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Criminal Measures to Combat Administrative Corruption in Iraq

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Abstract

The aim of this study is to contribute to the reduction of administrative and financial corruption crimes that are rampant in Iraqi government institutions and departments. This study is based on a qualitative approach by analyzing primary and secondary sources. In result, the study found that the reasons for the spread of administrative and financial corruption in Iraqi institutions are due to the weak legal and procedural mechanisms. In conclusion, there is no precise definition for the crime of corruption and it is due to the overlap of issues and the different visions of the different countries' legislatures.

Keywords: Punitive measure; Administrative corruption; Penal code.

Medidas penales para combatir la corrupción administrativa en Irak

Resumen

El objetivo de este estudio es contribuir a la reducción de los delitos de corrupción administrativa y financiera que son rampantes en las instituciones y departamentos del gobierno iraquí. Este estudio se basa en un enfoque cualitativo mediante el análisis de fuentes primarias y secundarias. Como resultado, el estudio encontró que las razones de la propagación de la corrupción administrativa y financiera en las instituciones iraquíes se deben a la debilidad de los mecanismos legales y procesales. En conclusión, no existe una definición precisa

para el delito de corrupción y se debe a la superposición de temas y las diferentes visiones de las legislaturas de los diferentes países.

Palabras clave: Medida punitiva; Corrupción administrativa; Código Penal.

1. INTRODUCTION

There is no doubt that corruption has become a current issue in the international and domestic arena as a major obstacle to development in the various fields and it is also linked to the decline of investments and economic growth. Corruption violates the laws and it is a serious phenomenon that violates moral values and standards. It is also linked to crime and has become one of the most important factors affecting their emergence. The administrative and financial corruption crimes are the most dangerous types of corruption because they directly affect the administration and make them unable to carry out the tasks required of them. As a result, it gives rise to negative and harmful consequences. It is also a pandemic that destroys the state and society and undermines the value of morality, impedes development programs and violates the principles of justice, integrity and equality within it. This type of criminal behavior has become a multifaceted phenomenon in view of its multiple forms and manifestations that have gone beyond the borders of a single state to become a globalized international phenomenon that can no longer be dealt with through national criminal procedures, especially in the light of scientific and technological progress. Scientific and technological progress has led to

the development of new and sophisticated methods that are sometimes difficult to identify (Philip & Bezlov, 2010). The research methodology adopted for this study is the qualitative and descriptive approach. This researcher analyzed legal texts, data, facts and available reports on administrative corruption crimes, the statement of their effects and various reasons, as well as analysis of criminal laws.

1.2. Definition of Administrative Corruption Crimes

Administrative corruption is very complex, intertwined and occurs at multiple levels. There is a need to try to identify what it is and diagnose all the aspects before embarking on the search for ways to combat them. The effectiveness and success of each confrontation depend on the strict diagnosis of the problem as well as jurisprudence because the definition of corruption varies according to its origins and intellectual orientations. That is why Gardner says there is no consensus on the definition of corruption, and it is perhaps due to the generality and capacity of its use in the field of politics and is also reflected on other sectors and trends Jurists have been concerned about corruption, and it is of special importance because of a large number of definitions that have been identified in this field. Among the definition of corruption is the spreading of infringing on public funds and profiteering from public posts in society (Gerald & Naomi, 1977). His definition refers to the fact that corruption is anti-reform, contrary to religion, and against the law. However, it did not address the benefit to the person who did not commit the corrupt act. It also prevents the

entry of corrupt acts that are forbidden by law and they are legally not criminal.

It has also been defined as an intention to use public office with all the consequent prestige, influence and authority to achieve personal, financial or non-financial benefits in contravention of official laws and regulations (Nasr, 2015). The consequences of this definition restrict the definition of corruption from the angle of violation of the law through the use of public office as well as the presence of intention before it can be considered a criminal act. It also did not include the definition of the purpose and benefit that was derived from the corrupt act. It may also be the goal of the public employee to achieve the goals of others and not for himself. In 2003, the UN Convention Against Corruption defines corruption as performing acts that constitute improper performance of the duty or misuse of a position or authority, including acts of omission in anticipation of an advantage or seeking to obtain a promise by offering or requesting directly or indirectly or a consequential acceptance of an advantage granted directly or indirectly to the same person or to another person (Argandoña, 2006). But, this definition was not agreed upon, and was reversed in the final draft of the convention, which did not define the corruption, but referred to its image, namely bribery, embezzlement of property, and trading of influence and abuse of employees, and illicit enrichment. It can be concluded from the above that the concept of corruption has extended to include bribery and other aspects of corruption.

1.3. The Types of Administrative Corruption and Its Impact on Society

Administrative and financial corruption has spread in a huge way in societies and has transformed from a local phenomenon to a global phenomenon. Where studies have shown that corruption has a deleterious effect on administrative performance and economic and political development. However, some types of corruption are not visible. So this researcher will address the different types of administrative corruption crimes and allocate the other part to show the disastrous effects of this crime (Semenov et al, 2018).

1.4. The Types of Administrative Corruption Crimes

Corruption crimes are divided based on its size, i.e. small corruption crimes and large corruption crimes. The first so-called crimes of corruption, the lowest grades, are carried out by individuals without any coordination with others. These crimes are committed by young employees through their receipt of bribes from others. Such types of criminal behavior are committed by employees in different sectors and it is based on the economic need of the perpetrators. The employees take bribes for the service they offer to citizens, and paid in return for service such as bribery involving Bribes paid in return for services rendered are committed by officials in the state departments and its institutions and the police, and they usually due to the rapid termination of routine procedures. Also, the employees of other

government departments such as taxes, real estate registration, municipalities and others are also committing similar corruption crimes (Mariani et al., 2017). While the second category of administrative corruption is large, this kind of crimes is committed by senior officials and officials such as heads of state and government and ministers. The main factor behind this kind of crimes is greed as their goal is to achieve greater financial or social interests. The bribes are large and the amount commensurate with the size of profits and gains achieved by the giver of the bribe. The larger the yield or the bigger the savings in expenses or costs are, the bribes paid will be correspondingly larger. Those who make higher gains from their corrupt practices will pay more for their criminal behaviors. In addition, there are other types of administrative corruption crimes namely, organized corruption and random corruption crimes. The first type of corruption crimes spread in different organizations through specific procedures and arrangements. This type of corruption is defined by the amount of bribery and the mechanism of payment for the completion of certain transactions (Marsela, 2017).

The second type, random corruption, is organized corruption where bribery is carried out without prior coordination and the transactions cannot be guaranteed because the transactions may be initiated at any time. There are also other types of corruption crimes and they are linked to what the individuals are involved in and they are public sector and private sector corruption crimes. The first is more serious as it has an impact on individuals and it includes rampant corruption in the government administration and all its public bodies. It

will become one of the biggest obstacles to development as the public office is exploited for personal purposes and interests. The second type of corruption, private sector corruption, involves the private sector seeking to influence the course of public policy of the state through the use of bribes and gifts. This is usually carried out in order to achieve personal interest such as exemption from tax (Michael, 2013).

1.5. The Effects of Administrative Corruption Crimes

Administrative corruption has economic, political and social consequences that have a devastating effect on society. The destructive effects of this phenomenon affect all those who contribute to life in the state, wasting money and time, disrupting public services and leading to sabotage. The corruption is not only at the economic and financial field, but it is also in the political, social and cultural arena, not to mention the deterioration of the institutions and public services that are related to the lives of the citizens. Moreover, this type of crime leads to the disintegration of moral values and there will also be frustration and criminal activities will increase. Members of the society will become indifferent and negative and it will lead to the emergence of intolerance and extremist views. The spread of crime will be in response to the collapse of values and lack of equal opportunities, to the idea and lack of standards in the performance of the duty of supervision and there will be a decline in the standard of public services and its supervision as well as lack of attention to the rights of the public. There will also be a heightened sense of injustice - amongst

the majority leading to social congestion and the spread of hatred among certain segments of society. It will also result in the spread of poverty and an increase in the size of the marginalized groups especially women, children and youths (David & Amaroreyes, 1983).

1.6. Criminal Legislation for Administrative Corruption Offenses

The Iraqi Penal Code Law No. 111 of 1969 was amended to include these crimes. It was especially important, although it did not name the crimes of administrative corruption. Rather, the acts committed were considered as such because of their implications of corruption, including the crimes stipulated in articles 223, 234, 271, 272, 275, 276, 290, 293 and 296. Other crimes in which one of the aggravating circumstances is present are stipulated in paragraphs 5, 6 and 7 of Article 135 of this law. It includes administrative corruption in the public sector such as bribery and embezzlement. Crimes that interfere with the administration of justice such as when a judge or court is influenced to rule in favor of one of the litigants. Where studies have shown that corruption has a deleterious effect on administrative performance and economic and political development. However, some types of corruption are not visible (Mahmoud, 2008). The Iraqi legislature counted a crime of falsification or change in the official documents of traditional corruption crimes, such as the crime of carrying the employee or the person charged with a public service during the appointment of an document from the profession of his job,

either by defrauding another person's name or other means of recording and proving an incorrect fact regarding an order that the document will prove. Falsification, corruption offenses include the crime of complicity such as when the employee or public service provider uses a false name or false personality to obtain an official license, identity card, public election card or permit to transfer or pass through the country. Recognizing the seriousness of corruption and its grave effects at all levels, the Iraqi legislature has pushed to establish its own laws and regulations, such as the Integrity Commission Law No. 30 of 2011, punitive and institutional measures have been put in place to confront them (Abdul, 2012).

This is in contrast with the Arabic legislation, which modifies its penal laws. The Egyptian legislature did not deal with the administrative and financial corruption crimes as an independent crime, but treated it as a negative indicator to measure the effectiveness of the state's administration of its institutions, Therefore, the Egyptian Penal Code No. 58 of 1937, amended in Chapter 4, is concerned with the establishment of legal mechanisms to combat corruption crimes. The fight against these crimes was one of one of the priorities of this law. Therefore, the Egyptian legislature approved the system of accountability in both its criminal and disciplinary aspects, which guarantees the prosecution of corrupt people with a deterrent punishment for their crimes against society. It also established a regulatory system that includes the organs and institutions of the state based on the mutual supervision between the three state authorities. While the Jordanian legislature has only introduced amendments

including the criminalization of all manifestations of corruption, especially after the issuance of a special law to combat corruption, Law No. 62 of 2006 and the Anti-Corruption Commission Law, and the law did not refer to the concept of clear and specific crimes of administrative corruption. It also referred to the crimes that constitute corruption in some of the paragraphs of Article 5, where it states: An act of corruption is any act or omission that leads to the violation of public funds as well as abuse of power that is contrary to the provisions of the law and standards of modesty (Aldouri, 2016).

Furthermore, the Arabic legislations are specific in their fight against corruption. These are laws for the establishment of bodies or departments to combat corruption, not laws in the strict sense of the word. It is subordinate to the system of referral to other laws such as the Penal Code or other laws when criminalizing corruption. In addition to the general criminal texts contained in the Penal Code or other laws do not include all forms of administrative corruption. It is not possible to criminalize bribery in the private sector, trading of influence, acts of bribery committed by a foreign public official or criminalization of concealing the money obtained from corruption crimes or crime or the crime of obstruction of justice, Some of the Arabic criminal legislations have adopted these cases of the criminalization of corruption, but on the other hand, the principles of criminal law does not allow the measurement or broad interpretation of criminal acts. For example, a judge cannot convict a person of a crime of bribery in the absence of proof that the accused is a public servant. Thus, he may not convict a person of the crime of bribery if he is from

the private sector. Also, the judge cannot convict a person for the crime of embezzlement in the private sector as such a restriction is contained in the United Nations Convention against Corruption of 2003. However, he can be convicted under the general provisions for a different crime such as treason or theft if the conditions are met. This is not consistent with the criminalization of corruption.

1.7. The United Nations Convention against Corruption (UNCAC)

The United Nations Convention against Corruption (UNCAC) of 2003, provided for the offenses and they are set forth in Articles 15 and 25. The offenses are placed under the heading of Criminalization and Law Enforcement, and it distinguishes between the compulsory criminalization and selective criminality. The UNCAC called upon the acceding countries to comply with the convention and complete what is lacking in their national legislation (Maroto, 2017). The Iraqi legislature responded positively to the articles stipulated in the UNCAC including the administrative and financial corruption committed before and after the ratification of the UNCAC by Iraq. Thus, the money laundering offense was issued under the Coalition Provisional Authority Order No. 93 of 2004. It was intended to combat money laundering and the financing of criminal activities and criminal organizations through the Money Laundering Reporting Office. The aforesaid institution commenced its functions at the Central Bank of Iraq under the Anti-Money Laundering, started his duties at the Central

Bank of Iraq as stipulated in Chapter 4 of the Integrity Commission Law No. 30 of 2011 on the crime of illegal gain. The Iraqi legislature criminalized unlawful gains which are obtained at the expense of the people under the amended Law No. 15 of 1958. Article 20 of this law stipulates that Anyone who defaults or fails after being directed by the investigating judge to prove the legitimate sources of the increase in his wealth or that of his spouse or his or her children in a manner that is inconsistent with their resources, shall be punished by imprisonment and a fine equal to the value of the illicit gain, subject to the penalties provided for in the applicable laws (Kazem et al., 2015).

The Arabic countries' position on the UNCAC was demonstrated by the Yemeni legislature which enacted Law No. 47 of 2005, and which has since become an integral part of the Yemeni legislation. Yemen sought to achieve a balance in the implementation of the law in order to achieve the goal of the state. It established the Republic of Yemen's Supreme National Authority to combat corruption and it is the supreme authority for the monitoring and control of all tenders and auctions. It has also established a supreme committee for tenders and auctions, an anti-money laundering unit, the Specialized Anti-Corruption Bureau and other existing bodies entrusted with the by the Supreme National Authority to combat corruption crimes by implementing Law No. 30 of 2006. On the approval of the financial guarantees and Law No. 39 of 2006 to combat corruption, the Supreme Authority for the Supervision of Tenders and the Supreme Committee for Tenders issued Law No. 23 of 2007 on tenders and auctions. The Money Laundering Unit was also established

in the Central Bank to implement Law No. 1 of 2010 on money laundering. In addition, the Jordanian Penal Code followed the UNCAC which Jordan ratified in 2004 and thus it became a part of the national legislation even when it contradicts with the provisions of the national law. The provisions of UNCAC contained newly established crimes and it includes administrative and financial corruption. And The Jordanian criminal legislation has taken a step forward with regards to the policy of criminalizing corruption, which is in addition to the traditional crimes of corruption as contained in the Penal Code or other penal laws. Examples of Jordanian legislations article 5 of the Anti-Corruption Law No. 62 of 2006. This law broadened the scope of the criminalization of corruption. After the criminalization of the traditional acts of corruption such as bribery, embezzlement, or other crimes contained in the Jordanian Penal Code, it has broadened the scope of criminalization to include economic crimes, acceptance of favoritism or favoritism. All the acts in the international conventions deal with the fight against corruption as well as extend the scope of criminalization to include foreign public officials and employees of public international institutions and this is in accordance with the provisions of paragraph (b) of the same law (Abdel, 1970).

1.8. The Criminal Penalties for Administrative Corruption Offenses

There is a need to have a range of measures and penalties, such as a set of legal procedures and penalties, to combat administrative

corruption. In each crime, a series of legal procedures following the commission of the crime should be taken into account. It will include the place where the offense was committed and investigation procedures such as detection, arrest, prosecution and execution of the punishments (Philippe, 2005). In the light of the Iraqi Criminal Procedure Law No. 23 of 1971, there is a need to make it clear from the beginning the legal procedures that can be taken against the perpetrators of administrative corruption crimes. There is also a need to clarify the penalties that can be imposed on the perpetrators of these crimes and their role in reducing the crimes of administrative corruption.

1.8.1. The Criminal Procedures for Administrative Corruption Offenses

The criminal procedures here refer to the provisions that are related to the investigation and it indicates the ways in which the government agencies that specialize in the detection and investigation of the crime and their perpetrators refer the corrupt act to the competent court for sentencing and execution. With reference to the general provisions of the Code of Criminal Procedure No. 23 of 1971, these provisions are applicable to administrative and financial corruption offenses at each stage of the criminal proceedings for this type of crime. Such procedures are naturally followed and the general principle is, without exception, applicable to all crimes. is without

exception, However, the specificity of the crimes of administrative corruption, the manner in which they are committed, and the confidentiality of others, in addition to the lack of these crimes to the existence of the victim as a natural person, as is the case in many other crimes, which weakens the individual motivation in the pursuit and follow-up; This type of crime is characterized by the absence of personal injury and direct damage, which in turn burdens the competent authorities in the prosecution and follow-up of the perpetrators of these crimes (Aljourani, 2015).

The Iraqi legislature has been urged to establish a specialized body, an Integrity Commission, to combat administrative and financial corruption crimes and the said body should set its objectives and obligations as stipulated by Law No. 30 of 2011. The newly-formed body is tasked with carrying out investigation by qualified investigators. They work under the supervision and guidance of the investigating judges who are appointed by the Supreme Judicial Council (Abdelreda & Awad, 2015). The investigating judges carry out their tasks in accordance with the provisions of the aforementioned law and the Criminal Procedure Code Law No. 23 of 1971. Chapter 3 of the Integrity Commission's Jurisdiction in Investigative Proceedings deals with administrative corruption offense and jurisdiction over civilian or military entities. This body may use all scientific means, organs and agencies in the investigation and collection of evidence to detect and prosecute corruption offenses (Alzubaidi, 2016).

Moreover, UNCAC, which was ratified by Iraq under Law No. 53 of 2007, includes the unusual procedures in the Code of Criminal Procedure that is in force. It includes procedures such as supervised deliveries and special methods of investigation such as electronic surveillance, penetration and confidentiality, security and intelligence cooperation, information exchange, freezing, seizure and recovery of property through the procedures of international sources, joint investigations and the transfer of procedures. The information obtained through these methods and procedures shall be considered as evidence against the offenses set forth in these agreements (Alukaily, 2015).

It is anticipated that these new and special procedures in investigating and prosecuting the perpetrators of administrative corruption crimes will be implemented in Iraq. At first glance, it appears to be a clear violation of human rights and the sensitivity of its details guaranteed by the Iraqi Constitution of 2005, especially in the field of electronic surveillance, infiltration, banking secrecy, controlled delivery, etc. At the same time, more and more Iraqis have voiced their concern in order to protect their human rights and privacy. Human rights are becoming less popular in favor of modernized forms of criminality and contemporary criminal legislation has made this reality compelling (Khayat, 2006). Therefore, any reluctance, rejection or negligence by individuals or institutions to provide information or documents that can help to detect administrative corruption offenses constitutes criminal conduct. The disclosure of administrative corruption offenses and encouraging the reporting of the perpetrator of the said offense is of particular importance because the crimes are

carried out secretly. It is especially so when the administrative corruption offenses are linked to the use of modern technologies in the economic and banking fields.

Despite Iraq's ratification of the UNCAC, the Iraqi criminal law did not provide for the establishment of a specialized court to deal with cases of administrative corruption. The ordinary criminal courts have been left to deal with this type of crime. The absence of a specialized court to settle this type of serious crime has had a major impact on the increase in corruption crimes in Iraq. Furthermore, the judges specializing in corruption offenses will have the experience and knowledge of the cause of these crimes and they will have the ability to examine the perpetrators skillfully. This will, in turn, expedite the resolution of these cases and the courts can then impose criminal penalties that commensurate with the gravity of the crime in order to reduce corruption crimes in the future (Alasadi, 2014).

1.8.2. The penalties for administrative corruption offenses

Punishment is the oldest known method to combat crime and protect society. Punishment is the final stage in the criminal follow-up of the perpetrators of administrative corruption, and is the best means of deterrence when other means of protecting the society has failed. The penalties provided for in the Iraqi Penal Code Law No. 111 of 1969 vary in terms of the force and the purpose of these penalties is to reduce the risk of crimes of administrative corruption. The penalties in

the Iraqi Penal Code range from imprisonment with fine or the return of things which have been unlawfully acquired or the value of the illegally acquired loot (Harba, & Alukaili, 2015).

Article 250 of the Iraqi Penal Code stipulates that: Any person who, with intent to deceive, steals, conceals, destroys or alters a document, piece of evidence or object used in the commission of an offense that is submitted before a court investigating authority is punishable by detention plus a fine or by one of those penalties. The penalty will be a term of imprisonment not exceeding 7 years if the offender is a public official or agent to whom such articles are entrusted or assigned by virtue of his official capacity. As well as article 307 (a) of the same law provides for offenses against the duties of the function. Any public official or agent who seeks or accepts for himself or for another a gift, benefit, honor or promise thereof to carry out any duty of his employment or to refrain from doing so or to contravene such duty is punishable by a term of imprisonment not exceeding 10 years or by detention plus a fine which should not be less than the amount he sought, was given, or was promised but should not, under any circumstances, exceed 500 dinars. The Iraqi legislature sought to punish the exploitation by the employee or public service officer of his job in the seizure of right or money or property or otherwise owned by the state or one of its institutions in which they contribute.

The same position has been taken by the Egyptian legislature to impose severe penalties for the crimes of administrative corruption and

the include imprisonment and a fine. The Egyptian Penal Code Law No. 58 of 1937, as amended in Articles 103, 104, 105, 106, 107, 108 and 109. The multiplicity of images shows corruption in this law and tighten of the penalties that reached the maximum life imprisonment. The Jordanian legislature increased the penalties for administrative corruption offenses when they amended the Jordanian Penal Code Law No. 16 of 1960. The category of crimes that are contradictory to the duties of the job are contained in Articles 170 to 184. The penalties ranged between imprisonment and aggravated fine, and when it involves the return of unlawfully acquired property, we find that the Jordanian legislature intended to severely punish the perpetrators for crimes of bribery, embezzlement, infringement of freedom, abuse of power and breach of duties of the job. The Jordanian legislature sought to expand criminal responsibility in the field of administrative corruption crimes through the adoption of the Anti-Corruption Law No. 62 of 2006. As a The Jordanian legislature sought to consolidate the principles of justice and accountability, and good performance in order to protect the public interest and to ensure the adherence to the principles of national integrity and to fight corruption in all its forms (Ismail, 2014).

2. CONCLUSION

This study concluded that there is no precise definition of the crime of corruption and it is due to the overlap of issues and the different visions of the different countries' legislatures. Therefore,

there is no unified international agreement to define it in a comprehensive manner. All that exists are personal definitions or individual efforts to define the phenomenon. In addition, the Iraqi legislations does not have any legal text that fits the description of administrative or financial corruption but was limited to the picture between the felony and the misdemeanor if this indicates anything indicates the seriousness of these deviant behaviors. On the Iraqi Integrity Commission Act Law No. 30 of 2011, we find that there are limitations to the crimes of corruption. Some of the crimes that are contained in the Iraqi Penal Code, such as the crime of bribery and embezzlement and exceeding the limits of their employees and other crimes, which are exclusive. Sanctions under the Iraqi Penal Code Law No. 111 of 1969 are weak. Most of the sanctions, if not all of them, are the penalty of fine and imprisonment, and even for the term of imprisonment, they are for short periods that are disproportionate to the gravity of the act committed by the offender. It should be noted that the Iraqi legislation has been silent about the criminalization of other forms of corruption mentioned in the UNCAC that was ratified by Iraq under Law No. 35 of 2007. This law includes crimes such as bribery in the private sector or the removal of the immunity from prosecution of international public officials or foreign employees in international institutions for crimes committed in Iraq.

This study supports the work at the international and national level in order to define the crime of administrative corruption in a comprehensive manner that covers all types of corruption in order to identify it and the possibility of determining what is considered

corruption or not for the purposes of facilitating the identification of the crime and then the appropriate punishment for the perpetrator. And, the enactment of laws on the accountability of international personnel serving in international or regional organizations or entities with headquarters in Iraq. The adoption of strict measures in the face of crimes of administrative corruption, Through the criminalization of all its forms and manifestations, especially some negative behaviors and widespread in Iraqi society, such as means, favoritism and nepotism, under the Iraqi Penal Code No. 111 of 1969, Also, It is necessary to adopt the examples stipulated in the UNCAC to enable the authorities to punish anyone who commits these crimes.

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