained by a natural or legal person after the implementation of this law through collusion with a person mentioned in Article One to exploit his position or position.

3- All money that has not been disclosed or whose legitimate source has not been proven.

The Iraqi legislator’s call to achieve full legislative harmonization with the provisions of the agreement by including in criminal legislation texts that criminalize the largest number of acts of corruption raises questions about what method the legislator can follow to achieve legislative harmonization with the provisions of the two agreements: In this regard, it is noted that there are two methods that govern this. The first matter: is to single out special legislation to combat corruption crimes. This legislation includes, in addition to the traditional crimes regulated in the Penal Code, the creation of other crimes related to corruption that did not exist previously, so that these crimes are defined in detail, specifying their pillars, elements, and punishment, and the special provisions that distinguish it from other crimes, and these crimes are in line with what is stipulated in the United Nations and Arab anti-corruption conventions. We find that the Algerian and Yemeni legislation are among the legislation that approved a special law to combat corruption crimes.

The second method is referral, through the legislator authorizing the issuance of a legal text according to which internal legislation refers to international agreements related to combating corruption, in what are considered corruption crimes, provided that internal legislation determines the penalties prescribed for those crimes. Considering that the referral method is characterized by being a simple and inexpensive method because it allows the punishment of all crimes mentioned in the United Nations and Arab anti-corruption conventions through a simple reference to those international agreements without the need to issue separate criminal law legislation specific to those crimes, and adopting

The referral method eliminates the need for new national legislation or even amending existing legislation when international agreements related to combating corruption are amended.

As far as the matter is concerned with the method that the Iraqi legislator can follow for the purposes of achieving legislative harmonization with the provisions of the agreement, we find that the legislator has taken the first method, although not completely, through his legislation of Integrity Commission Law No. (30) of 2011, amended by Law No. (30).) of 2019, which determined what is considered a corruption crime when it defines what is meant by a corruption case based on the texts contained in the amended Penal Code No. (111) of 1969. Therefore, achieving legislative compatibility with the provisions of the two agreements is through making an amendment to the Penal Code and the Penal Code. Integrity Commission, and according to the subject of the amendment related to either of them, that is, in terms of criminalizing acts or defining what are considered corruption cases, as for the method of referring to the provisions of the two agreements, we agree with those who see it. This method cannot be adopted because international agreements are not suitable for self-application by the national judge, as it is impossible for the national judge to rely on the international agreement to issue a criminal ruling in a case before him, especially since the agreements often address the national legislator to take legislative measures necessary to harmonize its legislation.

5 FOURTH REQUIREMENT: UNJUST ENRICHMENT

The text of the agreement in Article (20) of the United Nations Convention stipulates: “Each State Party shall consider, subject to its constitution and the basic principles of its legal system, adopting whatever legislative and other measures may be necessary to criminalize the intentional illicit enrichment of a public employee, that is, a significant increase in his assets.” He can explain it reasonably in relation to his legitimate income.

The above-mentioned article contains a material element, that is, intentional enrichment or unlawful gain, that is, knowledge and free will, and the moral element assumes the presence of intention for that reason and intentionality in it [24]. The

ruling of the above article contradicts the presumption of innocence stipulated by the Iraqi legislator in the Penal Code, which stipulates for the accused Innocent until proven guilty in a fair trial) as the article contradicts the logic that imposes innocence, as the increase in an individual's assets and material and moral revenues, therefore, we impose good faith according to the agreement, and thus the unnatural increase assumes forms of assumed responsibility. The question that arises here is what responsibility is. The assumption is whether it is intentional liability or not Intentional and what is the difference?

To answer the question regarding intentional liability, the burden of proof is on the judiciary to eliminate the rule that the accused is innocent until proven guilty. The increase in the financial situation is that it is assumed that the person is corrupt. The criminal responsibility is that the burden of proof falls on the accused and not on the judiciary. In the absence of the presumption of innocence, you are convicted until proven otherwise. Also, that Illegal gain was mentioned in the Integrity Commission Law of 2004, which was abolished in the financial disclosure system. The law, which did not criminalize the act of gain or illicit enrichment, preferred the law to be truncated, and after a while the new Integrity Commission Law was issued in force No. (30) of 2011, which came in Chapter Four. Under the title of illicit gain, it stipulates: "It is an increase in the funds of the person obligated to submit a financial disclosure report, or the funds of his wife or children dependent on him, that is not proportional to their normal resources after illegal gain, unless the taxpayer proves that it was earned from legitimate sources.

6 FIFTH REQUIREMENT

Similarities and differences between bribery crimes, the crime of abuse of office, and the crime of embezzlement of property in the private sector

First: the similarities:

1- It was previously mentioned that the crime of bribery in the private sector requires a certain characteristic of the perpetrator, which is that the perpetrator be an employee or worker in that sector and have a dependent relationship with the employer. The offender (the bribe-taker) must be competent in the work he is doing. Here, this crime is close

to the crime of abuse of position, because the latter requires a special characteristic in the offender, which is that the offender be a public employee and be specialized in the work from which he obtained or attempted to obtain a profit or benefit. This means that the crime of abuse of position does not occur from An employee or worker in a private project if he takes advantage of the opportunity to work in this project for the purpose of achieving a profit or benefit for himself or for others without right, meaning that the convergence between the two crimes is within the jurisdiction of the perpetrator with the work he performs.

2- The crime of bribery in the private sector is an intentional crime, and requires the presence of private intent in addition to the general intent. As for the crime of misuse of position, it is also an intentional crime whose occurrence requires the presence of general intent. There are those who believe that the intent required in this crime is the specific intent, so general intent is not sufficient for this crime to occur. They base this on the fact that the direction of the offender's intention to obtain profit or benefit is considered an element of intent, and achieving profit or benefit is not considered an element of the material element.

Secondly - the differences: -

1- These two crimes differ in terms of the parties to the crime. The crime of bribery in the private sector is multi-party, as it requires that there be a perpetrator (the briber) and the person in need (the briber), and sometimes a third party called (the intermediary) intervenes, and the bribe may be done to a person. Another is called the beneficiary). As for the crime of misuse of the position, this crime is committed by the public employee alone, and here the idea of a criminal agreement based on mutual benefit between the parties to the relationship is absent and left behind, meaning that this crime does not contain an element of return for benefit, and this means that the crime of misuse of the position is not multiple. the parties

2- If the forms of the material act in the crime of bribery in the private sector are represented by a request, taking or acceptance, then the forms of the material element in the crime of abuse of position are embodied in two forms. The first is represented by an act or activity through which the employee intends to obtain or attempt to obtain for himself or others a profit. Or a benefit from the work of his job, and the second form is represented by a place to which this activity is returned, which is profit or benefit.

We can also add to this that resorting to the referral method requires the legislator to intervene by stipulating the penalty prescribed for acts criminalized by the agreements and for which there is no criminal text in the law, which necessarily requires the legislator's intervention. By introducing amendments to the laws in force, and therefore: resorting to amendment in terms of specifying prohibited acts and the penalty prescribed for each act is the first method to be adopted as long as the legislator will intervene by making amendments to the laws in all cases.

7 CONCLUSIONS

After we completed our research entitled (Images of criminalization introduced within the scope of the International Convention on Financial Corruption), we explain the most important findings and recommendations we reached as follows:

First: Conclusions

1- We noted that the phenomenon of corruption is a dangerous and widespread global phenomenon with deep roots that must be combated. Therefore, the United Nations of 2003 and the Arab Convention of 2010 were held to combat corruption, which represents a very important international charter with strategic dimensions, issued under the auspices of the United Nations and the League of Arab States and in its provisions. It is in the interest of the States Parties in which corruption is widespread. Iraq has ratified the United Nations Convention for the year 2003 in accordance with Law No. (53) of 2007 published in the Iraqi Gazette Al-Waqa'i 4047 on 8/30/2007. Iraq has also ratified the Arab Anti-Corruption Convention for the year 2010, which entered into force. Implementation was carried out in 2013, and Law No. (94) of 2012 (Law to Ratify the Arab Anti-Corruption Agreement, published in the Iraqi Gazette, No. 4268, on 02/18/2013) was issued. Thus, Iraq is legally and politically obligated to enforce the agreement and consider it part of the legal system. Ratifying this agreement enhances the ability of the Iraqi state and its institutional system to curb and eradicate the phenomenon of corruption. If its provisions are applied systematically and in a high patriotic spirit, it is the most capable of bringing about a fundamental change in the current situation.

2- We noted that corruption is a criminal crime that lacks the presence of the victim as a natural person, as is found in other crimes such as murder or theft. Corruption crimes are mostly

committed against a legal person, and here the individual incentive for legal prosecution is weakened due to the absence of direct personal harm resulting from the crime, and the burden of discovery is placed on the crime of corruption is investigated and investigated by the competent regulatory bodies.

3- It became clear to us that although the Iraqi penal laws for combating corruption in government institutions included the largest possible number of forms of corruption, these images do not include all forms of corruption, as the legal texts omitted many important forms, which were stipulated in the United Nations and Arab agreements. To combat corruption. Second: Recommendations:

1- Since Iraq has joined the United Nations and Arab anti-corruption conventions, we call for the activation and reconsideration of some laws and the enactment of laws required to achieve full legislative compatibility with the provisions of the two conventions, in order to avoid conflict between the convention and the Iraqi Penal Code and other special laws, and this could be Through the following:

A- Make the necessary amendments to the Penal Code to criminalize acts of bribery of a foreign employee, bribery of an international employee, and bribery within the private sector, as well as illicit enrichment to achieve legislative harmonization with the provisions of the United Nations and Arab anti-corruption conventions, which Iraq has ratified.

B- Amending the text of Article (9) of the Penal Code in a way that leads to extending the regional jurisdiction of the Penal Code and the laws related to combating corruption crimes to include the foreign employee and the international employee who commits a bribery crime outside Iraq, as well as concluding agreements on the extradition of criminals and including in these agreements the special texts. By extraditing the perpetrators of these crimes, as the crime of bribery committed by a foreign employee or international employee is not limited to the state's territory, but in most cases it is committed outside Iraq, and therefore the mere criminalization without amending and concluding and activating the agreements regarding the extradition of criminals makes the criminalization void. It is of no use, especially if we know that international employees enjoy immunity.

C- Amending the texts for granting immunity by adding a paragraph to it in the following manner: No person who has been granted immunity under domestic or international laws

will benefit from immunity if the crime charged against him is considered one of the crimes of corruption, in order to achieve the effectiveness required by the criminal texts to combat corruption. Corruption crimes.

2- Since corruption is a widespread phenomenon in most government departments, it is recommended to follow a somewhat long-term strategy for the purpose of combating it. Adopting short-term solutions will not achieve anything and will not combat corruption, but rather will lead to an increase in existing corruption and expenses and money spent under the umbrella of combating corruption to no avail.

3- We call for the necessity of holding comprehensive awareness courses and seminars for employees that highlight the negative effects of the corruption phenomenon, considering that the national duty requires standing up to it, informing about the corruptors, and bringing them to justice in order to be a deterrent to them.

4 - The Integrity Commission has multiple powers granted to it under the Integrity Commission Law No. (30) of 2011, as amended, and it was required to eliminate the phenomenon of corruption or even reduce it, but the reality is that the Integrity Commission was unable to activate its role, especially with regard to proposing projects. Laws that contribute to preventing or combating corruption, so we call on the Integrity Commission to propose modern laws that raise the level of combating corruption.

8 FOOTNOTES

The Iraqi Parliament ratified the United Nations Convention against Corruption of 2003, and issued Law No. (35) of 2007 (the law of the Republic of Iraq's accession to the United Nations Convention against Corruption), published in the Iraqi Gazette, No. 4047, date: 8/30/2007, p. 5.

It should be noted that the Iraqi Parliament ratified the Arab Anti-Corruption Agreement of 2010, which entered into force in 2013, and Law No. (94) of 2012 (Law Ratifying the Arab Anti-Corruption Agreement) was issued, published in the Iraqi Gazette, No. 4268, dated 2/2/2013. 18, p. 6.

See Article (8) of the 2005 Constitution of the Republic of Iraq, in force.

Tariq Abdul Rasoul Taqi: The legal framework for corruption crimes in light of the United Nations Convention against Corruption, Integrity and Transparency Journal for Research and Studies, Modern Waqf Press, Issue 11, 2017, p. 8.

Dr. Walid Ibrahim Al-Desouki: Combating corruption in light of the law and regional and international agreements, 1st edition, United General Company for Marketing and Supplies, Cairo, 2012, p. 107.

Dr. Nabil Al-Obaidi, Dr. Saadoun Hasib Arif, the extent of the effectiveness of national and international legislation in addressing corruption, a research submitted to the Conference on Legislative Reform, a Path to Good Government and Combating Corruption), which was held by Al-Nabaa Foundation for Culture and Media and the University of Kufa, College of Law for the period 25-26, 2018, pp. 21-23.

Amir Fareg Youssef: Combating administrative and functional corruption and its relations with crime at the local, regional and Arab levels, Modern University Office, Alexandria, 2010, p. 99

Dr. Yahya Yassin Saud: The impact of Iraq's accession to the United Nations Convention against Financial and Administrative Corruption in 2003, research published in the Tikrit University Law Journal, Year 2, Volume 3, Issue 1, Part 1, 2018, p. 208.

It is worth noting that a great difference appeared in the definition of the concept of corruption on the part of the delegations participating in the preparation of the United Nations Convention against Corruption. Therefore, this agreement did not include a specific definition of corruption, but rather it limited itself to defining criminalized acts of corruption. In the same vein, the Arab Convention against Corruption followed in not providing a specific definition. Corruption, but rather limited to defining corruption crimes. Article 4 of the Arab Anti-Corruption Convention, however, some jurists defined corruption, based on what was stated in the aforementioned United Nations Convention, as: "Performing acts that constitute improper performance of duty or abuse of position or authority, including acts of omission in anticipation of an advantage or in pursuit of To obtain an advantage that is promised, offered, or requested, directly or indirectly, or as a result of accepting an advantage granted in some way, whether to the person himself or for the benefit of another person. See: Jaafar Abdel Salam, Definition of Corruption and its Forms from the Legal Perspective, Research Papers of the International Arab Anti-Corruption Conference held At the Naif Arab Academy for Security Sciences in cooperation with the United Nations Office on Drugs and Crime in Vienna on 6/10/8/2003, Part 2, Center for Studies and Research, Riyadh, 2003, p. 55.

Article (21) of the United Nations Convention against Corruption of 2003 stipulates that: "Each State Party shall consider adopting whatever legislative and other measures may be necessary to criminalize the following acts, when they are committed intentionally during the exercise of economic, financial or commercial activities: A- A promise Any person who manages any private sector business, or works for it in an undue capacity, or offers or gives it to him, directly or indirectly, for the benefit of the person himself or for another person, in order for that person to do or refrain from doing something. B. Soliciting or accepting, directly or indirectly, an undue advantage, whether for the person himself or for another person, in order for that person to do something. "This does not constitute a breach of his duties."

Ahmed Abu Al-Rous, Crimes of Counterfeiting, Forgery, Bribery, and Embezzlement of Public Funds from a Legal and Technical Point of View, Criminal Encyclopedia Series, Book Five, Modern University Office, Cairo, Blasnah Publishing, p. 706.

Ramses Behnam, Penal Code Special Section, Alexandria Knowledge Establishment, 2005, p. 300.

Articles 15 and 16 of the United Nations Convention against Corruption include the elements of the crime of bribery in the field of public office. Article (4) of the Arab Anti-Corruption Agreement also briefly refers to this.

Suleiman Abdel Moneim, The phenomenon of corruption, a study into the extent of compatibility of Arab legislation with the provisions of the United Nations Convention against Corruption, United Nations website, <http://www.undp.pogar.org/arabic>, (last visit to the website on 9/26/2023), p. 55-58; Legislative Guide to Implementing the United Nations Convention against Corruption, United Nations, 2006, United Nations website, <http://www.undp.pogar.org/arabic>, pp. 108-110.

Muhammad Ahmed Abu Zaid: Al-Wajeez on the crimes of bribery, embezzlement of public funds, aggression against it, treachery, forgery, and forgery through jurisprudence and rulings of the Court of Cassation, Cairo, National Center for Legal Publications, 2006-2007, p. 22.

16. Article (106) of the Egyptian Penal Code No. (58) of 1937 stipulates the following: "Every employee who requests for himself or for someone else or takes promises or gifts without the knowledge and consent of his employer, to perform or refrain from one of the tasks he is assigned to, is considered

to have been bribed." The penalty shall be imprisonment for a period not exceeding two years and a fine not less than two hundred pounds and not exceeding five hundred pounds. This article punishes bribery employees, and the text does not require a special qualification for the employee. It is valid for him to be an employee in a commercial, industrial, or agricultural company, or a commercial place, and the like. It is a text that goes beyond what the United Nations Convention against Corruption wants, which contented itself with calling for the criminalization of bribery in sector entities. Private companies, such as companies, banks, civil society organizations, trade unions, federations, and others.

Kamel Al-Saeed, Explanation of the Penal Code, Crimes Harmful to the Public Interest, A Comparative Analytical Study, 1st edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, pp. 432-433.

17. Article (22) of the United Nations Convention against Corruption, and Paragraph (12) of Article (4) of the Arab Anti-Corruption Agreement.

It has also criminalized Article (4) of the Arab Anti-Corruption Agreement! Embezzlement of property in the private sector, according to the same approach as the aforementioned United Nations convention.

It is worth noting that Article (17) of the United Nations Convention against Corruption includes the legal model for the crime of embezzlement of public funds. The Iraqi legislator also dealt with the crime of embezzlement of public funds (Articles 315, 316, 335, 340, 341) of the Iraqi Penal Code No. (111) of 1969, as amended, to detail the crime of embezzlement of public funds. See: Awad Muhammad, Crimes Harmful to the Public Interest, University Press House, Egypt, 1985;

Dr. Fakhri Abdul Razzaq Al-Hadithi, Explanation of the Penal Code, General Section, Al-Sanhour Library, Baghdad, 2018.

It is the same definition that came later, Paragraph (5) of Article (1) of the Arab Anti-Corruption Agreement.

Dr. Wissam Nemat Al-Saadi: Mechanisms of the international community in combating corruption, a study of the mechanisms for implementing the United Nations Convention against Corruption, 1st edition, Arab Center for Scientific Studies and Research, Cairo, 2020, pp. 97-99.

Article (113) bis of the Egyptian Penal Code No. (58) of 1937. Although Iraq may respond to the requirements of criminalizing the embezzlement of private sector property,

under the crime of breach of trust in the text of Article (453) of the Amended Penal Code No. (111) of 1999, the crime of embezzlement of private sector property must be singled out with a special, clear text, to focus light on it. There is no doubt about the issue of Iraq's response to criminalizing this act, in accordance with what was stipulated in the United Nations and Arab anti-corruption conventions.

Dr. Uday Talfah Muhammad Al-Douri: Harmonizing the criminalization of embezzlement in the private sector with the United Nations Convention against Corruption, research published in the Journal of the College of Law for Legal and Political Sciences, College of Law and Political Science, University of Kirkuk, year 2017, Volume 6, Issue 22, Part One, p. 587

(1) Paragraph (2) of Article (2) of the United Nations Convention, Paragraph (4) of Article (1) of the Arab Agreement

Dr. Nabil Al-Obaidi, Dr. Saadoun Hasib Arif, previous source, p. 23.

Dr. Osama Ahmed Muhammad, Dr. Israa Younis Hadi, Combating Corruption in Light of Iraqi Criminal Legislation, research published in Tikrit University Law Journal, Year 5, Volume 5, Issue, Part 1, 2021, p. 240.

Iyad Kazem Saadoun: Criminal forms of administrative and financial corruption in the amended Iraqi Penal Code No. (111) of 1969, research published in the Journal of the University of Babylon, Human Sciences, Volume 23, Issue 3, 2015, p. 1092.

Dr. Nawar Daham Matar Al-Zubaidi: The criminal policy of the Iraqi legislator in confronting corruption crimes, Al-Mansoura Magazine, issue 25, 2016, p. 159 Muhammad Ghali Wahi financial and administrative corruption in Iraq and ways to address it, research published in the Journal of Legal and Political Sciences, College of Law, University of Kufa, Issue (No. 2), Volume (1), 2009, p. 215; Studies on the legislative and institutional frameworks of the national anti-corruption strategy for the years 2010-2014, Integrity Commission Publications, p. 5.

Dr. Ibrahim Ahmed Al-Sharqawi, Public Funds and Their Civil and Criminal Protection, New University Publishing House, Alexandria, 2010, p. 247.

Text of Article 19 of the Convention: "Each State Party shall consider adopting such legislative and other measures as may be necessary to criminalize the intentional abuse of a public employee's position or position, i.e. his doing or not doing

any act while carrying out his job for the purpose of obtaining an undue advantage." or for the benefit of another person or entity, which constitutes a violation of the laws).

Article (4) of the Illicit Gain at the Expense of the People Law No. (15) of 1958.

Algerian Anti-Corruption Law No. (1-6) of 2006; And the Yemeni Anti-Corruption Law No. (39) of 2006

Tariq Abdul Rasoul Taqi, previous source, p. 9

Nasser Karimish Khader Al-Jourani, Dr. Haider Kazem Abdul Ali, International measures to combat corruption and their repercussions on Iraqi legislation, research published in the Journal of the Islamic University College, No. 36, 2015, p. 108.

Iyad Haroun Muhammad, previous source, p. 1748

Dr. Mahmoud Naguib Hosni: Explanation of the Special Penal Code - Special Section, 1st edition, University Press House, Alexandria, 2019, pp. 63-64.

Dr. Mahmoud Naguib Hosni, previous source, p. 143.

Dr. Mahmoud Naguib Hosni, previous source, p. 143.

Dr. Fawzia Abdel Sattar, previous source, p. 161.

Dr. Mahmoud Najib Hosni, previous source, p. 148. Dr. Fawzia Abdel Sattar, previous source, p. 166.

Rasha Ali Kazem: previous source, p. 91.

Rasha Ali Kazem: previous source, p. 93.

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