

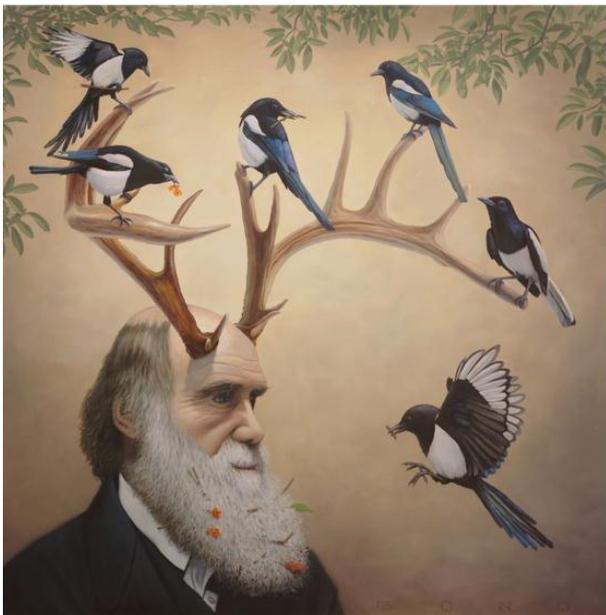
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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 35, 2019, Especial N°

22

Revista de Ciencias Humanas y Sociales
ISSN 1012-1537/ ISSNc: 2477-9385
Depósito Legal pp 198402ZU45



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The Crime Of Illegal Gain In The Light Of Iraqi Law And International Agreements

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Abstract

This study deals with the crime of graft as one of the most serious crimes of a private nature as it relates to the civil service and a certain category of employees, exclusively by law. The researcher divided this study into two main subjects where the first section of it came under the title (What is graft), while the researcher The second of them was entitled (legal regulation of the crime of graft), and for the purpose of taking note of the subject of the research completely, we have divided each research into several demands, which branches of several branches of the need for the research for the purpose of fully knowing the details of the research, has reached the researcher at the end of this study a The crime of graft has aroused controversy and controversy wide jurisprudence on the extent of its legitimacy and conflict with the provisions of the Constitution, as it is one of the most difficult crimes in terms of proof because of the character of the perpetrator in this crime and its wide influence facilitates the concealment of the features of the crime and its effects, as the researcher recommended the need to tighten The penalty for graft crime is commensurate with the gravity of this crime, its gravity and its effects on society, and the call to benefit from the UN expertise in the field of combating corruption after Iraq acceded to the 2004 UN Convention.

Key words: Iraq, crime, gain, illegal, bribe

El crimen de ganancias ilegales a la luz de la ley iraquí y los acuerdos internacionales

Resumen

Este estudio aborda el delito de injerto como uno de los delitos más graves de carácter privado, ya que se relaciona con el servicio civil y una determinada categoría de empleados, exclusivamente por ley. El investigador dividió este estudio en dos temas principales donde la primera sección del mismo se tituló (Qué es el injerto), mientras que el investigador El segundo de ellos se tituló (regulación legal del delito de injerto), y con el propósito de tomar Nota del tema de la investigación por completo, hemos dividido cada investigación en varias demandas, que ramas de varias ramas de la necesidad de la investigación con el fin de conocer completamente los detalles de la investigación, ha llegado al investigador al final de este estudiar un El delito de injerto ha suscitado controversia y amplia jurisprudencia sobre el alcance de su legitimidad y conflicto con las disposiciones de la Constitución, ya que es uno de los delitos más difíciles en términos de prueba debido al carácter del autor en este El delito y su amplia influencia facilitan la ocultación de las características del delito y sus efectos, ya que el investigador recomendó la necesidad de endurecer. La pena por delito de injerto es proporcional La gravedad de este crimen, su gravedad y sus efectos en la sociedad, y el llamado a beneficiarse de la experiencia de la ONU en el campo de la lucha contra la corrupción después de que Irak se adhirió a la Convención de la ONU de 2004.

Palabras clave: Iraq, crimen, ganancia, ilegal, soborno.

Introduction:

- The public office is considered a secretariat placed by the community for the purpose of carrying out his duties as defined by the functional rules and general legislative laws in the country concerning the operation of the public facility. These laws and functional rules have given a set of administrative functional powers that enable the employee to perform his job duties in the best way, especially Some bodies whose function is of a special nature linked to the administration of the state, such as the President of the Republic, ministers, members of the legislative body in Parliament and other special grades, but the human being by nature is a weak being has been entrusted himself sometimes to do acts contrary Law and functional duties for the purpose of profiting by exploiting public office, which is

legally defined crime of graft.

- When this crime has become a serious phenomenon threatening the security and safety of the community as it relates to the public service that provides a public service to the community, whose owners must enjoy the integrity and honesty as they are faithful to the rights and property of the people who were placed in their custody to conduct public matters and provide public services to individuals. The various legislations address this phenomenon, especially after the emergence of doctrinal opinions that support the criminalization of this act at the beginning of the twentieth century and then the international community confronted this phenomenon and called in many international conferences and treaties parties to legislate laws criminalizing gain. The draft law, which was followed by the Iraqi legislator through the law of graft at the expense of the people No. 15 of 1958, which was considered the first law to criminalize this act at the level of the Iraqi state since its inception, although this law did not address this crime as required. Some of the difficulties in its implementation and the lack of real intention of the State and harnessing the capabilities required to combat this crime on the ground, and after the change in Iraq after the change in the political situation after 2003 and witnessed the accession of Iraq to the United Nations Convention against Corruption of 2004. The Integrity Commission No. 30 of 2011 in force, which addressed the issue of graft, but it remained below the previous application such as law virtually on the ground for lack of motivation among the real decision-makers in the state to combat this crime.

Research importance:

- The importance of the research comes through the importance of the subject matter of the study in the criminal and administrative law, where the crime of graft has aroused wide controversy in terms of legitimacy and constitutionality and conflict with the most important constitutional human rights that the origin of the accused innocence, so this study comes to shed light on this crime by explaining its concept and distinguish it from other similar crimes as well as the elements and the penalty prescribed in Iraqi law.

Research problem :

- The problem of the research is the need to preserve public money and public service by criminalizing all acts that would harm them and with the increase of administrative and financial corruption in Iraq after the political events witnessed in the country after 2003 and the loss of the country's wealth by some of the decision-makers in the state has become. It is imper-

ative to activate the law of graft to maintain public money and the law of Iraqi graft in force has been initiated for more than half a century and has not been so that it has become incompatible with the reality of the situation and many of the legal shortcomings that must be addressed through the issuance of a comprehensive law addressing this issue. It is strengthened to take real action rules to apply to the ground effectively.

Research Methodology :

- Given the importance of the subject of the research, his study required the use of more than a methodological method where the researcher used the descriptive inductive method through access to some of the sources available under our hands are legal jurisprudence and previous studies related to the subject of the research and try to benefit from it, with the help Analytical approach through the analysis of some legal texts on the subject of the study in order to identify the areas where the defects and try to find appropriate solutions.

The first topic

What is graft?

The public office is considered a national mandate and the secretariat is the responsibility of the public official (1), which the law gives him wide powers and competencies for the purpose of performing his job duties in the best way and in the best way. The different legislations set a set of controls and restrictions to prevent the deviation of the employee towards what may be harmful to the job Ethical and illegal, and prevent him from exploiting the public office to achieve personal purposes, which is called in the legal term graft, which is a crime punishable by most legislation around the world, if not all, and to know more about what this crime has This is a topic to three demands we take him in the first concept of the crime of graft and in the second distinguish this crime other than likening crimes and either third demand was dedicated to the statement of the historical evolution of this crime in ancient laws and legal systems, as follows.

The first requirement

The concept of graft crime

By looking at most of the jurisprudential sources we can say that the concept of graft crime at the level of legal jurisprudence did not receive much attention as it did not appear in many legal literature a specific definition of this crime as most scholars in terms of the definition of this crime to explain the definitions contained in The different laws may be due to the fact that the crime of graft legally has a specificity gained through the legal text that criminalizes this act, which is usually different from one legislation to

another due to the different jurisprudence schools in the field of law and taken by the legislation Multiple data both in proportion and in line with the social and legal system prevailing in that State (2).

However, there are some scholars who have worked hard to formulate a definition of this crime and their opinions differed in this regard. As a result, the various jurisprudential definitions given by each of them reflect their views and attitude towards this crime. The project is (is a money obtained by the practitioner of public work or public service, whether that money for himself or for other relatives or relatives through the exploitation of the power authorized by law to perform that work or job) (3), while others defined it as (Injury to state employees and public sector workers in excess of They shall be entitled to the public service or the capacity enjoyed by that employee for the purpose of obtaining an unlawful gain, whether that gain has been made to the employee himself or to him or her. To others) (2).

Another part of the jurists went on to define the crime of graft as one of the crimes whose application is limited to some persons in public jobs or services whose purpose is to prevent these persons from exploiting their functional influence and to protect the job and public money from Damage that may be inflicted on him as a result of the unlawful practices committed by such persons through their infringement (4).

The crime of graft is also defined as “all money earned by persons entrusted with the law to perform a public service, whether that money is for him or for others through the exploitation of the job he performs or the capacity he enjoys because of that job or

The result, or both, through an act or conduct contrary to the provisions of the law or by any other means, even if they are not legally criminalized, that is, any increase in the property of one of the persons entrusted with the law shall arise after assuming the service, whether it be for him, his wife, assets or branches. Or his in-laws when such funds are not commensurate with the resources the taxpayer receives and the inability to prove the legitimate sources of those funds (5).

Thus, we find that all the previous definitions, although different in terms of language wording of the meaning of graft, but all agree in essence, as all these definitions focus on the need to be a public servant to complete this crime and to exploit the functional influence or powers it enjoys, and through All of the above the researcher believes that a definition of the crime of graft can be formulated on the grounds that all the money found for the benefit of a person in charge of a public service or job in accord-

ance with the provisions of the law was obtained through the exploitation of the function entrusted to him or the influence enjoyed by the employee as a result of his work For the purpose of For the conduct of illegal acts, whether that money to him or to one of his boat assets and branches has been unable to indicate the source that legitimizes the money.

As far as legislation is concerned, most of the legislations that regulate the crime of graft have explicitly defined this crime and the persons included in its scope, and that some legislation, especially Arabic, has used the term illicit enrichment or enrichment without reason to express this crime and that this difference does not reflect anything from Some of the international conventions have taken the term enrichment, such as the Arab Convention against Corruption 2010, the United Nations Convention against Corruption 2004, and the Inter-American Convention against Corruption. For the enrichment of the illicit or enrichment without reason to define the crime of graft believes part of the jurisprudence that this term is more accurate than the graft to express this crime (6).

However, the Iraqi legislator has always used the term graft in the laws dealing with the provisions of this crime, through the issuance of the first law criminalizing this act at the level of Iraqi legislation since the founding of the Iraqi state known as the law of graft at the expense of the people No. (15) for 1985 Article 4 of this Law defines this crime as any property found for the benefit of any of the persons entrusted with filing the declaration in accordance with the provisions of this Law and has not provided it unless it is proved to have been obtained in one of the legitimate ways.

Thus, the Iraqi legislator through the text of the above article has been limited in the definition of the crime of graft on the presumption of inflation in the funds are not compatible with the resources obtained by the taxpayer in accordance with the provisions of the law if he is unable to indicate the legitimate sources of that inflation in his money.

Soon, that is what was stated in the Integrity Commission Law of 2011 in Chapter IV, which is dedicated to the crime of graft, as this crime is defined as any increase in the funds of persons charged with reporting on the disclosure of financial receivables or funds belonging to their spouses or children It is not commensurate with their regular resources and their fixed incomes unless the legitimate source from which the money was obtained is proved (7).

While we see the Egyptian legislator has known this crime through the law issued in 1975 on graft as all the money earned by one of the subject of the provisions of this law, whether for himself or others because of the

exploitation of the service or capacity or as a result of conduct contrary to the provisions of the law or the violation of public morals The public order shall also be regarded as any increase in wealth resulting from the exploitation of the service, capacity, result or irregular behavior occurring after the employee has assumed his duties or the status of the person subject to this law or his spouse and minor children when they are not commensurate with their resources and are unable to prove a legitimate source of such funds. 3).

(2) Article (18) of the Iraqi Commission on Integrity in force No. 30 of 2011 as amended.

(3) Article 2 of Law No. (62) of 1975 in force on amended Egyptian graft is considered.

It is noticeable through the previous legal texts that the Egyptian legislator has made the same mistake as the Iraqi legislator by limiting the illegal graft to the adoption of the presumption of inflated funds of unknown origin exclusively without paying attention to other benefits that may accrue to the person in charge of the provisions of this law. It is possible to make money even if it is indirect, although the Egyptian legislator has expanded a little by the previous definition of the crime of graft in terms of the scope of the criminalization of the acts within this article that it has added to the exploitation of the service or public service by Pain Wrap the character what it gets under the provisions of this law as a result of violating the provisions of the penal or public morals, which we did not find like him in the law of the Iraqi (8).

Despite these clear and explicit provisions in the criminalization of this act, the crime of graft is still considered a difficult crime in the application and proof, both with regard to the procedures for their proper application or in terms of the means of proof, due to the relatively recent crime in addition to The character of this crime, which makes it different from other crimes in terms of the personality of the perpetrator, as it is limited to the employee or in charge of public service, which is often at a level of culture, know-how and experience to enable it to hide the features of this crime after committing easily using the information (9) The functions and powers conferred upon him by the law and the regulations governing the conduct of the job.

The second requirement

Distinguish the crime of graft from similar offenses

Graft crime is characterized by a set of characteristics that are unique to most other crimes, whether in terms of the elements that must be available

to do the crime or in terms of results as well as people within its scope, as it approaches some other crimes with some qualities and characteristics, so we will address in this The most important offenses approaching the crime of graft for the purpose of distinguishing between them in more detail, such as:

Section 1 // The crime of graft and bribery:

A crime of bribery is defined as an employee's illegal trade in the job entrusted to him, as if he had agreed with the respondent or responded to or showed acceptance of the gift or benefit offered to him by the other party in return for him to perform a job or to refrain from doing a job. It shall be the duties entrusted to him by virtue of the position he occupies (10).

Or it is an act committed by the person who acquires the status of public servant or any person who performs a public service when he is trading his job using the powers and powers conferred upon him to perform his duties. (11) A job or an abstention from any of the functional jobs, called the briber and the other interested party, if he accepts the performance of the employee's request or submits his / her own request for tender.

Through the previous definitions of the crime of bribery it is clear to the researcher that it is approaching in some of its qualities as a criminal offense specific to a certain category of people from the crime of graft and differed in some other qualities:

1_ The similarities between the two crimes:

The crime of bribery in some of its characteristics is close to the crime of graft and interferes with it in several aspects, as is the case with the criminalized interest, since both acts are due to the purpose or interest protected by the law from their criminalization to preserve the public office and protect it from anything that would The law in both crimes seeks to prevent the exploitation of public office by some of the weaker souls who seek to exploit the job for personal gain for their own benefit or for one of their dependents on the basis of powers and exile. Y career they gain through their occupation of those public positions (12).

Both the crime of graft and the crime of bribery are similar in terms of the inability to initiate the two crimes, as both crimes can not be an incomplete crime, although the reasons differed and differed in each, as the inability to achieve the attempted bribery crime is due to the reason It is the availability of the elements of the crime upon request and supply or agreement on any benefit in return for an act or abstention from an act contrary to the rules of the civil service. Thus, the crime of bribery is considered a mere

attempted crime, while the reason for the inability to initiate the crime of graft since the attempt It constitutes one of the other crimes If the employee tries to obtain an illegal gain without completing the other elements of the crime, that attempt may be considered as a crime of bribery or the crime of embezzlement of public funds on the grounds that these crimes are one of the means of graft (13). It can not be in both crimes, although the difference in that for each of them.

On the other hand, both crimes are similar in that they are crimes that are confined to the public servant or the person who performs a public service, and the like cannot be conceived of the crime of bribery or the crime of graft against any person, whether natural or moral if the status of public servant Does not apply to him as this attribute is the cornerstone of the proof of both crimes

1_ The differences between the two crimes:

The crime of bribery differs from graft in that the former is considered a predicate offense as it is realized once its elements have been completed, unlike in the case of graft crime, which is considered a precautionary crime and is usually resorted to for the purpose of holding the accused accountable. In some cases where the elements of the original crime cannot be proved against the perpetrator, the crime of graft differs from bribery in that the latter is sometimes a part or element of the elements underlying the physical pillar of the graft crime while it is not conceivable that the crime of gain Is evil One of the pillars of the crime of bribery (14).

They also differ in terms of the character of the perpetrator or the perpetrator of the criminal offense, as in the crime of graft usually identified employees covered by the provisions of this law, whose competencies or job addresses are listed exclusively and does not include all who acquire the status of public servant without a legal text against them This is contrary to what it is in the crime of bribery, which occurs once the assumed corner of the public employee in the absolute sense that anyone who acquires the status of public servant or perform a public service in accordance with the legal concept of public service falls within the scope of the crime of bribery if it is staffed Other Crime (15).

As well as the difference between the two crimes in terms of the law governing each of them, as the crime of graft is not usually included in the chapters of crimes in the Penal Code, as in the case of other crimes of various kinds, which are regulated by the Penal Code, we find that this type of crimes enjoy The law does not only provide for the criminalization of this act in the Penal Code, but the specificity and seriousness of this crime

necessitates the legislator to know all the issues related to it. (J) to prevent the exploitation of certain legal loopholes that may be contained in the Penal Code in relation to these

Crime as applied in various legislations around the world and the same thing as the Iraqi legislator in accordance with the law of graft at the expense of the people No. (15) for the year 1958 in force, but the crime of bribery like other crimes is usually limited to the provisions of the law Penalties: There is a chapter of several articles within this law in which the legislator deals with the statement of the provisions of this crime and related to it, we find that the Iraqi legislator in the Penal Code in force No. 111 of 1969 amended has dealt with the provisions of the crime of bribery in the first chapter of Part VI of it through the articles (307 - 314) of this chapter on crimes For violating the ethics of public office.

Finally, both crimes differ in gravity as the crime of bribery is more serious than graft, considering that the Iraqi legislator has counted it as felonies and decided to imprisonment of seven to ten years (16).

Unlike in the case of graft, which is considered a serious misdemeanor in accordance with Iraqi law (17)

Section II // The crime of graft and embezzlement:

Jurisprudence defines the crime of embezzlement as one of the crimes against public office, which is the taking of the public official or his equivalents to take what is in his custody and under his possession and by virtue of the legal capacity to exercise his functions of the things belonging to the State or to individuals for their own benefit Or taking it (18).

The Iraqi legislator did not address a specific definition of the crime of embezzlement either in the Iraqi Penal Code in force in 1969 or in other laws on the job

In the public office and discipline where he has only satisfied the provisions of this crime and the penalties prescribed in articles (315 - 320) this law.

From the above, it is clear to the researcher that the crime of embezzlement is approaching in some aspects of the crime of graft and disagrees with it in other aspects and we will show this in some detail:

1_ The similarities between the two crimes:

Both crimes are similar in terms of their attachment to public office, as the element or pillar is considered the basis for the availability of both the crime of graft or the crime of embezzlement that the perpetrator is a public official or his equivalents.

They are similar in terms of the interest that the law seeks to protect since

the purpose of criminalizing both graft or embezzlement is to protect the public service and the interests of the community related to it, prevent its exploitation and prejudice its sanctity and walk public facilities system and steadily in the public interest. Also, both crimes are similar in terms of the place of assault, which is the public money and that the way in which it is different, but they differ in terms of the source and type of money In the crime of graft, the Iraqi legislator did not give attention to the source of money when the employee is unable to prove his legitimate source while in the crime Embezzlement has stipulated that the money subject to the crime is in the hands of the employee (19)

1_ The differences between the two crimes:

Both offenses differ in the character of the offender, as the lawmaker in the graft offense requires that the offender be in addition to being a public servant or in charge of public service or his equivalents, it has also stipulated that the employee is of the functional categories or persons mentioned in the legal text on While the corner of the capacity in the crime of embezzlement is the availability of the status of public servant in general, it is contained in any employee or in charge of public service, regardless of his degree or function (20).

They also differ in terms of the functional competence of the employee in each of the two crimes, as the legislator requires in proving the crime of embezzlement that the employee is competent in his job. Incomplete possession through physical behavior that is directly related to the outcome, while in the crime of graft the criminal behavior and the outcome do not occur at the same time, but they are linked through causal relationship behavior is the exploitation of function and the result achieved criminal is the mother's inflation And for the benefit of the employee (21).

The crime of graft is considered a misdemeanor according to the Iraqi legislator, while the crime of embezzlement is considered a crime that falls within the classification of felonies, since the Iraqi lawmaker has made the punishment of this crime temporary imprisonment (22).

Finally, the crime of graft differs from the crime of embezzlement in terms of the situation preceding the crime

The third requirement

Criminalize graft in international agreements

Corruption is considered one of the biggest threats to the security and safety of states, especially administrative corruption related to the civil service,

since the employee in this case deviates from the legislative texts and the rules of the civil service and seeks to harm them and thus harm the interests of society, which represents the beneficiary party of public utilities, The project in some legislations is noticeably increasing and corruption crimes are increasing in countries, especially developing ones. International conventions and conventions have been included in its articles to urge countries to include them in their domestic legislation.

United Nations Convention against Corruption 2004

This Convention is the first document on the international level in the field of combating corruption in general and the most important, which entered into force in 2005 and acceded to Iraq in 2007 (23), and obliged in its articles States parties to this Convention to take all deterrent means and the enactment of laws It also called on all member states to cooperate with each other in the legal field in the fight against corruption and to provide assistance in some matters needed by States, such as in the case of the recovery of public funds smuggled out of the State (24).

With regard to the crime of graft, this Convention has been stipulated in the principles or non-mandatory provisions of the Member States through Article (25), and has used the term illicit enrichment to express this crime where it is stated (for each of the Member States to consider subject to their Constitution In accordance with its legal system in adopting such legislative and other measures as are necessary to criminalize the deliberate unlawful enrichment of any public official in the event of any significant increase in his wealth that he cannot reasonably account for in proportion to his legitimate income.

In the foregoing, we believe that this agreement was not binding on member states in terms of criminalizing graft in their domestic laws, due to the objection of some countries at the time to this criminalization as contrary to the basic principles in their constitutions such as the United States and Canada.

2. African Convention against Corruption 2003:

This agreement came after the deterioration of the economic and social conditions in most African countries and the delay in the development process due to the spread of administrative corruption in most institutions of African countries and the spread of crimes affecting the security and safety of public service, Article 1 of this Convention defined the crime of graft as any unreasonable increase In the money and proceeds of any public official or other person, such increase cannot be justified with his legal income (26).

This convention has differed from others, as this crime was not confined to employees only, but extended in scope to include any person, whether natural or moral who can not prove a legitimate source of funds, and thus the assumed corner of the crime of graft in accordance with this Convention is different from what is in law. The situation with regard to the various legislation at the present time, including Iraqi law, although the Convention was concerned with the fight against corruption, especially with regard to administrative corruption and related to state agencies in general.

The Convention also obliged Member States to take appropriate legislative measures in line with the constitutional and legal principles and foundations of those countries in order to incorporate graft as a crime punishable by their domestic law. The fourth is to include a range of offenses that are linked to the scope of the Convention, including the crime of graft (27).

3. The American Convention against Corruption of 1996:

This convention was the first of its kind in the world to criminalize corruption in general and the crime of graft in particular. This convention was later adopted by the Organization of American States. The provisions of this agreement criminalize illicit enrichment to express this crime, which is mentioned in the article. (28) Each State Party to the present Convention shall, without prejudice to the fundamental principles and constitutional and legal foundations of that State, take the necessary measures to establish a legal framework for the offense of illicit enrichment as in the case of a substantial increase in A State may not be reasonably interpreted for its legitimate gains in the performance of its functions, and any State who has not established illicit enrichment in its laws as a crime of corruption may insofar as its laws permit assistance to cooperate with other States Parties in respect of such a crime. (29).

In doing so, we believe that this Convention did not oblige States Parties to criminalize graft in their laws, but rather gave them the freedom to choose whether or not to criminalize this act, but nevertheless obliged States to cooperate and assist other States Parties in their needs. Information and facilities related to the crime of graft and its procedures.

This Convention, as evidenced in the text above, has made the crime of graft limited to the public office and public servant or his equivalents other than the African Convention, which expanded the scope of the supposed corner of this crime.

4. Arab Convention against Corruption 2010:

This agreement was established at the initiative of the member states of

the Arab League in December 2010 convinced that the phenomenon of corruption is a serious criminal phenomenon, which takes many forms and has adverse adverse effects from several political, social, economic and moral aspects and desirous of activating the Arab efforts to combat corruption and facilitate International cooperation in this field (30).

This Convention obliges Member States to criminalize graft within their domestic laws through Article 4 of which states that (taking into account that acts of corruption criminalized under this Convention, each State shall, in accordance with its legal system, adhere to its own legal measures to criminalize such acts. Enrichment for no reason).

Thus, this Convention shall be binding on States Parties and shall not leave them free to criminalize graft. The international regulation of the crime of graft is an important step towards the criminalization of this act in the domestic laws of States that have not yet provided for its criminalization. States are obliged to provide assistance and cooperation in cases related to this crime even if their laws do not criminalize it.

The second topic

Legal regulation of the crime of graft

The society in general is characterized by evolution and thus develops with him the forms of crime and the ways of committing it and its people. Therefore, jurisprudence called for the need to criminalize this act and as a result has emerged various efforts at the international level through the conclusion of a number of conventions and international conventions that urged States to criminalize this act in their constitutions and domestic laws as we have shown earlier in this research and After these countries became obliged under the conventions that acceded to the criminalization of this act has become a graft is a crime punishable by most of the various positive laws, including Iraqi law, which dealt with the provisions of this crime and its punishment and the procedures used to prove, and this will be addressed in this article, The following is ..

The first requirement

The legal basis for the crime of graft

There are a number of provisions that constitute the mainstay and legal force upon which the judiciary depends to criminalize graft. (31) With regard to the Iraqi Constitution, there is no explicit mention of the crime of graft, but it was established to criminalize such acts through Stressing on laying the general foundations for combating the crimes of administrative and financial corruption and all that may harm the public interest, public office and profiteering, and the constitutional provisions stipulated

in Article (27) of which states that (public funds are inviolable and their protection is the duty of every citizen. Provisions that relate Preservation of State properties and conditions of their disposal, and the limits not it is permissible to get off anything from this money) (32).

Thus, we find that the constitutional legislator in Iraq has made public money inviolable and therefore

Any act that may prejudice the public office and public finances shall be considered a crime punishable by law, thus leaving wide scope for the ordinary legislator to regulate such crimes, including the crime of graft by a special law dealing with its provisions in detail.

The Constitutional Legislator also prohibited a group of categories exclusively from those with special grades in the State from exploiting the influence they enjoy under their function and exploiting them for financial transactions for the purpose of profiting through the provisions of Article (127) of which states that The President of the Republic, the President and members of the Council of Ministers, the Speaker of the Council of Representatives and his deputies, members of the Council, members of the judiciary and those with special degrees may use their influence to buy or lease any of the State's funds or to lease or sell any of their property or to negotiate with it or to conclude a contract with the State. They are bored (Maine or suppliers or contractors) (33).

Thus, we find that the Iraqi Constitution did not explicitly stipulate the crime of graft, as is the case with most constitutions in countries (such as the Egyptian and Lebanese Constitution), but it criminalized all acts against the security and safety of public money and stressed the sanctity and to respect the rules and provisions of the public service.

While the Iraqi legislator in the law of graft in force in 1958 that he (is considered illegal gain at the expense of the people:

Any money obtained by any of the persons mentioned in accordance with the first article of this law because of the work or influence or the circumstances of his job or position or because of the exploitation of any of that.

2 - Any money obtained by any natural or legal person through collusion with any of the persons mentioned in Article 1 of this law to exploit his position or position.

3- Any property not provided by any of the persons mentioned in Article 1 by the declaration submitted by it, or provided by it, and has not been proved to be a legitimate source, and any increase included in its declarations following the first declaration fails to prove the origin of the project (34).

After the change in the political situation in Iraq after 2003 and the accession of the Republic of Iraq to the United Nations Convention against Corruption under the law of the Republic of Iraq accession to the United Nations Convention against Corruption of 2004 No. 35 of 2007, which was ratified by the Iraqi parliament and became obligatory for the Iraqi legislator to conform internal legislation Thus, the legislator passed the Integrity Commission Law No. 30 of 2011, which provoked wide disagreement in that it was complementary to the graft law or that it was a substitute for it. Some to Article 40 of this Law, which stipulates (not any text that works contrary to its provisions with the provisions of this law), that it had canceled implicitly Agan Law No. 15 for the year 1958 graft (35).

The legislator also confirmed in article 18 of this law what is stipulated in article IV of the aforementioned Iraqi graft law No. 15 of 1958 by stating cases in which the employee is convicted of the crime of graft (36).

The issue of the criminalization of graft has been and still raises a lot of legal and judicial jurisprudence on the extent of the legitimacy and constitutional provisions of the law that criminalizes this act has emerged divergent views of jurisprudence on this issue, there is a part of jurisprudence see the legitimacy of the criminalization of graft as a interference in The rights related to the State shall be sponsored by the citizens, which require that the public official submit a statement of financial disclosure indicating the sources of his income and property and that the State has the right to hold the public official accountable to the extent of the validity of the data contained in those financial statements contained in his statement, including his debts. As a result, those who believe in this view believe that the burden of proof in this case rests on the employee who submits a financial report to confirm the validity of what is contained in the declaration and that according to this opinion is a requirement of public interest and that the criminalization of graft does not cancel the rule of clearance (37).

While another aspect of the jurisprudence went to the contrary to the first opinion completely by saying the illegality and legitimacy of the crime of graft and the provisions related to it, supporters of this view of the scholars that it is illogical and unacceptable to be considered every public official is unable to prove the sources of income proof However, the source of this money or that increase in his wealth is illegal gain, and this contravenes the most important constitutional principles and rules with regard to human rights, which is that the origin of the human being is innocence to prove the charge attributed to him by a final judicial ruling (38).

The presumption of innocence shall remain the basis until it is definitive-

ly proven and the conclusive evidence that there is no doubt that the accused shall be convicted of graft by finding an illegal source of increase in his wealth. The accused shall determine his legal status during the period preceding the conviction as innocent. If, unless the court is able to provide conclusive and conclusive evidence that the public official is convicted of the crime of graft, which has been proven in accordance with the proper legal procedures followed by the court, he shall issue a verdict of innocence and the presumption of innocence is the original. a Out of the penal provisions is that they force once it has gained a judicial *res judicata*, they become a fact that can not be compromised (39).

In our view, the second argument is the closest to the logic, because the origin of the accused is innocence on the grounds that it is one of the most important rights guaranteed by the Constitution and the law and therefore the trouble of proof can not fall on the accused as the owners of the first trend, which leads to the accused accused of the crime of gain The conviction requires the investigating authorities to prove the charge and to make sure that the source of such money is indeed illegal. Otherwise, he is considered a public official or the defendant is innocent and may not be convicted on charges of graft. .

As for the position of the Iraqi legislator, it is through reading the legal texts related to this crime we see that he took what the jurists in favor of the first direction and it seems clear through the text of Article IV of the graft law, which stated (all the money did not one of the persons provided In the first article of this law in the declaration submitted by him, or had been mentioned and did not show him a legitimate source and every increase contained in his statements that follow the first declaration with it is unable to prove the source of the project, and in general is considered an illegal gain money everyone charged with submitting the declaration In accordance with the provisions of this Law did not offer what winning it has not been proven one of the legitimate ways) (40).

Thus, the Iraqi legislator has made the trouble of proving in this case the fact that the defendant, who is the public servant or the like, must prove a legitimate source of income and when he fails to do so, the money is considered a legal presumption sufficient to convict him of the crime of graft.

The second requirement

Elements of the Graft Crime

The crime of graft, like other crimes that must be available to the availability of a set of pillars on which the crime is based, these elements are usually the cornerstones of physical behavior is illegal, but the second pil-

lar is moral, which depends on the availability of cognition and will in the person of the offender. These elements are common in all crimes in all forms and forms, but some crimes that are of a special nature such as graft crime and other crimes of certain groups sometimes require the availability of another corner may differ from what it is for the elements of ordinary crimes, due to the nature of these The crime and its specificity, so the elements of the graft crime are:

Section I // Physical Corner:

Which is represented by the perpetrator of the wrongful conduct, whether positive or negative, ie, by refraining from doing an obligation under the law or by doing any of the illegal acts, the Iraqi lawmaker knew the material corner of the crime in general in Article (28) of which (The material element of a crime is a criminal conduct by a person by committing an act criminalized by law or by refraining from an act ordered by law).

The physical element of the crime has three basic elements, which are the legally prohibited act and the criminal result, as well as the causal relationship that actually links the prohibited result. In the physical corner of the crime of lawful gain, the first element is the prohibited behavior or the illegal act by the employee or the criminal outcome of the wrongful act.

The offender is a public servant or public service performer who is legally required to damage public money or society as a result of the misuse of his or her functional powers and to link criminal behavior to this result (41).

Through the text of Article (18) of the aforementioned Integrity Commission Law, which stipulates that (any illegal gain shall be deemed to be an increase in the funds of the person charged with submitting the financial disclosure report or the money of his wife or children belonging to him shall not be commensurate with his ordinary income unless it is proved that he is receiving it of a project road).

We believe that the Iraqi lawmaker did not specify the form or image of the physical behavior of this crime in a certain way as in other crimes, but it revolves around the exploitation of the person in charge of public service who are mentioned in this law exclusively for his job, whether a negative or positive act harmful to the job and public money. As this employee has been unable to indicate a legitimate source of this increase, it is inevitable that as a result of his exploitation of the public office assigned to him, which is known as unjustified wealth, which means that the Iraqi lawmaker has abandoned criminalization once the existence of such unjustified funds and consider the employee's inability About T. Justification A legitimate source of such funds is the causal relationship in which the judge or

investigator deduces that the accused has committed the crime of graft by exploiting his position.

Some also believe that, since those charged with the provisions of this law and subject to the categories and functional grades have been prevented by the law from practicing any activity or business after working hours and if they have any source of legitimate gain, they are obliged to indicate in the financial disclosure form submitted by Thus, the nature of the legitimacy required by the legislator for the source of this increase may be administrative or criminal, but the legislator did not differentiate between them, but made the lack of Legality Matal If we look at the text of article (20) of the law of the Commission on Integrity in force, which stipulates that (any failure or disability after being commissioned by the investigating judge to prove legitimate sources of increase in his money or the money of his wife or children affiliated with him in disproportionate to their resources .. Subject to the penalties stipulated in the laws in force (42).

We believe that the Iraqi lawmaker did not prevent the conduct of legal proceedings against the employee accused of illicit gain if proven against him any other crimes in addition to this crime constitutes one of the sources of those illegal funds, whether those crimes or offenses administrative or criminal.

Section II // Moral Corner:

The moral element in the general sense of the criminal law is the criminal intent of the perpetrator of a criminal offense, since it is not possible to impose a penalty on a person whose will is not directed to do an act prohibited by law, and the criminal intent is defined as the knowledge of the offender of the crime and its consequences and orientation of his will. Towards their commission (43).

Part of the jurisprudence raises the question of the type of criminal intent required by the crime of graft Is it a public or private intent? .

Where the special criminal intent is that requires the need for a special motive for the perpetrator when committing the prohibited act, as in the crime of falsification of documents in Iraqi law, which requires the availability of the legal corner of the private criminal intent in addition to the general intention, which is the intent of the perpetrator using the false editor of Yeah (44).

Thus, part of the criminal jurisprudence believes that the special criminal intent for the moral element in the crime of graft is established by proving the intention to obtain an illegal gain with the public official, while the majority of jurists and the judiciary believe that the intent to be available

in this crime is the general criminal intent. Which lies in the availability of knowledge and will only the perpetrator of the crime and its elements and insist on them, and this intent is also required by the partner in the case of the crime of more than one person (45).

Given that the crime of graft is considered a temporary offense, the criminal intent must be available to the offender during the conduct of the act or behavior that is prohibited by law. Therefore, the criminal intent in this crime is subject to the general rules of evidence on criminal matters based on the conviction of the criminal judge. Including the facts and evidence before it (46).

Section III // Status of the offender:

The crime of graft as we explained earlier in the research is not a general crime and therefore the Iraqi legislator has been designated by a particular group or group of persons and therefore requires the establishment of its own corner, which is supposed to be the culprit is one of the persons mentioned within the categories (47) In the absence of such capacity, the elements of the offense shall be impaired and it shall be impossible to convict the accused of the crime of graft (48).

The Iraqi Graft Law of 1958 was subject to most categories of public officials and those in charge of public service or the like to the provisions of this law and thus obliged them to submit their financial report such as officers and their deputies, police and employees in the Secretariat of the capital and every public official of non-military, police and others However, the situation has differed from what was in force in the law of the Integrity Commission in force, which was limited to some special grades and occupy senior positions in the State, these categories are contained exclusively in Article (17) of which Each person occupies one of the following functions or positions in charge of providing disclosure of a report on financial disclosure:

The President and his deputies.

Members of the Legislature.

3. The Prime Minister, his deputies, the ministers, those who are of their grade, their agents, and employees with special grades.

4. President of the Supreme Judicial Council and judges.

5. The heads of the regions, their prime ministers, their ministers and their agents.

Governors and members of provincial councils.

Heads of independent bodies and their agents or deputies.

Ambassadors, consuls and supplements.

- 9 - Corps commanders and teams and heads of security services.
10. General directors, those of their rank and the Commission's investigators.
11. Officers in the armed forces, internal security forces and security services of the rank of lieutenant colonel and above (49).
12. Any person who deems the Commission necessary to disclose their financial receivables.

Thus, the Iraqi legislator, as is the case in most of the legislation that criminalized graft, provided that this supposed corner is available on the side, which is a special characteristic of being a public servant or in charge of public service, as mentioned in the above article of the law. It is essential to achieve the material element in the crime of graft fully and not considered the status of the partner in it because it is not among the elements within the moral corner of the crime, as the restriction of this crime to this group of categories by the legislator came because of the importance of these functions and the owners Widespread influence and control over Aldo It makes the owner of this job able to exploit his influence and damage the public office and public money through the graft (50).

By reading the text of the above article of the law of the Commission on Integrity we see that the Iraqi legislator in paragraph (12) of which has given the right to the competent authorities to expand this rule by adding any person believes the Commission to disclose their financial receivables and that this text has been absolute and did not restrict the legislator job Thus, the Commission may submit to those who deem it necessary to submit to the provisions of this Law by submitting a report on its financial liability even if it is a person of private law such as traders, businessmen and other groups of society in addition to the public official.

The third requirement

Penalty for graft offense

The crime of graft is considered a difficult criminal crime in terms of proof and therefore the task of issuing the appropriate punishment and conviction of the accused of this crime is not easy to prosecute due to the status of the perpetrator in this crime, whether social, political or security, as the categories covered by the law of gain The provisions of the project are often entities that have wide influence and high positions in the state and thus control matters, which makes it easier to hide the tools of crime and their effects and manipulate evidence in various ways, which makes it difficult for the competent authorities to investigate and judge to prove the charge Z public employee and punished.

The penalty in accordance with criminal jurisprudence is the material penalty prescribed in the Criminal Code for the protection of the interest of society in implementation of the judicial verdict against those found guilty of a crime and to prevent the prevention of further crimes by the offender himself or the rest of society.

The crime of graft, like other crimes, has been prescribed by the Penal Code as financial penalties, namely, fine and deprivation of liberty, namely imprisonment. The penalties for committing any crime represent the reaction of the society in general towards the offender for its actions contrary to the law and the prevailing social values. The Iraqi legislator specified in Article (15) of the Graft Law the original penalty. (51) Any person who is covered by article 1 of this law shall be liable to an unlawful gain, punishable by imprisonment for a term not exceeding five years, or by a fine or by both penalties.

While the Iraqi legislator in the law of the Commission on Integrity in force to the introduction of a relative fine in the punishment of this crime, which is commensurate in its gravity with the interest or damage caused by the commission of the crime without being restricted by the judge a minimum or higher penalty does not change the nature of this punishment as A penalty shall remain and shall not be converted into compensation in this case (1), through the text of Article (20) thereof, which states that (any failure or disability after being commissioned by the investigating judge to prove legitimate sources of increase in his money or that of his wife or children belonging to him Not commensurate with their resources shall be punished by imprisonment and a fine equal to the value of earning G. The project or one of these penalties shall be confiscated and the confiscation of the graft taking into account the penalties provided for in the other laws in force (52).

Thus, the legislator has made the amount of the fine imposed on the offender as a penalty for this crime equal to the amount obtained by graft.

Although the legislator has stipulated a penalty for this crime, it remains difficult to prove and this is evident on the ground through the scarcity of judgments and decisions related to graft crimes issued by the judicial authorities in Iraq.

Conclusion

At the end of this study, the researcher has reached a set of conclusions and recommendations that have been developed through our study of the subject of research:

Results

1. The crime of graft is a crime of a special nature that distinguishes it from other criminal offenses. Therefore, various legislation has been dealt with in a special law of this crime, often known as the law of graft, and sometimes this type of crime is called enrichment. The Iraqi legislator has followed this matter, where he devised a special law called the law of graft at the expense of the people No. 15 of 1958, which dealt with the provisions of graft as a crime punishable by law.

2 - The crime of graft has aroused legal jurisprudence and legal controversy even at the level of criminal justice in terms of the extent of its legitimacy and conflict with some of the basic provisions of the Constitution that it comes as an exception to the principle of origin in the accused innocence and thus emerged conflicting doctrinal views in terms of legitimacy and illegality of these the crime .

3 - Although the Iraqi legislator has criminalized the graft, but this did not prevent some of the weak souls from the exploitation of public office and political influence to harm public money and obtain illegal gain through the job and this failure in the application of the law due to several reasons from the point of view We considered perhaps the most important is the political situation witnessed in Iraq in the last periods after 2003, which was characterized by turbulence and lack of clarity in the political vision of decision-makers and weak law enforcement due to the spread of corruption in most of the joints of the state all these circumstances led to the failure to apply the provisions of the law of graft on the perpetrators of these the crime .

Recommendations

1 - We call on the Iraqi legislator to legislate a new law of graft to be as far as possible commensurate with the political reality witnessed by Iraq to be reinforced by real and concrete actions on the ground to reduce this phenomenon and its effects on society in general.

2 - We believe the need to tighten the penalty prescribed for the crime of graft to commensurate with the gravity of this crime, as it relates to the betrayal of the employee in the trust placed on him by members of the community to dispose of their money and the management of public affairs.

3 - We call on the Iraqi legislator to provide for the punishment of anyone who knew of the crime of graft and refrained from reporting, as is the case in most laws on graft, including the Egyptian lawmaker, as it constitutes one of the negative crimes.

4 - The researcher believes the need to raise awareness of the public official in Iraq through the intensification of courses and seminars urging

the fight against administrative and financial corruption and encourage the employee to report cases of corruption as soon as it is known and provide full protection of the amount that most cases of failure to report come because of fear of oppression Therefore, the state must provide adequate protection for the amount of corruption crimes.

5 - Given the accession of Iraq to the United Nations Convention against Corruption, we call on the federal government and the authorities concerned with combating corruption to the need to benefit from the expertise provided by the organs of the United Nations General Authority in the fight against corruption, especially since Iraq is one of the countries most affected by the crimes of financial corruption in general and gain Project in particular to reduce this phenomenon and then eliminate it permanently.

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Revista de Ciencias Humanas y Sociales

Año 35, Especial No. 22 (2019)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.

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