

Legislative Shortcomings In Procedures For Seizing Public Funds Subject To Administrative And Financial Corruption Crimes In Iraqi Legislation

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Abstract:

Criminal policy in addressing administrative and financial corruption, in terms of legislation, is not limited to focusing only on the substantive aspect of criminal law by criminalizing acts considered corruption cases or amending their regulation. There must also be equal attention to the procedural aspect of criminal law by identifying its shortcomings, addressing them, and developing them in line with the evolving methods of committing crimes. This is because effective regulation of criminal procedures is one of the most influential factors in combating corruption. However, the practical application of some existing criminal procedures against corruption crimes has revealed certain shortcomings in their provisions, given the developments in methods of committing corruption crimes, their spread, and their extensive impacts. Due to the nature of these crimes, there has emerged a need to reconsider the regulation of procedures required for their investigation to limit their effects on public funds. Moreover, some necessary criminal procedures that play an important role in seizing public funds are not included in the current Iraqi legislation. Although the Iraqi legislator, in its keenness to fulfill international obligations and confront corruption crimes, enacted the Integrity Commission Law, incorporating within some of its provisions new procedural rules consistent with the Commission's work some of which were not previously recognized in the Code of Criminal Procedure nevertheless, the Integrity Commission Law still suffers from legislative shortcomings in the procedural aspect regarding criminal procedures for seizing public funds. There are procedures that it does not regulate at all despite their importance in enhancing the Integrity Commission's work in addressing administrative and financial corruption and preserving public funds.

INTRODUCTION

Precautionary criminal procedures for seizing public funds subject to corruption are among the means required during investigation stages, whether at the preliminary, primary, or judicial investigation phase. They are considered one of the important means to protect public funds subject to corruption, aiming to deprive the accused of the opportunity to smuggle or dispose of such funds. During investigation stages, various procedures are undertaken by the authorities conducting the investigation, whether by the investigator, the judge, or the competent court, to uncover the truth regarding the committed act. Throughout these stages, a set of evidences emerges concerning the corruption crime and its proceeds or criminal returns, necessitating the adoption of precautionary measures towards the public funds subject to corruption. Although the effective Iraqi Code of Criminal Procedure includes a set of precautionary procedures, the regulation of some of them suffers from legislative shortcomings that, under their current form, cannot provide the necessary protection for public funds. Moreover, there are some precautionary procedures that the legislator did not address in either the Code of Criminal Procedure or the Integrity and Illicit Gain Commission Law, despite their importance in preserving such funds, which constitutes a legislative shortcoming regarding these procedures. Precautionary procedures for public funds are divided into two types: the first is direct criminal procedures on funds subject to corruption, and the second is indirect criminal procedures on public funds, yet their objective remains the same, namely to preserve public funds from waste and loss. This is what we seek to clarify in this research.

First: Importance of the Research

The topic of studying legislative shortcomings in procedures for seizing public funds subject to corruption crimes is considered one of significant importance, given its aim to clarify the effectiveness of the current procedural criminal law regarding the seizure of public funds involved in corruption crimes, and the extent to which its existing rules can provide the necessary protection for the protected interests that the legislator intended to safeguard. The effectiveness of any legislation primarily depends on its capacity to comprehend the facts falling within its scope of application, which necessitates conducting studies and

periodic follow-up on the effects resulting from the practical application of the relevant rules of procedural criminal law, and on what criminal policy requires in combating corruption by updating criminal law in accordance with its orientations. This is done through reviewing the provisions of procedural criminal law related to procedures for seizing public funds to verify their effectiveness and identify the areas of legislative shortcomings within them.

Second: Research Problem

The problem of this study revolves around the legislative shortcomings in the procedural provisions of Iraqi procedural criminal law regarding the seizure of public funds subject to administrative and financial corruption crimes, in addition to the ineffectiveness of some of its provisions in practical application due to their incompatibility with the developments that have occurred in the facts subject to regulation. Iraqi procedural criminal legislation still lacks fundamental criminal procedures aimed at providing the necessary protection for public funds. Based on the above, we have chosen this study to be entitled “Legislative Shortcomings in Procedures for Seizing Public Funds Subject to Administrative and Financial Corruption Crimes in Iraqi Legislation,” in order to identify the areas of legislative shortcomings in Iraqi legislation on this subject. Accordingly, the problem of this study revolves around “the legislative deficiency in Iraqi legislation regarding criminal procedures related to seizing public funds, and in light of this legislative shortcoming, to what extent are the current criminal procedures effective in providing such protection?”.

Third: Research Objective

This study aims to shed light on the areas of legislative shortcomings within procedural criminal law regarding criminal procedures related to seizing public funds subject to corruption crimes, which have not been regulated by the Iraqi legislator in the Code of Criminal Procedure or the Integrity and Illicit Gain Commission Law, on one hand, and on the other hand, to identify the shortcomings in the criminal procedures regulated in the aforementioned laws whose current regulation does not align with the criminal policy for seizing public funds. The study also seeks to call upon the legislator to address these shortcomings through proposals and solutions presented by this study, in order to ensure the effectiveness of criminal law in protecting public funds and preserving them from waste and loss.

FOURTH: RESEARCH METHODOLOGY

In this study, we will adopt the inductive, analytical, and comparative methods, so that we can examine the provisions of the amended Iraqi Code of Criminal Procedure No. (23 of 1971) and the amended Integrity and Illicit Gain Commission Law No. (30 of 2011) related to the regulation of procedures for seizing public funds and other relevant provisions, and attempt to analyze their essence and contents in a manner that clarifies the areas of legislative shortcomings, whether as deficiencies affecting them or as procedures not included within the scope of the legal text. The study will also identify the flaws and shortcomings contained in these provisions or the two aforementioned laws, and then adopt the comparative method to support our views in addressing these shortcomings.

First Research

Direct Criminal Procedures for Seizing Public Funds

Investigations into administrative and financial corruption crimes are conducted in accordance with the general rules stipulated in the Code of Criminal Procedure and the Integrity and Illicit Gain Commission Law. Through practical reality in investigating corruption crimes, several aspects of legislative shortcomings have emerged, some resulting from the lack of regulation of certain fundamental and important criminal procedures aimed at directly seizing public funds subject to corruption crimes, and others resulting from the ineffectiveness of applying some existing criminal procedures due to the legislative shortcomings in their regulation, despite the fact that their effective application contributes to preserving public funds. Based on the above, this section will address the most important direct precautionary procedures required in the investigation of corruption crimes to seize public funds, through two topics. The first topic will address the mandatory seizure of the accused’s funds in corruption crimes, while the second topic will address the suspension of the act subject to the corruption crime during investigation and trial.

First Topic

Mandatory Seizure of the Accused’s Funds in Corruption Crimes

Seizing the accused's funds is considered one of the direct precautionary procedures required in primary and judicial investigations into corruption crimes against public funds. It is one of the most important procedures that contribute to preserving public funds subject to corruption crimes, as it plays a role in restricting the owner's disposal, whether he is an accused or a suspect, during the investigation and at all its stages. Based on the above, this topic will be addressed in three sections. The first section will define the mandatory seizure of the accused's funds in corruption crimes; the second section will clarify the legal regulation of the seizure of the accused's funds in corruption crimes; and the third section will be devoted to the legislative shortcomings affecting the legal regulation and the method of addressing it.

Section One

Definition of Mandatory Seizure of the Accused's Funds in Corruption Crimes

In this section, we will address the definitions given regarding the seizure of the accused's funds in corruption crimes and then clarify the justifications that led us to call for making the seizure mandatory in certain corruption crimes.

First: Definition of Mandatory Seizure of the Accused's Funds in Corruption Crimes

The Iraqi legislator did not define the mandatory seizure of funds related to corruption, nor the seizure of the accused's funds in crimes involving movable or immovable property, in the Code of Criminal Procedure. However, some jurists and writers in the field of criminal law defined the seizure of the fugitive accused's funds as "a procedure issued by a legally competent authority that prevents a fugitive accused of committing a felony, when it is impossible to arrest him, from disposing of his movable and immovable property in order to force him to surrender himself." Others defined the seizure of the accused's funds in general as "a necessary precautionary legal procedure by which the accused is prevented from disposing of his funds to guarantee the rights of the crime's victim."

It is clear from the above definitions that seizure aims either to force the accused to surrender himself if he is a fugitive thus constituting a means of coercion or compulsion to make him present himself before the competent authority or to prevent the accused from disposing of his funds until the case is resolved, thus serving as a means of restricting the accused's freedom in disposing of his funds. This makes its nature precautionary for both purposes mentioned. There is no independent definition of the mandatory seizure of funds subject to corruption; thus, this topic is considered among the emerging issues required by criminal policy to combat corruption.

Second: Justifications for Mandatory Seizure in Certain Corruption Crimes

There are several justifications or reasons that led us to call for making the seizure mandatory on the accused's funds in corruption crimes against public funds, which are as follows:

1. Mandatory seizure of the accused's funds in corruption crimes against public funds contributes to limiting their smuggling or disposal in bad faith through any form of property transfer, thereby facilitating the enforcement of restitution, confiscation, and compensation judgments for damages caused to public funds, whether the accused is a fugitive or present. This aligns with the rationale behind regulating seizure in relation to crimes involving public funds or their equivalent.
2. Granting investigative authorities the power to request the imposition of mandatory seizure on the accused's funds in corruption crimes contributes to preserving the funds subject to the crime, especially in preliminary investigations before initiating a complaint. Often, the suspect disposes of the funds involved in corruption crimes as soon as he hears that investigations are being conducted against him. This is particularly relevant in the preliminary investigations carried out by the Integrity Commission in informational corruption cases, as these are usually accurate investigations accompanied by evidence proving that there are funds related to corrupt acts that require seizure, since it is the authority specialized in combating corruption.

Section Two

Legal Regulation of Seizing the Accused's Funds in Corruption Crimes

The Iraqi legislator addressed two types of seizure in the Iraqi Code of Criminal Procedure. The first type is the seizure of the fugitive accused's funds in felony crimes, as a means aimed at forcing the accused to surrender himself when it is impossible to execute the arrest warrant. The second type is the seizure of the accused's funds in specific types and categories of crimes for which the legislator deemed it necessary to impose seizure on the accused's funds, namely felonies involving movable or immovable property, crimes affecting internal or external state security, and crimes against state funds or their equivalent. The

latter type of seizure is issued either by a decision of the investigating judge or the court on its own motion or upon request from the public prosecution or the competent administrative authority. Upon examining the provisions regulating the seizure of the accused's funds, particularly paragraph (a) of Article (184), we find that corruption crimes against public funds fall within the scope of application of the above paragraph, as they are considered among the crimes against state funds or their equivalent. Thus, the judiciary can rely on it to seize the accused's funds, whether on its own motion or upon request from the public prosecution or the competent administrative authority. This is the focus of our discussion in this section. In this regard, a question arises: is the seizure regulated in the current Code of Criminal Procedure considered mandatory or discretionary?

Some jurists and researchers argue that seizure is divided into discretionary seizure, which is subject to the discretion of the investigating judge or the court, and mandatory seizure based on a request submitted by the public prosecution or the competent administrative authority. We believe that the seizure regulated in the Code of Criminal Procedure in Articles (121-122) and (183-186) is primarily discretionary, as it is subject to the discretion of the investigating judge or the court in imposing it, but it becomes mandatory if the public prosecution or the competent administrative authority requests its imposition in the crimes referred to in the above provisions. However, there is no provision in the Code of Criminal Procedure that obligates the judge or the court to automatically impose mandatory seizure on the accused's funds in corruption crimes. Mandatory seizure is that which does not leave its imposition to the discretion of the judge or the court but is imposed mandatorily upon fulfillment of its conditions, except for what is stated in Article (143) of the Code of Criminal Procedure, which regulates mandatory seizure of the accused's funds in crimes punishable by death, and this is within the jurisdiction of the competent court only. Additionally, the Iraqi legislator in the Code of Criminal Procedure granted competent administrative authorities the power to request seizure before filing a complaint and granted them a period of three months to file the complaint from the date of seizure. Despite the legislative wisdom the legislator intended from this authorization to impose seizure, we believe that this procedure aligns with the powers of the public prosecution and its role in representing public interest, but granting this power to administrative authorities has no justification. It would have been preferable for the legislator to require these authorities to submit the seizure request through the public prosecution to examine and scrutinize the evidence supporting the seizure request before requesting its imposition.

Section Three

Legislative Shortcomings Affecting Legal Regulation and Methods of Addressing Them

The legal regulation of the mandatory seizure of the accused's funds in corruption crimes suffers from legislative shortcomings represented by a lack of provisions regulating it in the Code of Criminal Procedure. Therefore, we will clarify the areas of legislative shortcomings affecting it and then outline the method of addressing them.

First: Legislative Shortcomings Affecting Legal Regulation

The legal provisions regulating the seizure of the accused's funds in corruption crimes suffer from the following legislative shortcomings:

1. Shortcoming in the Authority Requesting Seizure

Articles (183-186) of the Code of Criminal Procedure limited the authority to request seizure to the public prosecution and the competent administrative authorities, without granting the investigative authorities the power to request seizure, despite their specialization in investigating the subject matter at all stages of investigation. Moreover, they are more knowledgeable about seizure procedures and when its imposition is necessary, and they do not resort to procedures that restrict individuals' freedom to dispose of their property unless they have evidence supporting the seizure request.

2. Shortcoming in the Mandatory Nature of Seizure

The main justification that led the legislator to regulate the seizure of the accused's funds, whether present or fugitive, in crimes involving public funds or their equivalent, is to prevent the accused from disposing of or smuggling those funds. However, the legislator left the imposition of this procedure to the discretion of the judiciary, the public prosecution, or the competent administrative authorities in requesting its imposition. The judiciary may fail to impose seizure, or the public prosecution or administrative authorities may fail to request it, thus negating the purpose of its legislation. The legislator did not require the judge or court to impose mandatory seizure automatically in crimes against public funds despite their

seriousness but rather made it mandatory only upon request. It is illogical to assume that administrative authorities are more knowledgeable than the judge in determining whether the accused's funds should be mandatorily seized.

Second: Method of Legislative Treatment

Legislative treatment requires amending the provisions regulating the seizure of the accused's funds in the current Code of Criminal Procedure to include the following:

1. Making seizure mandatory on the accused's funds in corruption crimes involving public funds or in crimes that result in damage to public funds, whether the accused is present or fugitive. Examples include, but are not limited to, embezzlement and related crimes, illicit gain crimes, conflict of interest crimes, and other crimes involving public funds that cause waste or damage.
2. Granting the competent investigative authorities the power to request seizure, whether at the preliminary investigation stage before initiating a complaint or at all stages of the case after initiation, similar to the legislator's approach in the Anti-Money Laundering Law, which granted the Anti-Money Laundering Office the authority to request seizure at all stages of the case or even before filing a complaint by three months. This is because investigative authorities, when requesting seizure, would have reached a set of evidences through investigation that support the seizure request. This approach aligns with the practice of many countries' legislations specializing in combating corruption.

Second Topic

Suspension of the Act Subject to Corruption Crime during Investigation and Trial

The majority of administrative and financial corruption crimes focus on large investment projects, tenders, and auctions executed with substantial amounts of money. Those who seek to benefit from these activities by virtue of their position, responsibility, or membership in various committees overseeing and implementing these activities are targeted. When legal procedures are taken against employees or public service officials for violations that caused waste or damage to public funds by virtue of their work, these legal procedures are not accompanied by precautionary measures taken by the competent investigative authorities to freeze the funds related to the works, contracts, or expenditures involved in the corruption crime. The work continues without suspension, nor is the disbursement of funds halted until the investigation is resolved, even in the presence of violations indicating suspicions of corruption. Based on the above, this topic will be addressed through three sections. The first section defines the suspension of work subject to corruption crimes. The second section clarifies the legislative shortcomings affecting the legal regulation of suspending work subject to corruption crimes. The topic concludes with a third section addressing the legislative treatment method of the shortcomings related to the suspension procedure.

Section One

Definition of Suspension of Work Subject to Corruption Crimes

In this section, we will clarify the definitions given regarding the suspension of work subject to administrative and financial corruption crimes legally and jurisprudentially, if any exist. Then, we will discuss the justifications necessitating the regulation of suspension of work as a mandatory procedure aimed at preserving the funds involved in corruption crimes from waste or damage.

First: Definition of Suspension of Work Subject to Corruption Crimes

The Iraqi legislator did not address the definition of suspension of work related to financial crimes in the penal laws, including the Code of Criminal Procedure or the Integrity and Illicit Gain Commission Law. Nor have we found any definition by jurists, writers, or researchers within the sources we reviewed. Therefore, suspension of work in corruption crimes can be defined as "a judicial procedure by which activities, works, contracts, or disbursements suspected of corruption are stopped or suspended for a specified period or until the criminal case is resolved, provided that there is convincing evidence supporting the suspicion of corruption."

Accordingly, suspension of work subject to corruption crimes is an investigative procedure taken during the preliminary or judicial investigation phase, when it is discovered that the work or financial activities in a particular institution have a suspicion of corruption that can be remedied or its effects mitigated by suspending the work for a defined period until financial or technical auditing is conducted either by the Financial Control Bureau or by experts selected by the judge or court.

This suspension may include stopping the execution of works, disbursements, or halting the completion of contractual procedures or certain deals in which the state is a party or beneficiary, if it is proven that

their signing resulted from corruption, favoritism, abuse of influence, or was executed unlawfully. In some cases, corruption may be rampant within a company or institution, leading to a decision to suspend certain financial or commercial activities or to suspend all its operations until investigations are completed. Suspension of work is considered a precautionary measure directed directly at activities and funds belonging to the state, aimed at preventing their waste and avoiding the damage that would befall them.

Second: Justifications for Legislating the Suspension of Work Subject to Corruption Crimes

Suspending work is an important procedure considered a preventive measure that contributes to mitigating the effects of corruption before they occur. In addition, there are several other justifications calling for regulating this procedure as mandatory in corruption crimes involving public funds, including:

1. Reducing the repercussions of corruption in the work subject to suspicion, restoring integrity and transparency in administrative or economic work. Moreover, it helps halt corruption-related activities and highlights manipulation and violations occurring within institutions, thereby contributing to exposing those involved in such crimes.
2. Protecting state funds from waste and damage resulting from corruption by suspending suspicious activities, disbursements, or projects, and halting activities associated with corruption. It also helps mitigate the effects of corruption crimes on public funds by preventing the continuation of damages that illicit activities may cause if they proceed.
3. Contributing to awarding government contracts in a legal and honest manner, free from bribery, mediation, and favoritism, as such contracts would be subject to suspension and scrutiny if executed through illegal means.

Section Two

Legislative Shortcomings Affecting the Legal Regulation of Suspension of Work Subject to Corruption Crimes

The Iraqi legislator has not regulated the procedure of suspending work during the investigation of corruption crimes, whether discretionary or mandatory, in the Code of Criminal Procedure or the Integrity Commission Law. There is no provision granting the investigating judge or competent court the authority to suspend work related to the crime in general or specifically to corruption crimes during investigation stages, despite the importance of this procedure for preserving public funds, as it is a measure that directly targets the funds involved in corruption. Furthermore, limiting investigative procedures to the offender or accused does not prevent the continuation of work or disbursements, as the accused may be replaced by another member or committee to continue completing the work, causing damage to public funds despite the violations committed without any protective measure. This constitutes a legislative shortcoming represented by the absence of a provision granting the judge or competent court the authority to suspend work subject to corruption crimes.

Section Three

Legislative Treatment Method for the Shortcomings Related to the Suspension of Work Procedure

Legislative treatment of the shortcomings in the Code of Criminal Procedure concerning the suspension of work, represented by the absence of a provision regulating suspension, requires the introduction of a legal text either in the Code of Criminal Procedure or the Integrity and Illicit Gain Commission Law according to the legislator's discretion that includes the following:

1. Obliging the investigating judge and the competent court to have the authority to suspend work, contractual procedures, financial activities, disbursements, or funds involved in financial crimes for a specified period or until the case is resolved, if there is convincing evidence or proof of suspicion of corruption or legal violations.
2. Suspension of work upon the request of the public prosecution, the Integrity Commission, or any other competent investigative authority when there is convincing evidence of suspicion of corruption in the execution of the work, procurement process, or disbursement, similar to what some anti-corruption legislations in other countries have adopted.
3. Regulating the procedures to be taken in cases of suspected corruption or manipulation in tenders, bids, disbursements, or others, such as auditing the work, contract, procurement, or expenditures during the suspension period by the Financial Control Bureau or specialized experts selected by the judge or

court. If it is found that no violations accompany the work, the suspension or freeze is lifted; otherwise, the suspension or freeze remains until the case is resolved.

Second Topic

Indirect Criminal Procedures for Preserving Public Funds Subject to Corruption

The subject of preserving public funds involved in corruption crimes is not limited to the direct precautionary procedures previously mentioned. There are indirect precautionary procedures whose regulation contributes to the preservation of public funds and provides necessary protection. Criminal policy in most countries' legislations has developed regarding alternatives to criminal prosecution or punishment aimed at protecting public funds, including the introduction of investigative procedures intended to trace public funds for the purpose of seizure and recovery. However, we find no legislative steps by the Iraqi legislator in this regard to keep pace with modern criminal policy developments, given their impact on protecting public money and the community's public interest. Accordingly, this topic will be divided into two sections: the first addresses reconciliation with the accused in corruption crimes involving public funds, while the second focuses on parallel financial investigations related to corruption crimes.

First Section

Reconciliation with the Accused in Corruption Crimes Involving Public Funds

The philosophy of criminal legislation tends to create methods and alternatives whereby the criminal case or the prescribed punishment for corruption crimes is terminated in exchange for the state recovering its funds. This does not imply the state's complete abandonment of its authority to impose punishment and retribution on the offender, but rather the termination of the criminal case in a way that helps shorten litigation procedures while simultaneously preserving public funds, which positively reflects the public interest more than imposing punishment. Therefore, the legislator must pursue all means that ensure protection of public funds without limiting itself to criminalization and punishment. Instead, it must legislate criminal procedures that help preserve those funds and overcome obstacles facing the enforcement of recovery judgments. This necessitates the legislator authorizing reconciliation procedures with perpetrators of corruption crimes involving public funds in return for their restitution or compensation to the state for damages incurred, provided that reconciliation is organized under strict conditions and procedures. Accordingly, this section will be addressed through three subsections: the first defines reconciliation with the accused in corruption crimes, the second discusses the shortcomings affecting its legal regulation, and the third is devoted to the legislative treatment approach.

Section One

Definition of Reconciliation with the Accused in Corruption Crimes

In this section, we will address the definition of the reconciliation procedure with the accused in the field of corruption crimes involving public funds, as well as the justifications that prompted us to advocate for its regulation.

First: Definition of Reconciliation with the Accused in Corruption Crimes

The Iraqi legislator did not define criminal reconciliation in the Code of Criminal Procedure nor in the Integrity Commission Law. However, doctrinal definitions vary regarding the meaning of criminal reconciliation. It has been defined as "a procedure that may be offered by the competent authorities, which the accused has the right to accept or reject; if accepted, the criminal case is terminated upon payment of the reconciliation amount without affecting the civil case." Others have defined it as "an agreement between the prosecuting authority and the accused that results in terminating the criminal proceedings, provided that the latter undertakes certain measures."

From these definitions, it is evident that criminal reconciliation is a form of consensual criminal justice, whereby the state's right to punishment is extinguished due to the termination of the criminal case subject to reconciliation. Through it, the social body relinquishes its right to pursue criminal proceedings against the offender in exchange for the agreed reconciliation, which has a legally binding effect, leading to the dismissal of the criminal case with the consent of the public prosecutor representing the state and the accused's agreement to return the funds involved in the crime or compensate the state for the damage incurred.

Criminal reconciliation is an unconventional system for resolving criminal disputes based on balancing the interests of the accused and society, prioritizing the public interest by foregoing criminal prosecution, shortening litigation procedures, and reducing the number of cases before criminal courts.

Second: Justifications for Advocating the Legislation of Reconciliation in Corruption Crimes Involving Public Funds

1. Due to the repercussions and ongoing demands from all members of society to hold perpetrators of corruption crimes involving public funds accountable ensuring justice against those offenders and the recovery of the state's misappropriated public money lengthy investigative procedures have, over time, deprived society of the sense that justice is being served. This paved the way for seeking an alternative procedure that enables the state to terminate the criminal case by imposing punishment consistent with the public's sense of justice regarding public funds and achieves the state's interest in resolving the broader criminal justice crisis, represented by a conditional reconciliation system requiring the return of public funds but subject to strict procedures.

2. Restorative justice, in general, refers to a system based on compensating the victim (the state) and repairing the damage caused to its funds instead of punishing the offender, which may have effects as severe as, or even more painful than, corporal punishment. Thus, recovering public funds reconciled with the accused, along with imposing an additional fine, serves as a deterrent against such crimes primarily motivated by financial gain. The restorative justice system is not limited to compensating the victim but also contributes to rehabilitating offenders by allowing them to participate in correcting their mistakes and behaviors in a manner that does not negatively affect recidivism. Consequently, reconciliation spares the offender and their family the hardship of imprisonment, giving the offender an opportunity for repentance or return to the right path. This is only possible through the establishment of a restorative justice system (criminal reconciliation), granting both parties the right to amicably settle within the framework of the law, and avoiding the expenses arising from enforcing custodial penalties on the convicted, in addition to the public funds wasted.

3. The reconciliation system contributes to the swift recovery of state funds that may fail to be retrieved through ordinary litigation, whether before international or local courts, because perpetrators of corruption crimes often have full knowledge of legal loopholes enabling them to evade legal accountability and avoid evidence that could trace those funds, their locations, or their methods of disposal. Offenders may also store funds in places known only to themselves, thereby hindering recovery through custodial sentences. Reconciliation with the offender may aid the state in recovering these funds, thereby preserving the state's rights in public funds and ensuring their restitution. Moreover, this reduces the burdens and costs of litigation processes away from traditional procedures, saving the substantial expenses borne by the public treasury due to the complexity and difficulty of conventional legal processes.

Second Branch

Legislative Deficiency Affecting the Legal Regulation of Reconciliation

The Iraqi legislator did not address the reconciliation procedure within the criminal procedures organized by the Code of Criminal Procedure nor in the Integrity Commission Law. This represents a legislative deficiency characterized by the absence of a specific provision regulating the reconciliation procedure in corruption crimes involving public funds. Meanwhile, reconciliation is implicitly regulated in certain special laws with limited temporal scope, notably amnesty laws that act as implicit reconciliation between the public interest and the accused. The most recent of these is Amnesty Law No. (27 of 2016) as amended, which, in paragraph (tenth) of Article (4), specifies crimes excluded from the law namely embezzlement, theft of state funds, waste of public money, and financial and administrative corruption crimes unless the defendant or convicted person repays the public funds owed by means of a settlement with the injured party ensuring the recovery of public money, with full repayment required.

Despite the implicit treatment of reconciliation in this law, the legislator's position was neither clear nor explicit. Several observations can be made regarding the Iraqi legislator's policy in the aforementioned Amnesty Law concerning reconciliation:

1. The legislator referred to reconciliation using the term "waiver," stating that "the waiver of the legal representative of the public right is not required." It is legally known that criminal reconciliation differs from waiver in several respects. In waiver, the accused's acceptance is neither required nor conditional for its effect in terminating the criminal case, whereas reconciliation requires the accused's acceptance

and repayment of the owed public funds to have effect in terminating the criminal case. Waiver is limited to complaint-based crimes as defined by the Iraqi legislator in Article (3) of the Code of Criminal Procedure, punishable by imprisonment for one year or less, or a fine; if the crime is punishable by more than one year, reconciliation is only accepted with the judge's or court's approval. Conversely, reconciliation applies to public funds crimes and others within the legal scope defined by the applicable regulation. Moreover, repayment of funds is an essential element of reconciliation, as its effect only occurs when the accused or convicted repays the funds; hence reconciliation is compensatory. Waiver, however, does not require compensation and may result from a settlement between disputants.

2. The legislator did not specify in the Amnesty Law the competent authority to receive requests for recovery of public funds from the accused or convicted, nor the authority that determines the compensation to be paid, whether it is administrative, judicial, or hybrid in nature. The law only mentions settlement procedures with the injured parties or in accordance with the Government Debt Collection Law No. (56 of 1977) as amended, the Seizure Law No. (31 of 2015), or any other law replacing them, without specifying the authority adjudicating such settlement. It is legally questionable to grant this significant authority to the entity to which the accused belongs, especially given potential interference and facilitation when the accused holds a high position within that entity. It would have been more appropriate for the legislator to form a committee outside the accused's affiliated entity to estimate the amount of funds to be returned or the compensation to be paid.

From the above, it is evident that the legislator addressed reconciliation implicitly in the aforementioned Amnesty Law without encompassing it within criminal procedures that realize criminal justice a practice that is undesirable given modern developments in criminal policy.

Third Branch

Legislative Approach to Addressing the Deficiency

In light of the deficiencies affecting the Code of Criminal Procedure and the Integrity Commission Law regarding reconciliation in corruption crimes involving public funds, the legislator must regulate the criminal reconciliation procedure by introducing a provision in either the Code of Criminal Procedure or the Integrity and Anti-Corruption Commission Law according to the legislator's discretion, including the following:

1. Organize the reconciliation procedure for all crimes involving public funds, including corruption crimes; thus establishing a provision that permits reconciliation with the accused or convicted person under strict and precise procedures that prevent repeat offenses. This would be an exception to the general rule of proceeding with criminal prosecution in such crimes, making reconciliation an alternative method for the termination of criminal proceedings. This approach aligns with the legislative philosophy adopted by many countries concerning alternatives to criminal prosecution or punishment.

2. Explicitly define the substantive and temporal scope of application. Regarding substantive scope, the law should specify or describe the crimes eligible for reconciliation according to their nature or the subject of the offense, or limit it to certain cases as specified by the legislator. Regarding the temporal scope, the law should specify the stages of the criminal proceedings during which reconciliation may be applied and produce its legal effect. Ideally, reconciliation requests should be accepted at all stages, including after the issuance of a final judgment, since the rationale for legislating reconciliation remains the same regardless of the stage of the criminal process. The legal effect of reconciliation should correspond to the stage at which it occurs: if before judgment, it results in termination of the criminal proceedings; if after judgment, it results in suspension of the sentence execution without affecting the previous procedures before reconciliation.

3. Establish an independent high-level committee composed of representatives from the Supreme Judicial Council, the Public Prosecution, the Federal Integrity Commission, and the Federal Board of Supreme Audit to review reconciliation requests from accused or convicted persons. This committee would assess the value of funds to be returned or compensation for damages caused to public funds by the accused's actions, either by its own members or by appointing an expert committee for this purpose. After completing its procedures, the committee would submit the reconciliation request along with its decision to the court adjudicating the case involving the public funds subject to reconciliation. This ensures no leniency or negligence toward the accused or convicted.

4. Consider reconciliation as an aggravating circumstance if the reconciled individual commits another corruption offense after benefiting from reconciliation. Also, prohibit them from participating in political or administrative work, such as running for elections, founding political parties, holding any executive or administrative position, chairing or membership in supervisory or oversight committees, or engaging in purchasing activities. In all cases, they must be barred from any authority involving disbursement of funds, procurement, or any financial-related action, consistent with the approach adopted by the Iraqi legislator in the second amendment to Amnesty Law No. (27 of 2016).

Second Requirement

Parallel Financial Investigation of Corruption Crimes

The parallel financial investigation is a newly introduced procedure in the field of combating money laundering. It involves investigation, evidence gathering, and auditing the financial status of the perpetrator of a specific category of crimes. The objective is to uncover the proceeds of the crimes under investigation and subsequently trace them for seizure and confiscation before the perpetrator can dispose of them. Due to the rapid increase in corruption crimes and other financial crimes in Iraq, it has become necessary to seek effective solutions that assist in investigation and inquiry of most financial crimes, whether stemming from corruption or other financial offenses. One of these solutions is the establishment of unified procedures for parallel financial investigation and forming a joint investigation and auditing team from relevant institutions specialized in financial crimes under judicial supervision.

This requirement will be addressed in three branches: the first branch defines the parallel financial investigation; the second branch reviews the legal framework regulating it; and the third branch discusses the legislative shortcomings of the current regulation and proposes legislative solutions.

First Branch

Definition of Parallel Financial Investigation

The Iraqi legislator has not defined parallel financial investigation in the Code of Criminal Procedure, nor in criminal laws including the Anti-Money Laundering and Counter-Terrorism Financing Law. As for doctrinal definitions, they are scarce due to the novelty of the subject. It has been defined as “a financial investigative procedure conducted by the investigating judge in parallel and simultaneously with any traditional criminal investigation or money laundering crime related to an original crime believed to be connected to financial proceeds.” Another definition describes it as “a financial examination of a monitored criminal activity aimed at identifying the network, the degree of criminality, and establishing evidence that can be presented in criminal proceedings, ultimately to identify and trace the proceeds of the crime for seizure and confiscation.”

From the above definitions, it is clear that parallel financial investigation is a preliminary financial investigative procedure conducted simultaneously with ordinary criminal investigative procedures in certain crimes such as money laundering, terrorism financing, and corruption crimes. This means that parallel financial investigation is not independent or initiated based on a complaint or report, but rather results from opening a new sub-file against the perpetrator or accused in the original case. It is conducted in parallel to the traditional preliminary criminal investigation to search for crime proceeds if any, their location, and linking evidence supporting their connection to that crime or another. The process involves tracking the financial proceeds of the original crime by monitoring any increase in the assets of the accused, their spouse, children, or related persons whether in bank accounts, real estate, vehicles, or gold jewelry. If evidence exists, it is presented to link those financial proceeds to the original crime, and legal procedures are taken against the accused for another crime, often money laundering, as established by the parallel financial investigation.

The scope of parallel financial investigation is not limited to money laundering crimes alone but extends to cover most financial crimes, such as corruption, human trafficking, organ trafficking, theft, drug trafficking, arms trafficking, and other crimes suspected to be sources of illicit funds.

The parallel financial investigation holds significant importance in several aspects, including identifying the movement of funds, their ownership, and the parties involved in concealing them. It determines the motives and connections between persons related to the accused or suspect, uncovering all participants in the criminal activity from which those funds were derived. Moreover, it monitors the proceeds of the crime subject to the criminal investigation and helps reveal other crimes related to the investigated crime

or the perpetrator of the criminal activity. It also identifies suspects, witnesses, victims, and the means and methods used in the crime.

Additionally, it contributes to preventing organized crime and combating all forms of organized criminal activity. It serves as a crucial safeguard to prevent the flight of money obtained by the perpetrator from the original crime. Therefore, investigative procedures related to parallel financial investigation are indispensable in the field of financial crimes generally and corruption crimes specifically, ensuring that proceeds from such crimes are not smuggled or hidden. Delays in investigative procedures in the original case may lead to the smuggling or concealment of such funds, making their recovery difficult. Thus, parallel financial investigation is a proactive measure employed by investigative courts when initiating investigations into original financial crimes. It involves tracing the fate of the money obtained by the perpetrator from the crime and determining whether this has resulted in a money laundering offense. This includes searching for the suspect's assets and comparing the findings of investigations with the suspect's declared legitimate income when the suspect denies disposing of the proceeds of the crime. If it is established that the suspect's assets have increased beyond what is consistent with their income sources, the suspect is required to prove the legitimacy of this increase, which may result from proceeds of the original crime or another offense. Failure to provide such proof constitutes evidence of money laundering, and legal measures are taken against the suspect independently of the original criminal case. However, parallel financial investigation faces difficulties and obstacles, particularly in cases of financial and administrative corruption committed by public employees or officials during their duties. These investigations are considered among the most challenging due to the nature, severity, and complexity of the crimes, as well as the careful organization involved. Furthermore, funds derived from these crimes are often smuggled outside the country, complicating efforts by investigative authorities to locate them. These funds move with complete secrecy, facilitated by highly organized and influential entities. The evolution of electronic money transfer methods across borders, domestic and international financial transfers, banking secrecy, and the merging of legitimate and illegitimate activities add to these challenges.

Parallel financial investigations also face difficulties in evidence collection at times because proceeds from the original crime can be easily hidden or registered under the names of others, such as friends, relatives, so-called front persons, or may be transferred to bona fide third parties. This requires investigative authorities in parallel financial investigation to exert greater efforts to track these funds, prove collusion or cooperation by third parties, and subsequently seize those funds in preparation for confiscation.

Branch Two

Legal Regulation of Parallel Financial Investigation

Procedures related to parallel financial investigation are considered recent developments in the field of preliminary investigations. The Iraqi legislator has not addressed the subject of parallel financial investigation in the Code of Criminal Procedure or any other law. In practice, parallel financial investigations are carried out by a committee formed by the Federal Supreme Judicial Council, the Judiciary Council in the Kurdistan Region, the Federal Integrity Commission, the Integrity Commission in the Kurdistan Region, the Federal Board of Supreme Audit, the Board of Supreme Audit in the Kurdistan Region, the Federal Ministry of Justice, the Public Prosecution in the Kurdistan Region, the Anti-Money Laundering and Terrorism Financing Office, the Federal Ministry of Interior, and the Ministry of Interior in the Kurdistan Region. This committee prepared a guide titled "Financial Investigation Procedures Guide," issued in January 2023 in Baghdad, which serves as a practical document and reference manual for financial investigation procedures followed by the Supreme Judicial Council and other relevant official institutions, aiming to establish unified bases for financial investigation and define financial investigation techniques.

This guide bases the conduct of parallel financial investigations on Article 27/First of the Iraqi Constitution, which states that public funds are inviolable and protecting them is a duty of every citizen. It also relies on various provisions of the Code of Criminal Procedure related to preliminary investigations. Based on this, a directive was issued by the President of the Supreme Judicial Council to the heads of appellate courts in Iraq to implement parallel financial investigation procedures. Regarding its scope, the guide states that its procedures may be applied to all crimes involving financial proceeds. Therefore, it is evident that the practical application of parallel financial investigation by the judiciary

and other competent authorities is based on the guiding document and directives issued by the Supreme Judicial Council.

Branch Three

Legislative Shortcomings Affecting the Legal Regulation and Method of Legislative Remedy

Having clarified the legal regulation of parallel financial investigation in the previous branch, this branch will address the legislative shortcomings affecting this regulation and then outline the method for legislative remedy.

First: Legislative Shortcomings of Parallel Financial Investigation in Corruption Crimes

The legislative shortcomings affecting the Code of Criminal Procedure regarding parallel financial investigation can be summarized as follows:

1. The Iraqi legislator has not dealt with the subject or procedures of parallel financial investigation in the Code of Criminal Procedure, as it is an innovative measure involving opening a sub-file and proceeding on a partial subject within an original case without a complaint or formal notification. There is no legal provision among those referenced by the guiding document that regulates or authorizes the judge to open a sub-file specifically for parallel financial investigation. This represents a clear legislative deficiency due to the absence of a governing text, rendering the procedures adopted for parallel financial investigation legally unsupported.
2. Given the current legislative gap, the guiding document does not clarify which investigative authority conducts the parallel financial investigation. Specifically, it does not clarify whether a sub-case deriving from an original case related to corruption is itself classified as a corruption case, and whether this would determine the jurisdiction of the Integrity Commission to investigate it or not.
3. The fate of the criminal case related to the parallel financial investigation in corruption cases remains unclear. In the event it is proven that there are illicit funds in the accused's possession, it is uncertain whether this would transform into a case of illicit enrichment, thereby becoming a corruption offense, or whether it would be treated as a money laundering crime.

Second: Method of Legislative Remedy

Parallel financial investigation is a recent procedure necessitated by the need to confront financial crimes in general and corruption crimes in particular. Therefore, it must be framed by clear and precise legal provisions regulating its procedures, as it affects rights and freedoms. Its regulation should not be limited to a special law; thus, a provision must be introduced into the Code of Criminal Procedure to organize the procedures of parallel financial investigation, since it is a general procedure applicable to multiple categories of crimes. The Code of Criminal Procedure contains the general procedures applicable to all crimes. Hence, the newly introduced provision should include the following:

1. Opening a sub-file in every case related to administrative and financial corruption, money laundering, terrorism financing, or any financial crime or crime involving funds whether public or private which will be investigated financially in parallel with the criminal investigation of the original case, following all preliminary investigation procedures and various investigative methods.
2. The offense uncovered through parallel financial investigation in corruption crimes shall be considered a crime of illicit enrichment, treated as a corruption case subject to all substantive and procedural rules applicable to corruption crimes. The Integrity Commission shall conduct parallel financial investigations in administrative and financial corruption crimes.
3. The judicial investigation and trial procedures for the illicit enrichment crime resulting from parallel financial investigation shall be completed regardless of the status or outcome of the original criminal case.

CONCLUSION

First: Conclusions

1. This study has revealed that the Iraqi legislator has not regulated the procedure of precautionary seizure on the assets of defendants in corruption crimes involving public funds. There is no provision in the Code of Criminal Procedure nor in the Integrity Commission and Anti-Graft Law that obliges the investigating judge or the court to automatically impose precautionary seizure in this regard. Furthermore, the Integrity Commission has not been granted the authority to request the seizure of the defendant's assets in corruption cases, whether before filing a complaint or during the preliminary and judicial

investigations, unlike administrative bodies that possess such authority. This is despite the fact that the Integrity Commission conducts preliminary investigations in corruption-related complaints.

2. The study also shows that the Iraqi legislator has not addressed the procedure of suspension from work related to corruption crimes in either the Code of Criminal Procedure or the Integrity Commission Law. No provision grants the investigating judge or the competent court the authority to suspend the defendant from their position pending the completion of the corruption investigation or the resolution of the case, even though suspension is a crucial preventive measure that helps mitigate the effects of corruption by safeguarding public funds before further damage occurs.

3. The study found that the Iraqi legislator did not deal with the reconciliation procedure within the framework of criminal procedures organized in the Code of Criminal Procedure for crimes in general, whether corruption-related or otherwise. The only exception is the implicit reconciliation regulation contained in amnesty laws, which essentially represent a tacit reconciliation between the public interest and the defendant. However, this regulation lacks detailed criminal procedural safeguards to ensure the achievement of criminal justice.

4. Furthermore, the study indicates that the Iraqi legislator has not regulated the subject of parallel financial investigation either in the Code of Criminal Procedure or in any other law. The practice of parallel financial investigation has relied on circulars issued by the Supreme Judicial Council and on a manual of financial investigation procedures prepared by a committee formed by the Supreme Judicial Council and other relevant authorities, serving only as a guiding reference. There is no legal provision underlying this manual that regulates or authorizes parallel financial investigation or permits a judge to open a subsidiary file for such an investigation. This legislative gap renders the procedures adopted under parallel financial investigations legally unsupported. Additionally, the guiding manual does not specify the investigative authority responsible for conducting parallel financial investigations. Regarding our research topic, the manual also fails to clarify the fate of criminal proceedings related to parallel financial investigations in corruption cases, whether singular or complex, particularly in situations where illicit funds are discovered in the defendant's possession specifically, whether such cases should be converted into unlawful gain cases under corruption jurisdiction, thus falling under the Integrity Commission's investigative authority, or be treated as money laundering offenses.

Second: Recommendations

1. We propose that the legislator amend Article (184) of the Code of Criminal Procedure to include a provision mandating precautionary seizure on the assets of defendants in corruption crimes involving public funds, or in cases where such crimes have caused damage to public money, whether the defendant is present or absconding. Furthermore, competent investigative authorities should be granted the power to request the imposition of such seizure either during the preliminary investigation before filing the complaint or at any stage of the proceedings after the complaint has been filed.

2. We urge the legislator to introduce a provision in the Code of Criminal Procedure regulating the suspension from work or financial disbursement during the preliminary or judicial investigation of corruption crimes, especially when there is a suspicion of corruption accompanying the execution, disbursement, contracting procedures, or financial activities. The Public Prosecution and the Integrity Commission should be empowered to request such suspension when there is convincing evidence of suspected corruption. During the suspension period, the work or disbursement should be audited by the Financial Control Board or experts appointed by the judge or court. If no violations are found, the suspension shall be lifted; otherwise, it shall remain in effect until the case is resolved.

3. We recommend that the Iraqi legislator regulate the criminal reconciliation procedure within the Code of Criminal Procedure, particularly with regard to corruption crimes involving public funds. This can be achieved by introducing a provision either in the Code of Criminal Procedure or in the Integrity Commission and Anti-Graft Law, according to the legislator's discretion, which includes the following:

a. Organizing the reconciliation procedure for all crimes involving public funds, including corruption crimes, by establishing a legal provision permitting reconciliation with the defendant or convicted party according to strict and precise procedures that prevent the recurrence of the crime.

b. Explicitly defining the substantive and temporal scope of application. The substantive scope should specify which crimes are eligible for reconciliation, while the temporal scope should define the stages of the case during which reconciliation can be sought to produce its legal effect. The effect of reconciliation

shall depend on the stage at which it occurs: if before judgment, it leads to the termination of the criminal case; if after judgment, it results in the suspension of the penalty execution only, without affecting prior procedures.

c. Establishing a high-level independent committee composed of representatives from the Supreme Judicial Council, the Public Prosecution, the Federal Integrity Commission, and the Federal Financial Control Board to consider reconciliation requests with the defendant or convicted party. This committee shall estimate the amount of money to be returned or the compensation for damage caused to public funds by the defendant's actions, either directly by its members or by appointing a panel of experts for this purpose. Upon completing its procedures, the committee shall submit the reconciliation request along with its decision to the court adjudicating the related public funds case, which will then issue a reconciliation decision.

d. Treating reconciliation as an aggravating circumstance if the reconciled party commits a corruption crime after benefiting from reconciliation, and depriving the reconciled party of political and administrative work. Under all circumstances, the reconciled party shall be denied any authority related to disbursement, procurement, or financial transactions, in line with the approach adopted by the Iraqi legislator in the second amendment to Amnesty Law No. (27 of 2016).

4. We propose that the Iraqi legislator introduce a provision in the Code of Criminal Procedure to regulate the procedures of parallel financial investigation, given that it is a general investigative procedure rather than one limited to specific crimes. This is because the Code of Criminal Procedure encompasses general procedures applicable to all crimes. The organizing provision should include the following:

a. Opening a subsidiary file for every case involving administrative or financial corruption, money laundering, or any financial crime, in which a parallel financial investigation is conducted alongside the criminal investigation of the original case, following all preliminary investigation procedures and various investigative methods.

b. Considering the crimes revealed through the parallel financial investigation in corruption cases as unlawful gain offenses, subject to the substantive and procedural provisions applicable to corruption crimes. The Integrity Commission investigators shall carry out the parallel financial investigation.

c. Completing the judicial investigation and trial procedures for the unlawful gain crime resulting from the parallel financial investigation regardless of the outcome of the original case.

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