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## Forms of Infringement on Public State Property A Comparative Study

Amera Ghazi Saleh<sup>1</sup>

### Abstract

*The legislator in both Iraq and Lebanon was keen to try to preserve the properties of their countries and remove the violations committed against them. The present study gains its importance from its topic, which addresses the comparison between two different legislative environments in Iraq and Lebanon, each of which has its own historical circumstances, as well as the large number of infringements on public state property. The problem of the study is summarized in the forms of infringement that occur on public state property despite the existence of legislation that guarantees its protection and the identification of its necessitating causes in terms of the lack of legal rules. The results of the study revealed the most important of which is the multiplicity and diversity of Iraqi legislation that dealt with the criminalization of acts that are described as encroachments on public state property and were given the necessary protection through other legislation, and their development during the time periods of the life of the Iraqi state after independence. As for the legislation in force in Lebanon that deals with most of the public property is from the time of the French Mandate, and not many legislations were issued regarding it after independence. Moreover, the Lebanese Constitution, which is considered the highest legislation in the state, did not mention public state property, but rather merely emphasized private property and the impermissibility of expropriating it except for the public benefit.*

**Keywords:** *Infringement, public property, Iraq, Lebanon*

### Introduction

The idea of state property appeared with the beginning of the transition of human society to the era of civil organization, its stability, and the emergence of the political organization that governs individuals, so that the ruling authority “whatever its form” may be able to carry out its responsibilities and its ability to manage the affairs of its subjects, for which it enacted the legislation that it specified and defined its purpose. They were protected, and public property was included in the ownership of the ruler to distinguish it from the ownership of individuals. With the development of societies and the emergence of modern states, legislation tended to divide property in the state into two categories: the first owned by the state, and the second owned by individuals. State property was divided into two parts: general and designated. For the public benefit of all without exception, such as roads, bridges, water lakes, rivers, beaches, government buildings of all kinds, and public parks, to name but not limited to, the second is private and includes property not classified as public property, and its ownership as a person by private law is for the benefit of the state for the purpose of exploiting it, investing it, and building an effective economic and social

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<sup>1</sup> College of Physical Education and Sports Sciences – Mustansiriyah University  
Email: [amera.gh.saleh86@gmail.com](mailto:amera.gh.saleh86@gmail.com)

policy given the possibility of disposing of it. As a result, each section of it was subject to a different legal system that regulates and protects it (Seligman, 1995).

## **Importance of the Study**

Public property is subject to very special protection controls, which are distinguished from other funds when they are encroached upon, due to their clear importance which they have acquired as they are considered the basis for the state carrying out its duties in the appropriate manner, and if the constitutions have made this protection constitutionally an obligation on both the state and citizens as a principle. In general, the ordinary laws are responsible for stipulating the rules for this protection, whether from a civil or criminal perspective, to ensure the continued allocation of these funds for the purposes of public benefit for which they were prepared. Thus, they are subject to the provisions of public law, and are characterized by special protection due to their role in achieving public benefit, and in the event of an outbreak of A dispute that the administrative judiciary is competent to consider (Merril, 2011); Therefore, the research gains its importance from the following:

- 1) Its topic deals with forms of infringement on public state property.
- 2) Comparison between two different legislative environments in Iraq and Lebanon, each of which has its own historical circumstances.
- 3) Frequent encroachments on public state property despite the existence of legislation that guarantees its protection.

## **The Problem of the Study**

State property is generally viewed as permissible, with no owner and therefore available to everyone, whether through misunderstanding or lack of intended understanding for the purpose of bringing an undeserved benefit, which requires addressing its legal status, the legislation to which it is subject, and the ways to dispose of it and use it so that it is not vulnerable to corruption. To attack it with the intention of owning it, or harming it, and based on that, the researchers attempts to address the problem represented by: forms of infringement occurring on public state property despite the existence of legislation that guarantees its protection and identifying its causes in terms of the deficiency of legal rules and the weak performance of the agencies specialized in managing and preserving it, especially since the public domain The state's revenue is basically allocated to serve the people directly or indirectly.

## **Aims of the Study**

The current research aims to achieve the following:

1. Disclosing ways to protect state property in accordance with the legislation in force in Iraq and Lebanon.
2. Explain the forms and methods of trespassing on public and private state property in Iraq and Lebanon.

## **Methodology**

The researchers relies on the historical method concerned with describing the events that occurred in the past in a qualitative manner that deals with monitoring, analyzing, discussing, and interpreting their elements, and relying on that description to comprehend the current reality and

anticipate its near and distant future trends. That is, it is the path that describes and records past facts and events. The past and studies, interprets and analyzes it on systematic and precise scientific foundations with the aim of arriving at results and generalizations that help in understanding the present in light of the past and predicting the future (Alyan and Ghoneim, 2000), and that is through presenting the Iraqi and Lebanese legislation concerned with identifying and defining public state property, in addition to the descriptive and analytical approach that presents a picture records current conditions and trends, and explains why certain situations exist and others do not; It allows researchers to study the relationships between variables, and reach specific results, in a quantitative or qualitative manner in terms of content and content during a specific period of time, or several periods, by describing the forms of infringement on public state property in Iraq and Lebanon, and their relationship, the regulating legislation and the work mechanism of the concerned authorities (Al-Thunaibat, 2011).

## **Study Framework**

The spatial research framework is determined by the Republic of Iraq and Lebanon, and the thematic framework is determined by the laws and legislation regulating public state property and its protection. It includes three sections: the first section is state property, the second section is Iraqi legislation regulating state property, and the third section is the Lebanese legislation regulating state property, in addition to a conclusion, proposals and recommendations.

## **Section One: State Property**

State property is divided into public and private property. The private property of the state does not differ from the property of individuals themselves and is usually subject to the same rules as civil law, and the ordinary judiciary deals with the consideration of relevant disputes. Public government property is subject to a different legal system and is regulated by other legal rules that fall within the scope of administrative law, and the state, through the management of its public property, such as roads, bridges, lakes, rivers, government buildings, and public parks, aims to achieve a public benefit accessible to everyone without exception by law or regulation (Huber, 2013).

## **The Concept of Protection of Public State Property**

The abstract vision of public ownership of the state stems from the fact that this is merely a means of exchanging benefits and strengthening relations between people. Therefore, it is a means and at the same time aims to achieve social justice among all individuals. Public property must be the property of all people or their groups, and the right to use it belongs to them without official power of attorney or exploitation by any person for himself, meaning that the use of property is subject to the general rule for all individuals, nation or to all members of a particular group, without the jurisdiction of the individual, and must not exceed this context, if his benefit does not conflict with the benefit of such persons, in which case it refers to the sharing of benefit by others on the basis of equality and justice, unless it excludes the benefit of any person from benefiting from others, because it is considered one of the necessities of life (Haddouri, 2009). So, they all have something in common. Therefore, based on what is stipulated in the legislation of most countries, the main features of the public domain can be concluded as follows:

1. What belongs to the state as a whole or its public companies, as well as what is established for the public interest.
2. To be protected by the state in the sense that the transaction, confiscation, disposition,

prescription or ownership is illegal.

Public property must be protected from actions that harm it or do not benefit it, because the probability of their occurrence there is high for the following reasons (Abdullah, 2005): Firstly: increasing the number of beneficiaries: most types of commons are intended for the benefit of all people, and this large number of beneficiaries creates an excellent opportunity for illegal acts such as misuse, damage, theft, etc. Secondly: an increase in the number of officials authorized to manage the public sphere: when the state, represented by the President of the Republic, the Prime Minister, the King, the Emir and other guardians, does not direct all companies due to their diversity, differences and enormous responsibilities, then agreement was inevitable. This increases the possibility that the public area will be exposed to harmful behavior, such as illegal spending in addition to spending for illegal purposes. And to limit the scope of legislation on public property. Thirdly: a lot of confusion accompanies the freedom of movement to alienate or confiscate government property due to the many suspicions that arise from doing something impermissible or impermissible.

### **Criminal Protection**

Criminal protection is usually not dealt with in legal texts consolidated in a single statute, but rather in separate texts, and public goods are not considered equal with regard to claiming this protection, as they differ from each other in this regard, and the protection clearly targets public goods that the public has access to (Lacey & Quick, 2003). To which, for example, are general methods and an attempt to legitimize protection in different forms for the element of the public domain addressed in the standard and to emphasize its protection account, as stipulated. With its importance, the extent of its impact on the public and the subsequent penalties stipulated in the applicable laws (Al-Halafi, 2008); For example, criminal protection is determined by laws that consider the interference of individuals with public property a criminal offense and provide for criminal liability for interference with it, they are:

- Administrative protection: exercised by the state through various forms of control and accountability in accordance with applicable rules. Administrative control over the public domain is exercised through public supervisors, as the main task of supervisors at work is to monitor their subordinates, verify their integrity, and carry out their work, which undoubtedly leads to preserving the public domain (Scott, 2018).
- Civil protection: The idea of prohibiting trespassing on public property arose from French laws prohibiting the disposal of crown funds, but the French Revolution abolished this principle and issued civil laws that set it with special rules. This general rule continued until the last legislator intervened and explicitly stated that it is not permissible to dispose of public property. This does not only apply to capitalist countries that accepted the traditional theory. The following are the most important civil protection laws (Barznji 2023):

First: Not permitting the disposal of public property: The purpose of this principle is to prevent all civil lawsuits related to assets in the public domain, whose ownership is transferred to private individuals and groups, or that have conflicting material interests in them, and to direct them to the public interest, that is, to the public interest.

Second: The impermissibility of seizure of public property: It is one of the basic rules necessary to protect the general public, to ensure the survival and continuity of its assignment for the benefit of the general public. This is due to the recognition of the impermissibility of transferring ownership of public goods from the administration's custody to others, and as

long as it constitutes the rule of the impermissibility of confiscating property. Public ownership is a principle that protects it from any implementation.

Third: It is not permissible to acquire public property by statute of limitations: The content of this provision aims to ensure the continuation of the beneficial use for which this property was allocated, so this rule applies to all property during the assignment period, and it is the most important means of protecting the public; Since this is a successful treatment against any possible attack on public property.

### **Forms of Infringement on Public State Property**

There is a misconception that public property of the state is allowed or there is no guardian for it and that the violation has no legal force and does not require any responsibility. Therefore, among the remains of various complaints there are many violations, abuses and irresponsible attitude. Corruption is justifications that are not based on the state's laws to protect public property, punish transgressors, and its ability to punish all violators. Therefore, the investigator tries, within the limits of his capabilities and the subject of his investigation, to observe the forms of disruption of public order and the emerging mechanisms to eliminate and separate these violations. The sanctity of property is more stringent than the sanctity of private money. (Maguire, 2012), this is due to the large number of related rights and the large number of debts corresponding to them, and the crimes of commons are many in their forms and manifestations, including:

First: Forms of seizure of public state funds by the official: There are many forms of seizure of government property by officials, which are:

1. Theft: In general, this means that the perpetrator took another person's money for the purpose of possession, regardless of whether that money is owned by the state or by one of the institutions or bodies in which the state has a share, or whether it is owned by individuals. If it was stolen by an employee or a person affiliated with him, or occurred in connection with transactions between individuals (Bilal, 2009).

2. Confiscation of public domain(Shiha, 1994): Confiscation of state property can be seen as synonymous with embezzlement, but when these two concepts are considered and controlled, it becomes clear that there is a difference between them, "albeit with a similar result and description of the perpetrator. A government employee," as we mentioned previously, it is necessary to mention before the elements constituting the confiscation of state property: There are three elements necessary to commit this crime, the first of which is the specific character of the offender, then the material element, and then the moral element.

- Special character of the offender: When confiscating state property, the offender must be a government employee, and if this capacity is not proven, it is an ordinary theft, like an ordinary person confiscating this money.

- Material support: Available when an employee performs an act of personalization or facilitates the acquisition of a public good.

- Moral element: There is sufficient general criminal intent in this crime.

3. The crime of an employee harming property and public interests: A public employee exploits his public position in a way that harms the public interest for which he is responsible, for his own benefit or the interests of others (Bin Bashir, 2015).

4. Financial corruption (bribery) and its consequences: The purpose of this feature is to make the bribed person consider it a duty or refrain from doing so, and the crime of bribery is based on a special pillar: that is, the perpetrator is a public employee, and the material element: consists of four main elements: Criminal activity, represented by one of the forms of request or acceptance, and the location of bribery (Van et al., 2018).

5. The crime of using workers for their own benefit: It is the act of every public employee responsible for the public service in relation to the employees' use of the service related to his work, and their use of himself and for his personal benefit. This crime is based on three pillars, namely: the aspect of the public employee or the person subject to his guardianship by the criminal, and the material pillar that takes the form of three forms: the worker usurping the worker's rights to all or part of his wages without legal or administrative justification and carrying out the work without their consent or without compensation, Changing what was contracted with them, or falsifying employment records by including pseudonyms for people who did not do any work, and then receiving their wages. Completely. Or allocating a share to them, and the moral element comes once the criminal intent is eliminated as an intentional crime (Horton, 2016).

Second: Forms of usurpation of public property by non-employees: It includes any damage to public property committed by a person who is not responsible for the public service, or a "public employee", any member of the public, for the purpose of vandalizing, stealing or using public property. At the expense of others, or harming public property as a result of political disputes with parties or authorities, or due to ignorance of the nature of the damage that an individual causes to public property in public places, roads and bridges, or polluting the environment, parks and rivers, or sabotaging the public interests of citizens in matters of water, electricity, sanitation, etc. (Abramsky, 1993).

1. Vandalism in its various forms: Vandalism is defined as: "complete or partial destruction," that is, destruction that affects property in whole or in part, or leads to the cessation of the use of these goods in whole or in part.
2. Usurpation of real estate property: It means seizing immovable property and disposing of it illegally. In order to commit this crime, it is necessary: the site of the attack, the material support, and the material element.
3. Theft: It is basically a crime that aims to seize the money transferred to another person and dispose of it in order to seize it.

Fourth requirement: Mechanism for removing encroachment on public state property

- 1- Restraining the employee's from his work: This means stopping the employee, and temporarily as part of his disciplinary responsibility and for reasons determined by law or because management deems it necessary to implement this procedure in relation to one of them, the employee's activity. Stay away.
2. Reconciliation: The arbitration of public crimes, that is, the seizure of public funds or persons in their capacity as employees by the offender, are in their entirety indictable public crimes, which lawyers classify in two ways:

The opposite trend is to expand the scope of application of conciliation to include crimes occurring in the public domain: Criminal reconciliation must be limited to crimes that occur in the public domain

3. Eliminating encroachments on state lands: behavior related to state and municipal property within the framework of the basic concept without initial approval. The most prominent of these



- violations are: 1. Building anything that conflicts with or is consistent with the city's master plans. 2. Operating immovable funds owned by public bodies. 3. Exploitation of state-owned lands.

## **Section Two: Iraqi Legislation Regulating State Property**

The first Iraqi legislation relating to state property was the Law of Ownership and Determination of Princely Lands in Villages, Qasabas, and Cities No. 84 of 1926 (Al-Istrabadi, 2005), according to which citizens were allowed to own lands located outside the boundaries of villages, Qasabas, and cities, and to consider them as pure property on the condition that they were surrounded by buildings. And collecting the equivalent allowance, the tenth allowance if the land is princely and not delegated, and the tenth allowance only for twenty years if the land is delegated in the land registry, then Law No. 23 of 3/15/1927 came, and dealt with the transfer of ownership of the funds of the Ottoman Empire to The Iraqi government, the Law on Ownership of Estates and Government Buildings No. 84 of 1931, and the Law on the Sale of Movable State Property No. 53 of 1933, and then came the legislation regulating state property and its disposal, such as the amended Municipal Administration Law No. 130 of 1963, The Municipal Law No. 165 of 1964, and the numerous decisions of the former Revolutionary Command Council during the "Baath" rule of Iraq, all of which represent legislative texts that protect public property and indicate ways to preserve it. The Iraqi Civil Law No. 40 of 1951, and the Iraqi Penal Code are No. 111 of 1969, Code of Criminal Procedure No. 23 of 1971 as amended, and the Iraqi constitutions starting from 1970 until the effective constitution of 2005. The most prominent legislation that dealt with the concept of Iraqi state property and granted it protection, in addition to other laws such as: The Civil Procedure Code. No. 83 of 1969 and its amendments, Agrarian Reform Law No. (117) of 1970, and Implementation Law No. (45) of 1980 (38) and its amendments noted the impermissibility of seizing or selling state and socialist sector property, and Resolution No. 36 of 1994, regarding trespassing on the property of others and state property for the purpose of housing without prior permission or contract, and Resolution 154 of 2001 regarding trespassing on real estate belonging to the state and municipalities within the boundaries of the basic designs of cities without obtaining fundamental approval, and the Anti-Terrorism Law. No. (13) of 2005, the Law of Governorates Not Organized in a Region (43) and its amendments No. (21) of 2008, the Regulation on the Sale and Rent of Real Estate, State Lands and the Public Sector for Investment Purposes No. (6) of 2017 and its amendments, and the Fund Law Recovering Iraq's Funds No. (9) of 2012 (amended by Law No. 7 of 2019 regarding the recovery of all financial rights of the Republic of Iraq obtained by third parties from Iraqis and foreigners illegally as a result of the misuse of the oil-for-food program, the economic blockade, smuggling, and sabotage, And the Law on the Sale and Rent of State Property No. 21 of 2013, all of which are legal rules that deal with state property, protect it, indicate how to remove encroachments on it, and impose penalties on violators (Al-Thunaibat, 2011).

### **Eliminating Encroachment on Public Property**

Various Iraqi legislations have dealt with the mechanism for removing trespassing on public property, including what was specified by the Criminal Procedure Code No. 23 of 1971, as amended, considering that assault and trespassing on public property is a flagrante delicto, authorizing every individual who witnesses the crime to arrest the aggressors or trespassers, and refer them to the authorities. This is according to Article 102, which states: "Every person, even without an order from the competent authorities, may arrest any person accused of a felony or misdemeanor in one of the following cases (Mahdi, 2019):

**Embezzlement:** The Iraqi Penal Code considered the crime of embezzlement to be a crime against honor, as stipulated in Article 21, Paragraph A, Clause 6, which is: “A political crime is... However, the following crimes are not considered political if they were committed for a political motive... 6 - Crimes against dishonor. “With honor, such as theft, embezzlement, forgery, breach of trust, fraud, bribery, and indecent assault,” this crime was dealt with in Article 315, which states: “Any public employee or person charged with a public service who embezzles or conceals money, property, a document proving a right, or anything else found in his possession shall be punished with imprisonment.”.

**Seizure:** Article 316 of the Iraqi Penal Code addresses the crime of seizure, as it stipulates: “Any public employee or person charged with a public service who exploits his position and unlawfully seizes money, property, or a document proving a right or something else owned by the state or one of the institutions or bodies that contribute to the state shall be punished with imprisonment.” A share of her money or facilitating that for someone else, and the penalty shall be imprisonment for a period not exceeding ten years if the money, belongings, paper, or anything else is owned by someone other than those mentioned in the previous paragraph (Mahdi, 2019).

**Damage to property and public interests:** Article 318 of the Iraqi Penal Code refers to the crime of harming the public interest, as it stipulates: “Any employee or person charged with a public service who is entrusted with preserving the interest of the entity for which he works in a deal or a case who harms in bad faith or causes harm to this interest shall be punished with imprisonment.” To obtain a benefit for himself or others,” as well as Article 340, which states: “Any employee or person charged with a public service who intentionally causes harm to the funds or interests of the entity in which he works or is connected by virtue of his position or to the funds of persons shall be punished by imprisonment for a period not exceeding seven years or by detention.” “Entrusted to him,” and the wisdom of criminalization in this text is clear because the act of an employee or person charged with a public service entails a breach of the duty of honesty and special loyalty to the party in which he works by transgressing against its money or the money of another party whose job duties require him to be in contact with it (Warnock, 2010).

### **Lebanese Legislation Regulating Public State Property**

Public property gains its importance from the role it plays in the life of the state, the management of its affairs, and the benefit it brings to all citizens without discrimination (Diab & Mallat, 2010). Therefore, Lebanese legislation has limited its protection to it in multiple articles, texts, and various legislation, and has threatened those who trespass against it with punishment, namely:

1- The Lebanese Constitution issued on May 23, 1926 and its amendments: The Lebanese Constitution did not refer to the protection of public property in any of its texts. Rather, it merely indicated that private property is protected by law and cannot be seized except to achieve public benefit, provided that its owner is compensated fairly for it, in Article 15 of it, which states: “Property is under the protection of the law. It is not permissible for anyone to be deprived of his property except for reasons of public benefit in the circumstances stipulated in the law and after he has been fairly compensated.” This is a negligence on the part of the constitutional legislator who was supposed to extend his constitutional protection to property. The public so that no ordinary legislation would dare to detract from it, or affect it, even if the French High Commissioner Resolution No. 144 of 1925 is still in effect, but it does not live up to the supremacy of the constitution.



2- The Lebanese Penal Code: The Lebanese Penal Code extended its protection to public property, and threatened anyone who harmed it with the most severe penalties, such as death, and others. It also punished anyone who participates in work, or partners with a criminal, in trespassing on public property, such as vandalism, demolition, mutilation, and other crimes. crimes; It is stipulated in Clause 6 of Article 219: "Anyone who is aware of the criminal history of villains who regularly block roads or commit acts of violence against state security or public safety, or against persons or property, is considered an accomplice in a felony or misdemeanor." He provided them with food, shelter, a hiding place, or a place to meet." He addressed the person of the criminal who attacks state property and threatened him with the punishment of hard labor in Article 309, which states: "Whoever heads armed gangs or assumes a job or leadership of any kind shall be punished with hard labor for life." With the intention of invading a city or a locality or some state property or the property of a group of people, or either with the intention of attacking or resisting the public force working against the perpetrators of these felonies," and the arrest and fine of anyone who exploits state land without permission in Article 764, which states: "He shall be punished by arrest and a fine of six Thousands to twenty thousand liras for anyone who extracts grass, dirt, stones, or other materials from state property without permission." (Dib, (1975).

3- The Law of Obligations and Contracts: The Lebanese Law of Obligations and Contracts did not permit public administration employees to dispose of state funds as protection from the legislator to exploit the position in a way that harms the public interest. However, it required judicial approval within certain limits, and that is in Article 378 of it, which stipulates in Clause /Second/: "The persons referred to below are not permitted to purchase, neither by themselves nor through borrowed persons, even if the purchase is by auction, unless they have a license from the judiciary. If they do so, the purchase contract is invalid... Secondly - It is not permissible for those in charge of public administration to purchase state funds or funds." The villages or the funds of the institutes that were entrusted to them to take care of them..." (Dib, (1975)).

4- Decree Regulating Water Exploration and Use No. 14438 dated 5/2/1970. The decree regulating water exploration and use did not permit infringement on groundwater, which is considered public property, except after obtaining the state's permission, and in a manner that does not conflict with achieving the public interest it protects, as stated in Article Two. It stipulates: "It is not permissible to carry out work related to prospecting for underground or explosive water, or controlling it, or drilling wells, before obtaining a license to do so," in order for the state to regulate the exploitation of natural resources, and not to prejudice their safety and sustainability.

5- Beach Continuity Insurance Decree No. 5777 Date: 10/15/2019: The Lebanese legislator stressed the importance of keeping marine public properties open to the public in order to achieve the public interest, and that they are prepared for the use of the public without any fees or allowances, in Article 1 of it, which stipulates "Maritime public property must always remain open to the public without any obstacle to them and without any fees or allowances being incurred by visiting it. In return, when visiting public marine property, the public must maintain it, public cleanliness and the marine environment and not harm it under penalty of imposing penalties." necessary against anyone who violates this in accordance with the applicable laws and regulations."

6- Decree No. 4810 dated 6/24/1966 regarding the system of works on marine public properties: The legislator clarified that marine public properties must remain allocated for

public benefit, which is limited only by conditions and considerations related to the tourism and recreational aspects without affecting the public's right to enjoy them. And in part, but not all of it, in its first article, which stipulates: "Maritime public property shall remain for the use of the public, and no right shall be acquired over it for the benefit of anyone that would authorize its closure for a private interest. As for allowing the allocation of a part of the beach for the use of individuals or groups, and restricting this use to them only." It is an exceptional act that can be applied in special cases subject to the following general principles... (Diab & Mallat, 2010)"

7- High Commissioner Resolution No. 320 dated 5/26/1926 regarding the preservation and use of public property water: The French High Commissioner's decision prohibited encroachment on water that falls under the classification of public property, and disposal of it without a license in its first article, which states: "It is prohibited." Without a license granted by the administration within the conditions specified in Resolution No. 144.

8- Decree on the Comprehensive Plan for the Arrangement of the Lebanese Lands No. 2366 dated 6/20/2009: The Decree on the Comprehensive Plan for the Arrangement of the Lebanese Lands stated the state's commitment to preserving the natural and archaeological features of the coast in accordance with the legal frameworks and regulations in force, and according to what is included in the plan drawn up for this purpose in Article 9. Which states: "The Lebanese administration works, within the framework of applicable laws and regulations, to preserve the natural and heritage monuments of existing sites along the Lebanese coast, and to preserve historical sites in accordance with what is stated in the plan."

9- Decree imposing a retreat for construction from the axis and sides of public roads No. 15299 dated 2/5/1964: Decree No. 15299 forced all building contractors and private individuals who wish to construct buildings near public roads to retreat from their axis and sides in Article One () of it, which It states: "Building shall be set back from the axis and sides of public roads located inside and outside the scope of municipalities whose affairs are sponsored by the Ministry of Public Works and Transport, and whose planning has been implemented or approved by this Ministry as follows: A - International roads: sixteen meters from the axis of the road, provided that no The retreat from the side of the road (expropriation boundaries) is less than five meters. B - Main and secondary roads: twelve meters from the axis of the road, provided that the retreat from the side of the road (expropriation boundaries) is not less than four and a half meters. C - Local roads: tourist- Summer vacation, etc., ten meters from the axis of the road, provided that the retreat from the side of the road is not less than four meters."

### **Removing Encroachments on Public State Property in Lebanese Legislation**

Lebanese legislation has dealt with encroachments on public state property through numerous provisions in decrees and various laws that will be dealt with successively, but before that, the crimes mentioned must be clarified, which are as follows (Farhat, 2022):

- **Vandalism:** The Lebanese Penal Code has tightened the penalty imposed on anyone who vandalizes or defaces public state property in Article 311, which states: "Pursuant to Article 257, the penalty for whoever commits one of the crimes stipulated in Articles 309 and 310 is increased... if "He commits acts of sabotage or defacement in buildings designated for public interest or in intelligence, transportation, or transport routes," considering that sabotaging public facilities, even partially, is a form of conspiracy against the internal security of the state, and requires the penalty of life imprisonment with hard labor in Article 315, which states: "Conspiracy." Which is intended to commit an act or acts of terrorism... It requires life

imprisonment with hard labor if it results in vandalism, even partially, in a public building, industrial establishment, ship, or other facilities, or obstruction of means of intelligence, transportation, and transportation. The death penalty is imposed if the act leads to the death of a person. Or demolish some or all of the structure while there is one or more people inside it.

- **Harmful to the interests of the state:** The Lebanese Penal Code requires the imposition of penalties related to anyone who fails to perform his obligations towards the state, or was the cause of his failure, with regard to its public interests, which are necessarily reflected in the interests of citizens, in Article 299, which states: “Whoever does not implement... In times of war or when it is expected to break out, all obligations imposed on him by contracting an undertaking, contracting, or providing services related to national defense, the public interests of the state, or supplying the population shall be punished by temporary detention and a fine ranging from the value of the unexecuted obligation to twice its value, provided that it is not less than one million liras. If the failure is implementation resulting from an unintentional error shall be punished by imprisonment in addition to the fine specified in the previous paragraph. Half of the penalties stipulated in this article shall be reduced if implementation has only been delayed. These penalties shall be imposed at their previous differences on any other person who was the cause of the non-implementation of the contract or the failure to implement it. Delaying its implementation.

- **Embezzlement and misuse of employment:** The Penal Code addresses the crimes of embezzlement and misuse of employment with several articles, given the interconnectedness of the two crimes from the point of view of the Lebanese legislator. Article 359 stipulates: “Any employee who embezzles money or other state property entrusted to him by virtue of his position to manage, collect, or maintain by virtue of his position shall be punished by imprisonment from three months to three years and a fine, the least of which is the value of the restitution,” and Article 360, which explains the mechanism for the embezzlement to occur. If the embezzlement occurs by inserting incorrect writings into invoices or books, or by distorting or destroying accounts, papers, or other instruments, and in general, by any trick aimed at preventing the discovery of the embezzlement, a penalty of temporary hard labor shall be imposed in addition to the fine imposed by the previous article.

- **Theft:** The Lebanese Penal Code clarifies in Article 636 the punishment for the crime of theft and refers to those that occur in temples, roads, and public places as state property, or by the act of a public employee, as it stipulates: “Theft, for which no special penalty is specified in accordance with one of the provisions of this law.” By law, she is punished by imprisonment from two months to three years and a fine from one hundred thousand to four hundred thousand liras, and this punishment is increased according to Article 257 if theft is committed.

- **Usurpation of real estate:** The Lebanese Penal Code protected the state’s public real estate property from assault in Article 737, which stipulates: Whoever does not hold an official document of ownership or disposition and seizes a property or a section of a property in the hands of another person shall be punished with imprisonment from one month to one year and a fine from two hundred thousand to one million. Lira, and the penalty is increased in accordance with Article 257 in each of the following two cases: 1- If the act is accompanied by a threat or violence against persons or things, 2- If the usurpation occurs on all or part of public roads, state property, or communal property.

- **Water system crimes:** Article 745 of the Lebanese Penal Code regulates the penalties imposed on crimes affecting the public water system by stipulating: “Anyone who, without permission, undertakes excavation work shall be punished by imprisonment up to one year and a fine of

up to five hundred thousand liras. Underground, explosive, or confined water, unless it is intended to dig non-explosive wells on private property whose depth does not exceed one hundred and fifty meters, 2- Excavations must be conducted at a distance less than the depth of these excavations from the banks of water courses, their crossings, and irrigation, drying, and drainage canals. In any case less than three meters, 3- To remove stones, dirt, sand, trees, shrubs or herbs from those banks or from the basins of temporary or permanent water courses or from lakes, swamps, ponds and troughs.

### **Removing Encroachment on Public State Property**

Palm of the hand: Legislative Decree No. 13 regarding the organization of state departments referred to the crimes of a public employee's breach of his duties, which as a whole lead directly or indirectly to harming the state's property and interests, in Article 25, which prohibited the employee: 1- To carry out any act that violates the constitution and the laws. And the regulations, 2- To seek, request, or accept, directly or through an intermediary, due to the job, from stakeholders or their relatives, gifts, gratuities, or grants of any kind, 3- To engage in commercial or industrial work or any paid profession, 4- To practice Free profession, except in the cases stipulated in special laws and regulations, 5- To be a member of the board of directors of a joint-stock company, 6- To work in political matters or join political parties or organizations, 7- To accept any written or verbal recommendation related to the affairs stipulated It is subject to the law," and made the behavioral penalty for the violator, according to the text of Article 36, which can be imposed on the employee be one of the following penalties: "A- First-degree penalties: 1- Warning, 2- Reprimand, 3- Salary deduction for a period not exceeding five days, B- - Second-degree penalties: 1- Deduction of salary for a period not exceeding thirty days. C- Third-degree penalties: 1- Delaying the employee's entry in the promotion schedule for one year, 2- Disciplinary transfer, 3- Suspension from work without pay for a period not exceeding Three months, 4- Promotion from the promotion table, 5- Demotion, 6- Demotion, 7- Removal.

### **Results**

The encroachment on public state property was researched in Iraqi and Lebanese legislation in order to identify ways to protect it, the crimes committed against it, and mechanisms for eliminating them in both legislation, then comparing them. The researchers concluded the following results:

#### **First: At The Level of Iraqi Legislation**

The first Iraqi legislation relating to state property was the Ownership Law, specifying princely lands in villages and cities, No. 84 of 1926. Then came Law No. 23, dated 3/15/1927, and dealt with the transfer of ownership of the funds of the Ottoman Empire to the Iraqi government, and the Law of Ownership of Arsat. , government buildings No. 84 of 1931, the Sale of State Movable Property Law No. 53 of 1933, the Municipal Administration Law No. 130 of 1963, the Municipalities Law No. 165 of 1964, and the numerous decisions of the former Revolutionary Command Council during the "Baath" rule of Iraq, all of which represent texts Legislation that protects public property and specifies ways to preserve it.

The Iraqi Civil Code No. 40 of 1951, the Iraqi Penal Code No. 111 of 1969, the Procedures of Criminal Procedure No. 23 of 1971, and the Iraqi constitutions starting from 1970 until the effective constitution of 2005 are the most prominent legislation that it dealt with the concept of Iraqi state

property, and bestowed protection on it in addition to other laws such as: Civil Procedure Law No. 83 of 1969 and its amendments, and Agrarian Reform Law No. (117) of 1970.

The Implementation Law No. (45) of 1980 and its amendments noted the impermissibility of seizure of property. The state, the socialist sector or its sale, Resolution No. 36 of 1994 regarding trespassing on the property of others and state property for the purpose of housing without prior permission or contract, and Resolution No. 154 of 2001 regarding trespassing on real estate belonging to the state and municipalities within the boundaries of the basic designs of cities without obtaining approval.

Fundamentalism, the Anti-Terrorism Law No. (13) of 2005, the Law of Governorates Not Organized in a Region, and its amendments No. (21) of 2008, the System of Selling and Renting Real Estate, State Lands and the Public Sector for Investment Purposes No. (6) of 2017 and its amendments, and the Recovery Fund Law. Iraq Funds No. (9) of 2012 amended by Law No. 7 of 2019 regarding the recovery of all financial rights to the Republic of Iraq obtained by third parties from Iraqis and foreigners illegally as a result of the misuse of the oil-for-food program, the economic blockade, smuggling, sabotage, and the sale law, And Lease of State Funds No. 21 of 2013, all of which are legal rules that deal with state property, protect it, explain how to remove encroachments on it, and the penalties imposed on violators. Iraqi legislation outlines crimes against public state property such as embezzlement, seizure, damage to public property and interests, and financial corruption (bribery). "Benefiting from public works, undertakings, and contracting, and trespassing on public property is removed by withdrawing the hand (palm) of the employee who is exploiting his job, making it a vehicle for trespassing on public property, and by including that the trespasser is held responsible for the damages incurred by public finances due to his negligence or violation of laws and regulations." And the instructions in force, and demolishing the violation, or paying the equivalent wage for the duration of the violation, and the value of the damages resulting from it, and obligating the violator to pay the expenses thereof.

There are many and varied Iraqi legislations that dealt with the criminalization of acts that are described as infringements on public state property and were granted the necessary protection through other legislation, and their development during the time periods of the life of the Iraqi state after independence, and this may be due to the stability of political and security life despite coups and wars. Iraq witnessed in the period between the fall of the previous regime, the American occupation, and its departure from it witnessed a major legislative movement with the aim of building the new state.

## **Second: At The Level of Lebanese Legislation**

The first legal framework to address state property in Lebanon was French High Commissioner Resolution No. 275 dated 5/25/1926, which addresses the issue of management and sale of private, immovable state property. Also, High Commissioner Resolution No. 144 dated 6/10/1926 was the framework. The only law that addresses public state property in Lebanon, in addition to High Commissioner Resolution No. 320 of 5/26/1926 stipulating the preservation and use of water on public property, and High Commissioner Resolution No. 3339 of 11/12/1933 regarding the real estate ownership system and real rights. Immovables, and Law No. 163 of 8/18/2011 regarding the definition and declaration of the maritime areas of the Lebanese Republic, its rights, jurisdiction, and duties in the exclusive economic zone, the continental shelf, and on archaeological and historical objects found at sea, in addition to protecting the marine environment.



Preserving it, and Decree No. 5777 dated 10/15/2019 regarding securing the continuity of the beach, which stressed that marine public property must always remain open to the public without any obstacle to them, and the Lebanese legislator had granted legal protection to state property in the Lebanese Civil Law or What is known as the “Law of Obligations and Contracts of 1932, the Lebanese Penal Code of 1943, the Forest Law of 1949, the Civil Organization Law of 1983, the Lebanese Civil Procedure Law of 1983, the Lebanese Criminal Procedure Law of 2001, and the Decree on the Organization of State Departments of 1953, The Anti-Money Laundering and Terrorist Financing Law of 2015, the Decree of the Comprehensive Plan to Organize Lebanese Territories of 2009, and the Decree imposing a retreat from the axis and sides of public roads of 2013, all of which are legal rules that address state property, protect it, indicate how to remove encroachments on it, and impose penalties on violators.

The Lebanese legislator summarized the crimes that are described as trespassing on public state property through vandalism, harming state interests, fraud, bribery, embezzlement, exploiting one’s job, negligence, theft, seizure, demolition and sabotage, usurping real estate, water system crimes, sabotage and trespassing, and the trespass is removed. On public state property through restraint and a fine, and the encroachments committed are removed through compensation, demolition, and a demand for the equivalent fee.

Finally, the legislation in force in Lebanon that deals with public property is mostly from the time of the French Mandate, and not many legislations were issued regarding it after independence. Also, the Lebanese Constitution, which is considered the highest legislation in the state, did not mention public state property, but rather merely emphasized private ownership and the inadmissibility of its expropriation. Except for the public benefit, and this may be due to the special political and security situation that characterized Lebanon during its history, which was filled with security unrest, wars, and parts of its lands falling under Israeli occupation, all of which had an impact on the overall legislative life in the country.

## Conclusion

After reviewing the results of the research in Iraq and Lebanon, through the legislation regulating the protection of public state property and the forms of encroachments on it, and how to remove them, the researchers recommends to legislators in Iraq and Lebanon, and proposes to them the following:

1. Forming specialized committees whose mission is limited to the precise and clear definition of state property and distinguishing it from private state property, overcoming the difficulty of distinguishing between them, and adopting the criteria of public benefit, and the impermissibility of taking action to define public state property, and anything else to determine its private property, in view of the different role it plays. Both have the power to manage and manage the affairs of the state.
2. Reviewing the legal texts that deal with the protection of public state property and working to develop them from two aspects: the first is to expand its scope of coverage to include all the assets and things that the state deals with or disposes of in light of the evolving needs of the state and citizens, and the second is to increase the punishment for those who attack it in order to preserve its protection. The prestige of the state and its properties.
3. Activating the legal texts related to the protection of public state property and applying them to everyone without exception, in light of the abnormal circumstances that Iraq and Lebanon are experiencing, which have left a negative impact on state property.



4. An attempt to collect the various legal texts that address the criminalization of trespasses on state property in one piece of legislation, and to abolish everything that contradicts it in a way that is consistent with the role that the state should play through its public property and to preserve the stability of the relationship and dealings between the state and its citizens.
5. Addressing the legal texts that impose small financial fines against trespassers on state property in order to align them with the current exchange rate in both countries, to form a real deterrent that serves its desired purpose.
6. Working to address the problems, circumstances, and conditions that push many to encroach on state property by solving the housing crisis, reforming the salary and wages system, and serving residential and rural areas, so that citizens, whether they are public employees or ordinary people, are not forced to invade property. Country.

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