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## The Procedural System for the Crime of Illicit Financing of Political Parties

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### Abstract

*The crime of illicit financing of political parties is considered a special type of crime as it poses a threat to the interests that the legislator intended to protect. It requires confronting it with deterrent punitive provisions. However, these provisions are not sufficient to combat the crime unless there is a procedural system that ensures the enforcement of criminal provisions, the pursuit of the perpetrators, and the imposition of punishment. This naturally requires legislative treatment by organizing it through special procedural provisions. In this regard, we will discuss two aspects in this research. Firstly, we will examine the procedural effects of the crime of illicit financing in comparative legislation. Secondly, we will discuss the procedural effects of the crime of illicit financing in Iraqi legislation. Finally, we will present the most important findings and recommendations.*

**Keywords:** Political Parties, Illicit Financing, Procedural System, Iraqi Criminal Legislation.

### 1. Introduction

The protection of interests is not achieved solely through criminalization and punishment provisions; rather, these provisions are put into effect through the criminal procedures that enable the imposition of punishment on the perpetrator of the crime. Therefore, protection is not valid unless it is coupled with a procedural plan that ensures effective combating of corruption in financing and the pursuit of its perpetrators. Criminal procedures serve as the means to enforce criminal law and transform its provisions from a state of inaction to a state of motion. They are activated by a specific entity on behalf of society against the criminal who has violated its security (Mahdi, 2008) Given that crimes of illicit financing are subject to various procedures, some of which are shared with other crimes in terms of the procedural aspects, such as determining the competent authority to initiate criminal complaints and the entity responsible for trial, it is necessary for us to examine the procedural effects of financing in comparative legislation and Iraqi legislation (Lorts et al., 2022).

The significance of this study lies in highlighting the legislative deficiencies found in the Iraqi Law on Political Parties No. 36 of 2015 concerning the criminal procedures followed in the crime of illicit financing. It also aims to identify the shortcomings in the law on political parties in comparative legislation and determine their strengths and weaknesses, as well as assess the effectiveness of these procedures in addressing crimes committed by political parties in general, and illicit financing in particular (Guo, 2023).

The main problem of the study revolves around the procedural effects resulting from the crime

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of illicit financing of political parties. It aims to identify the legislative deficiencies in the Iraqi Law on Political Parties No. 36 of 2015, as well as to determine whether the Iraqi legislator has been successful in regulating the criminal procedures related to illicit financing. Additionally, it seeks to assess whether these procedures are sufficient to curb the corruption associated with illicit financing of political parties (Street, 2023; Ali et al., 2022).

The methodology adopted in this study is the analytical legal research method. It involves describing and analyzing the legal provisions of the Iraqi Law on Political Parties No. 36 of 2015. Additionally, the study utilizes a comparative approach between the Iraqi Law on Political Parties and the Jordanian Law on Political Parties (Grain et al., 2022; Boonlua et al., 2023).

We will divide the research into two sections. In the first section, we will discuss the procedural effects of the crime of illicit financing of political parties in comparative legislation. In the second section, we will examine the procedural effects of illicit financing in Iraqi legislation (Palmizal et al., 2022; Luo, 2022).

### **First Section: The procedural effects of the crime of illicit financing in comparative legislation**

Efforts to discover crimes and pursue their perpetrators through investigation and trial procedures have been ongoing since the recognition of crime by humanity. These efforts have continued to grow and evolve with the development of societies, the proliferation of crime types, and the methods of their commission. The investigation of a suspect in a crime is the stage preceding the trial and is a necessary step (Al-Bashri, 2004). Its objective is to achieve criminal justice and protect two equally important interests. The first is the protection of the accused, ensuring that punishment does not befall them if they are innocent. The second is the interest of society, ensuring that the perpetrator does not escape punishment (Mahmoud, 1984). Legislation has varied in regulating investigation procedures, particularly in initiating criminal proceedings. Some legislations have granted the public prosecution the right to initiate criminal proceedings, with exceptions allowing the victim to initiate proceedings, as seen in Jordanian legislation. Other legislations have granted the right to initiate proceedings to those harmed by the crime or their legal representatives, as well as those with knowledge of its occurrence, as seen in Iraqi legislation ("Article (1/A) of the Iraqi Code of Criminal Procedure No. 23 ", 1971). If the criminal proceedings are initiated based on a complaint, they are initiated by the public prosecution or another designated entity according to specific laws. If the proceedings are initiated based on reports, they are initiated by the public prosecution or another designated entity based on specific laws ("Article (1-2) of the Iraqi Public Prosecution Law No. (49) of 2017.,").

After the completion of the investigation, we move to the second stage of criminal proceedings known as the trial or judicial inquiry, which is conducted by the competent court (Hosni). All trial procedures are characterized by their judicial nature (al-Hadithi, 2011). The legislation under study has varied in organizing the procedures related to the crime of illicit financing. Some have chosen to regulate this matter within the Political Parties Law, as seen in Iraqi legislation. Other countries have left the regulation to the general rules stated in the Criminal Procedures Law.

The Jordanian legislator has regulated the procedural rules specific to the crime of illicit financing in the Political Parties Law No. 7 of 2022. The law specifies the court responsible for conducting the trial and the entities that play a role in initiating criminal proceedings. The Independent Elections Commission is responsible for initiating criminal proceedings against a

political party if it engages in any act that constitutes a crime according to Article 35 of the Political Parties Law, including the crime of illicit financing. However, the Commission does not have the authority to pursue or initiate the proceedings itself, as this jurisdiction lies solely with the public prosecution ((35/b), 2022a). The public prosecution fulfills its role in initiating and conducting the criminal proceedings as the accusing and investigating authority, in accordance with the provisions of Article 2 of the Criminal Procedure Code No. 9 of 1961 (Procedure, 1961). The public prosecution is responsible for initiating and conducting public prosecutions and may only be initiated by other entities in the circumstances specified by law (Jokhadar, 1993).

Continuing with the same legislative purpose, Article 20 of the Jordanian Code of Criminal Procedure emphasizes the jurisdiction of the public prosecution in receiving information and complaints, stating, "The public prosecutor receives information and complaints submitted to them." The public prosecution carries out its role within the scope of criminal cases and misdemeanor cases, as stipulated in Article 43 of the Code of Criminal Procedure. The law grants the public prosecutor the authority to conduct investigations personally in cases of felony or initial misdemeanor offenses. The law also gives the public prosecution the power to initiate criminal proceedings and conduct them, and this initiation constitutes the initiation of criminal proceedings. However, in cases of reconciliation misdemeanors, the public prosecution has the discretion to investigate (Nammour, 2013).

Furthermore, the public prosecution assumes the function of prosecution before the competent court, namely the Trial Court, after referring the case against the political party to the specialized Initial Court. This is based on evidence obtained through the investigation, as stated in Article 51. If the act constitutes a felony or misdemeanor within the jurisdiction of the Initial Court, the public prosecutor is responsible for prosecuting it before the Trial Court, where it becomes a procedural adversary ((35/b), 2022b) (Ali, 2009).

It is evident from the above that the Jordanian legislator has adopted the principle of combining the powers of investigation and prosecution and entrusted them to the public prosecution. The public prosecutor is responsible for prosecution and personally conducting investigations in crimes that fall under the category of felonies and misdemeanors (Al-Marashdeh, 2011), which are presented before the Initial Court. This is affirmed by Articles 51, 140, 166, and 206/1 of the Jordanian Code of Criminal Procedure.

Based on the above, it is apparent that the Jordanian legislator has regulated the procedures for investigation and the initiation of criminal proceedings in the Political Parties Law, and it has consolidated investigation and prosecution within one authority.

## **Second Section: The procedural effects of illicit financing in Iraqi legislation**

The Iraqi legislator has established the litigation procedures in cases arising from the crime of illicit financing, outlining the stages through which the perpetrator's responsibility is determined and punishment is imposed. This is specified in the Iraqi Political Parties Law No. 36 of 2015 and the Code of Criminal Procedure No. 23 of 1971. This crime shares similarities with other offenses, which we will explain in detail.

### **First Objective: The Stage of Initiating the Criminal Lawsuit and Conducting Investigation**

By initiating the criminal lawsuit, it refers to the procedure by which the case related to the crime is brought within the purview of specialized authorities in the state to investigate and prosecute the perpetrators ((1/b), 1971). The general principle is that the right to initiate the

criminal lawsuit rests with the aggrieved party or their legal representative, or any person who has knowledge of the crime, and they can bring it to the designated authorities as defined by the law (Hassan, 2019; Xie & Sun, 2023). However, in the context of financing political parties in Iraq, the Iraqi legislator introduced specific procedures for initiating the criminal lawsuit, assigning this right to various entities, including the Department of Political Parties and Political Organizations Affairs, the Integrity Commission, and the Public Prosecution. The Iraqi legislator also outlined the authorities responsible for conducting the investigation in the Code of Criminal Procedure, and we will clarify this further.

**First:** Department of Parties and Political Organizations ((8/First), 2007): Referring to the Political Parties Law, we find that the Iraqi legislator has specified a set of functions for the Department of Parties, including the initiation of criminal lawsuits. The law states, "The Department of Parties has the following competencies: Initiating complaints and lawsuits against political parties or any of their members in the event of violating the provisions of this law" ((17/Second), 2015; Waty et al., 2022). It can be observed from the preceding text that the Political Parties Law has made the Department of Parties one of the parties in criminal lawsuits by granting it various competencies, including the initiation of criminal complaints against a political party or one of its members.

Additionally, the Iraqi legislator in the same law mandated that the political party and its members initiate criminal complaints against any of its members in the event of violating the provisions of this law. The law states, "The political party and its members are committed to the following: ... Ninth: Initiating criminal lawsuits against any of its members in the event of their violation of the provisions of this law" (Ninth), 2015). The Iraqi legislator also indicated the possibility of filing a complaint by any interested party, as stated in the Political Parties Law, which states, "Any interested party may file a complaint with the Department of Parties against any party that violates the provisions of this law" ((32/First/2), 2015). This broad text includes interested parties who may be members of the party, other individuals, the public prosecutor, and others ((7), 2017).

**Second:** The role of the public prosecutor in initiating criminal lawsuits: The public prosecutor in most countries is responsible for safeguarding the public interest, although the scope of the public interest varies from one country to another, leading to different powers granted to this authority (Abdullah, 1981.). The public prosecutor initiates the criminal lawsuit in cases of illicit financing through two avenues: firstly, through complaints or reports submitted directly to them, and secondly, through referrals from competent bodies such as the Financial Control Bureau and the Integrity Commission. In both cases, it is the responsibility of the public prosecutor to pursue the criminal lawsuit. The Code of Criminal Procedure stipulates that "the criminal lawsuit is initiated by an oral or written complaint... or by reports submitted to any of them (the public prosecutors) if the law does not state otherwise" ((1/a), 1971).

Based on the information presented, it is evident that the public prosecutor initiates the criminal lawsuit in cases of illicit financing either through direct complaints submitted to them by any affected person falling within the relevant provisions or through referrals. Accordingly, the law obligates the Financial Control Bureau to inform the public prosecutor in case of any behavior that constitutes a crime under the Political Parties Law.

**Third:** The role of the Integrity Commission in initiating criminal lawsuits: The Integrity Commission is responsible for investigating specific crimes under the supervision of a specialized judge ((11/First), 2011). Its investigators, who are under its authority, carry out the necessary procedures and powers. The Integrity Commission plays its role in initiating the

criminal lawsuit after receiving reports from the Financial Control Bureau. It begins by initiating the criminal complaint and gathering information about the crime, and then requests the investigating judge to take the necessary legal actions against the political party (Al-Ghali, 2018). The Integrity Commission is a party in every corruption case that is not investigated by one of the investigators of the Investigation Department, and it has the right to follow up on the case through a legal representative (Farajallah).

**Fourth:** The role of the Financial Control Bureau in initiating criminal lawsuits: The Financial Control Bureau carries out its role in overseeing the finances of political parties through disclosure and auditing of their accounts. If the Bureau discovers a financial violation that constitutes a crime, it is legally obligated to inform the public prosecutor or the Integrity Commission about the discovered financial violation ((16), 2011). It should be noted that the role of the Financial Control Bureau does not involve direct judicial action but is limited to reporting the discovered violation to the mentioned authorities in cases where the action attributed to the party constitutes a criminal offense.

As for the authority responsible for initiating the criminal lawsuit before it - the investigating authority - the Iraqi legislator has specified the competent authority to which complaints and reports are submitted in Article 1 of the Code of Criminal Procedure, which states, "The criminal lawsuit is initiated by an oral or written complaint submitted to the investigating judge, the investigator, or any official at the police station or any judicial arrest member" ((1), 1971). Specialized entities determined by specific laws can also be the recipients of such complaints. One of these entities is the Department of Parties, as Article (32/1/2) states that "any interested party may file a complaint with the Department of Parties against any party that violates the provisions of this law." By observing the mentioned text, it can be noted that the Iraqi legislator has assigned the task of receiving complaints related to political parties to the Department of Parties (First), 2015 ), in addition to its administrative functions.

After initiating the criminal lawsuit, the preliminary investigation phase begins, which involves judicial procedures conducted by the investigating judge or investigators under the supervision of the investigating judge ((51), 1971). They are assisted by judicial arrest members who work under the supervision of the investigating judge and the oversight of the public prosecutor ((40), 1971). In addition to these entities, the Iraqi legislator granted limited investigative authority to the Department of Parties in the effective Political Parties Law, as stated in Article (17/2/d), which states, "The Department of Parties is responsible for monitoring violations committed by parties or political organizations and investigating them." It is noteworthy that the text grants the authority to monitor violations and investigate them, in addition to the right to file complaints against political parties in the event of these violations being proven. Thus, the Department of Parties has the authority to investigate party violations and the right to file complaints against political parties or any of their members.

The researcher believes that the legislative path taken by the Iraqi legislator is not correct because it assigns a part of the investigation tasks to a non-judicial entity, the Department of Parties, in addition to making it a party in the lawsuit. Furthermore, the task of investigation and accusation is assigned to the same entity, which does not achieve justice and contradicts the direction of the Iraqi legislator, which stipulates the separation of the powers of accusation and investigation. Therefore, the Iraqi legislator should have confined the authority of investigation to the judicial entities, specifically the investigating judge, and limited the role of the Department of Parties to monitoring violations and filing complaints.

## **Second objective: Trial Proceedings**

After the investigation into the crime committed through political parties is concluded and there is sufficient evidence to refer the perpetrators to the judiciary, the criminal lawsuit enters a new phase, which is the trial phase (Hassan). At this stage, a decision is pronounced, which is not final and can be appealed before the designated authority as specified by the law. The Iraqi legislator has assigned the trial of these crimes to the jurisdiction of regular criminal courts, as the authority of the judiciary extends to all crimes, as stated in Article 3 of the Judicial Organization Law, which states, "The jurisdiction of the judiciary applies to all public and private natural and legal persons, except as specifically exempted." The Iraqi legislator did not specify an exemption for crimes committed by political parties to be subject to regular jurisdiction. Therefore, crimes committed by political parties or their members and representatives are subject to the jurisdiction of misdemeanor or felony courts, depending on the nature of the crime.

From the information presented, it is evident that the Iraqi legislator was more organized in regulating the procedures related to the criminal lawsuit arising from the crime of illicit financing of political parties, including some detailed and organized provisions. Therefore, the legislative path taken by the Iraqi legislator was successful in organizing these procedures.

## **2. Conclusions**

We have found that the Iraqi legislator has regulated the criminal procedures related to the crime of illicit financing in the Political Parties Law and specified the authorities entitled to initiate the criminal complaint. The researcher concludes that the Iraqi legislator did not grant the Financial Control Bureau the authority to follow up on the criminal lawsuit, which is in line with the direction taken by the Jordanian legislator, who gave the authority to the Board of Commissioners to initiate the criminal complaint without following it up, leaving this authority to the public prosecution or the public prosecutor in Iraq. It becomes apparent that the Iraqi legislator has assigned the Committee of Party Affairs and Political Organizations the functions of accusation and investigation of violations, which contradicts the Iraqi legislator's direction of not combining the functions of accusation and investigation.

## **3. Recommendations**

We suggest that the Iraqi legislator amend Article (17/2/d) by assigning the Committee of Party Affairs the authority to monitor violations without the right to receive criminal complaints or investigate them. We propose that the Iraqi legislator grant the Financial Control Bureau the authority to follow up on the criminal lawsuit during the investigation and trial stages and make the Bureau a party to the criminal lawsuit.

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