

# Legal Basis for Crime of Mediation

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## Abstract

Some difficulties stand in the way of initiating a lawsuit in the mediation crime, due to the existence of some obstacles that prevent the achievement of the goals, this prevents the prosecution of the mediation crime from being brought before the competent authorities, and there is no doubt that the possibility of detecting the mediation crime and tracking down its perpetrators is related to the rule of transparency and equality in the field of public office. It is necessary to take some necessary measures in combating the crime of mediation, and these can contribute to moving the complaint against the one who mediates, begs, or recommends, or whoever accepts that mediation, begging, or will, and in accordance with the requirements of the Penal Code, because most of the crimes that fall within the concept of money crimes or administrative and financial corruption start from this crime, and its suppression will inevitably lead to a limitation in fighting corruption in government departments and institutions.

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## Keywords

Mediation, Preventive Measures, Crimes of Corruption, Obstacles.

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Corruption is a growing scourge in all countries with a negative impact on the development of societies and its phenomenon has social, economic and political aspects. Among the forms of administrative corruption is mediation, hope or recommendation, exploiting influence, all of which leads to the employee performing work as a result of mediation, recommendation or pleading contrary to the general context of administrative work, which leads to the disruption of the administrative system, the deterioration of public service, and the emergence of a state of economic and social backwardness, which is the result of administrative corruption, and which the legislator considered a crime punishable by law, because it represents a violation of the prevailing social and moral values in society, it frequently occurs in our daily lives through the exploitation of the influential

people for their influence in the authorities or jobs that some believe are important.

## 2. Statement of the Problem

The study raises a problem revolving around the statement of the obstacles that prevent the mediation case from being initiated? What are the necessary measures to prevent it? What are the substantive and procedural problems that prevent the application of the provisions of the Penal Code regarding the crime under study?

### 3. Importance of Study

Fighting forms of corruption, and most importantly mediation, provides effective criminal justice that guarantees the principle of no impunity. This can be achieved by approving a set of legal principles and mechanisms to activate criminal justice in the field of combating corruption crimes first, as well as creating a set of institutional and procedural mechanisms for detecting crime and encouraging reporting of it second.

### 4. Study Methodology

In this study, we will rely on the comparative analytical approach, being the most consistent with the nature of this topic and its scientific accuracy, by making a comparison between the penal texts contained in each of the Iraqi Penal Code No. (111) of 1969 and the Jordanian Penal Code and the Egyptian Penal Code, noting our focus on explaining the position of comparative laws before delving into the statement of the position of Iraqi law regarding it. With the aim of knowing the weaknesses and shortcomings in the texts of Iraqi legislation in order to find the necessary solutions and treatments for crime in the context of research.

### 5. Scope of study

The subject of the study falls within, so the cornerstone of studying this subject is the Iraqi penal legislation. Specifically, Article (330) of the amended Iraqi Penal Code No. (111) for the year 1969, and the Integrity Commission Law No. (30) for the year 2011 as amended. However, the nature of the study and the approved methodology requires reference to the Jordanian Penal Code and the Egyptian Penal Code.

### 6. Obstacles to Combating the Crime of Mediation.

The community's need for legislation has been imposed by the requirements of achieving the public interest in organization, arrangement and accountability of the negligent, and the punishment of everyone who committed a crime against the community, and then work to create a

good environment in which opportunities for corruption are reduced, as the practice of corruption involves many risks, and at various levels. In order to elaborate on this issue, it was dealt with in two requirements through which we can shed light on the legal basis for criminalizing mediation, and accordingly we will address it as follows: The position of the Iraqi penal legislation on the crime of mediation in the first request, while in the second request, we will devote it to discussing the position of the Anti-Corruption Law on mediation (Ashour, 2021).

### 7. Criminal legislation

The process of criminalizing an act requires the presence of legal provisions that define the elements of this act and the appropriate punishment for it, as it may be stipulated within the provisions of the Penal Code, which are as follows:

#### 7.1. Penal Code:

The Iraqi legislator in the Iraqi Penal Code No. (111) for the year 1969, in Chapter VI under the title: (crimes violating the duties of the job) in the third chapter of it dealt with various crimes mentioned under the title: (employees exceeded the limits of their positions), it included objective provisions dealing with one of the forms of acts committed by the employee, which is considered one of the most dangerous because of its characteristics that grant it confidentiality and non-disclosure, which facilitates its commission mostly on a daily basis and in all departments, state institutions and bodies. Among these functional crimes, which are the subject of our research, which were organized by the legislator under Article (330) of the Penal Code (mediation crime), according to which the employee violates the duties of his position or refrains from performing the work, crime of mediation is a social scourge that the legislator sought to protect the public office from the influences resorted to by stakeholders, which constitutes a crime of trading in functional influence and exploiting it (Halil, 2010, 94-106).

## 7.2. Integrity Commission Act:

Keeping pace with the international agreements on combating corruption and because Iraq has become obligated to tighten that agreement and consider it part of the legal system. Iraq has put in place anti-corruption policies by taking many legal measures and emphasizing international cooperation with international and regional organizations, by following the means that will strengthen the will of the state with the will of the international community. So that its will will have a more effective impact in combating corruption than if it showed its will through its national laws only; as efforts and positions will unite in a manner that leads to internationalizing solutions to confront this phenomenon and ensuring the implementation of rulings issued to confront it (Al-Kilani, 2000, 75-81).

In light of this, the Integrity Commission was established under the provisions of Article (102) of the Iraqi Constitution for the year 2005, and the Integrity Commission Law No. (30) for the year 2011, as amended, to work contribute to combating administrative affairs and financial corruption; where Article (1) considers the case of corruption to be the criminal case that is being investigated in connection with one of the crimes (theft of state funds, bribery, embezzlement, unlawful gain, employees exceeding the limits of their jobs), according to Articles (328, 329, 330, 331, 334, 335, 336, 338, 340, 341), of the Penal Code No. (111) of 1969, as amended (Ismail, 1995, 44-58).

## 8. Comparative Country Laws

Just as the Iraqi legislation dealt with corruption crimes, including the crime of mediation, so did the comparative legislation, and the Arab countries were pioneers in combating corruption, and this is due to the fact that they are the countries most affected by this phenomenon, and they dealt with this by joining international and regional agreements, and the creation of bodies and units concerned with combating corruption and based on global directives and international commitments in the field of combating corruption, the legislator has criminalized the employee's act as a result of mediation, recommendation, or pleading, or as a result of responding to it. In light of

the international consensus, and within the framework of the United Nations Convention against Corruption, countries have adopted measures, policies and preventive measures to combat corruption, and this was specifically stipulated in four articles (5, 6, 10, and 13) of the Convention. The positions of the comparative laws varied in terms of criminalizing mediation, some of which stipulated that it was criminalized within the provisions of the Penal Code, and others had not previously criminalized it, but in accordance with international obligations and its negative effects on the social fabric, it was included in the provisions of anti-corruption laws, which are as follows: -

### 8.1. Egyptian Criminal Legislation.

Egyptian legislator did not punish responding to a plea, recommendation, or mediation, except for the crimes of mediation with judges, according to Articles (120 and 121), as well as mediation by doctors under Article (222) of the Criminal Procedure Code. However, after the issuance of Law No. (69) for the year 1953, Article (105 bis) stipulated that: "Every public employee who performs an act of his position, abstains from an action of his position, or breaches its duties as a result of a plea, recommendation, or mediation, shall be punished with imprisonment and a fine of not less than two hundred pounds and not exceeding five hundred pounds." (Ashour & Mashaf, 2021).

The reason that the legislator aimed to achieve by criminalizing these acts and expanding the scope of criminalization lies in the fact that the employee's response to a request, recommendation, or mediation is nothing but a departure from the law; as the employee will not be as interested in following the law as much as he is keen on pleasing the person for whose benefit the hope, recommendation or mediation. Thus, the legislator criminalized the case of responding to mediation with every public official, and this behavior on the part of the employee means discrimination between citizens according to the kinship or friendship ties between him and them (Salama, 1993, 88- 104).

Thus, the employee must adhere to impartiality, integrity, and respect for his professional work, and that his motive for work is to achieve the public interest in accordance with laws and regulations, and that he be far from personal inclinations or whims that keep him

away from the objectivity imposed by the nature of the public job.

In addition, the Egyptian legislator has issued a number of legal legislations in order to combat corruption, including ((Law No. 11 of 1968, on Illegal Earnings, amended by Law No. 62 of 1975, and then the Decree was issued by Law No. (97) of 2015, amending the provisions of this law, Money Laundering Law No. (80) of 2002, and its amendments by Law No. (36) of 2014, Law No. (117) of 1958, for the reorganization of the Administrative Prosecution and Disciplinary Courts and its amendments. Law of the Central Organization for Organization and Administration No. (118) of 1964, and its amendments, Law of Reorganizing the Administrative Control Authority No. (54) of 1964, and its amendments, this is the law regulating the work and competences of the Administrative Control Authority, which is represented in researching and investigating the causes of failure in the work, revealing the defects of the administrative, technical and financial systems, and proposing means to avoid them. As well as following up the implementation of laws in the units of the administrative apparatus of the state and detecting administrative and financial violations and criminal offenses that occur from workers during the performance of the duties of their jobs or because of them. In addition to the competence to detect and control crimes that occur from non-employees and aim at prejudice to the safety of performing the duties of the job or public services. (Ashour, A. J. 2021).

## 8.2. Jordanian Anti-Corruption Law.

One of the crimes that alerted the legislator to the necessity of criminalizing it after it misled the professional and social reality and became a threat to the proper functioning of professional work with all integrity and objectivity, which is the crime of mediation, as it was mentioned in the Anti-Corruption Commission Law No. (62) of 2006 amended, through the text of Article (16/7), the Jordanian legislator generalized the definition by saying that what is considered corruption for the purposes of this law is the following: "The acceptance of nepotism and nepotism by public administration officials that nullifies a right or entitles a void." The legislator remained silent without specifying or mentioning a

description of the crime. The legislator wanted to impose his protection on the course of administrative work and the performance of the public position, so that the motivation for performance is the public interest, and not personal motives, which is a violation of many values, the most important of which is the lack of consideration of the burdens and responsibilities of the job, as well as a violation of the integrity of the public office (Al-Kilani, 2000, 75-81)..

## Conclusion

Through the foregoing, we must mention the most prominent findings of this study, in addition to a number of proposals that address and contribute to the problem of our research, as follows:

### First: Results

1. The crime of mediation is a social scourge that the legislator sought to protect the public office from the influences that stakeholder's resort to, which constitutes a crime of trading and exploiting job influence.
2. The different positions of national and comparative laws in terms of criminalizing mediation, some of which have stipulated that it is criminalized within the provisions of the Penal Code, and others have not criminalized it previously, but in accordance with international obligations and its negative effects on the social fabric, it has been included in the texts of anti-corruption laws.
3. The reason that the legislator aimed to achieve by criminalizing these acts and expanding the scope of criminalization lies in the fact that the employee's response to a request, recommendation or mediation is nothing but a breach of the law. As the employee will not be interested in following the law as much as he is keen to satisfy the one whose interest, recommendation or mediation was requested, and therefore the legislator criminalizes the case of responding to mediation in every public official.

## Second: Recommendations

1. Calling on the Iraqi legislator to tighten the penalty prescribed for the crime of mediation, since the prison sentence stipulated in Article (330) of the Iraqi Penal Code is not commensurate with the seriousness of the crime and its impact on society, so it was the first to increase the penalty and make it imprisonment instead of imprisonment.
2. We suggest to our Iraqi legislators to deal with corruption crimes in general and the crime of mediation in particular that may occur in the field of the private sector, and not be limited to criminalizing them in the public sector because of the risks of this crime on economic and social development.

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