

# Criminal Liability Arising from Failure to Submit Documents to the Federal Integrity Commission: A Case Study of the Republic of Iraq

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## الملخص:

يعد مكافحة الفساد وتعزيز النزاهة والشفافية من الركائز الأساسية للدولة الحديثة، وهما ضروريان لتحقيق التنمية المستدامة، وحماية المال العام، والحفاظ على كفاءة المؤسسات العامة ونزاهتها. وقد ركز التشريع العراقي بشكل متزايد على هذا الجانب، لا سيما بعد التحديات الكبيرة التي فرضها الفساد الإداري والمالي. وقد استدعى ذلك إنشاء هيئة متخصصة تعنى بمنع الفساد وكشفه والتحقيق فيه، وهي الهيئة الاتحادية للنزاهة. واليوم، أصبحت الهيئة إحدى أهم أدوات الدولة لتعزيز الرقابة والمساءلة. وينطلق البحث من فرضية مفادها إن النصوص القانونية الحالية التي تنظم المسؤولية الجزائية عن الامتناع عن تزويد هيئة النزاهة بالوثائق تعاني من قصور أو عدم وضوح في التوصيف العقابي، مما يؤدي إلى إفلات بعض الجناة من العقاب أو الاكتفاء بعقوبات انضباطية بسيطة لا تتناسب مع خطورة فعل الإخفاء، مما يتطلب تعزيز الترسانة القانونية بنصوص أكثر صرامة وشمولية.

وإن التعاون بين الإدارة العامة وهيئة النزاهة ليس مجرد إجراء شكلي أو تنظيمي، بل هو التزام قانوني وأخلاقي أساسي متجذر في فلسفة تشريعية تهدف إلى تمكين الهيئة من أداء مهامها بفعالية. فعندما أنشأ المشرع هيئة النزاهة ومنحها صلاحيات التحقيق، افترض ضمناً تعاون جميع الهيئات الرسمية، ولا سيما السلطات المختصة داخل الإدارة العامة، نظراً لإمكانية وصولها إلى الوثائق والمعلومات الضرورية لتحديد أوجه القصور، وتحديد المسؤوليات، وإثبات المخالفات. وإهم النتائج التي وصل لها البحث أن جريمة الامتناع عن تقديم الوثائق إلى هيئة النزاهة تعد من صور السلوك السلبي المجرّم قانوناً، كونها تمثل إخلالاً بواجب التعاون مع السلطات المختصة في مكافحة الفساد، مما يعرقل سير العدالة ويضعف ثقة المجتمع بالمؤسسات الحكومية.

**الكلمات المفتاحية:** المسؤولية الجنائية، الوثائق، هيئة النزاهة الاتحادية.

## Abstract

Combating corruption and promoting integrity and transparency are fundamental pillars of the modern state, essential for achieving sustainable development, protecting public funds, and maintaining the efficiency and integrity of public institutions. Iraqi legislation has increasingly focused on this aspect, particularly after the significant challenges posed by administrative and financial corruption. This necessitated the establishment of a specialized body dedicated to preventing, detecting, and investigating corruption: the Federal Integrity Commission. Today, the Commission has become one of the state's most important instruments for strengthening oversight and accountability.

Cooperation between the public administration and the Integrity Commission is not merely a procedural or organizational practice, but a fundamental legal and ethical obligation rooted in a legislative philosophy aimed at enabling the Commission to perform its functions effectively. When the legislature established the Integrity Commission and granted it investigative powers, it implicitly assumed the cooperation of all official bodies, especially the relevant authorities within the public administration, given their access to documents and information crucial for identifying shortcomings, determining responsibilities, and establishing violations.

**Keywords:** Criminal liability, documents, Federal Integrity Commission.

## **Introduction**

The issue of criminal liability for failing to provide documents to the Federal Integrity Commission is a vital topic in contemporary criminal and administrative law, given its direct link to the state's efforts to combat corruption and promote transparency and integrity in the public sector. This issue is particularly important in Iraq, where the Integrity Commission is the body responsible for uncovering and investigating corruption crimes. Therefore, cooperation from public employees and government institutions with the Commission is a legal and ethical imperative to ensure the effectiveness of oversight and investigative work. Documents are the cornerstone of uncovering and proving corruption crimes, and withholding or refusing to provide them is a negative act that can obstruct criminal justice and reduce the effectiveness of oversight bodies, especially the Federal Integrity Commission.

### **First: The importance of the research**

The importance of this research is highlighted by its handling of a delicate and vital topic that is directly related to the effectiveness of the anti-corruption system in Iraq, since refraining from providing the Federal Integrity Commission with documents, records and information is not just a negative administrative behavior, but sometimes constitutes a fundamental obstacle to the course of justice and the disclosure of facts.

### **Second: The research problem:**

The research problem stems from the following question: To what extent is criminal liability established for failing to submit documents to the Federal Integrity Commission?

### **Third: The research hypothesis:**

The research is based on the premise that "the current legal texts that regulate criminal liability for failing to provide the Integrity Commission with documents suffer from deficiencies or a lack of clarity in the punitive description, which leads to some perpetrators escaping punishment or being satisfied with simple disciplinary penalties that do not correspond to the seriousness of the act of concealment, which requires strengthening the legal arsenal with more stringent and comprehensive texts."

### **Fourth: The research objective:**

This research aims to achieve several objectives, most importantly:

1. To determine whether the act of "refusal" constitutes a separate, negative crime or a form of obstruction of justice or concealment of evidence.
2. To highlight the provisions in the Integrity and Illicit Enrichment Commission Law and the General Penal Code, and to assess their adequacy in deterring those who refuse to comply.
3. To identify the material and moral elements of the crime of refusal and to define the status of the "refuser" (whether it is limited to public officials or includes those entrusted with public service and others).

### **Fifth: Research methodology**

The study is based on the deductive analytical approach: through analyzing the legal texts contained in the Integrity Commission Law and related legislation, and deducing the legal rules that govern the liability of the abstainer.

### **Sixth: Research structure:**

The research is divided into three sections:

**Section One:** The theoretical framework of criminal liability for refusing to submit documents to the Integrity Commission.

**Section Two:** The scope of the legal obligation to submit documents to the Federal Integrity Commission.

**Section Three:** Criminalizing the refusal to submit documents to the Federal Integrity Commission.

## **Section One: The Theoretical Framework of Criminal Liability for Refusal to Submit Documents to the Integrity Commission**

### **Requirement One: Definition of Criminal Liability, Documents, and Refusal to Submit Them**

The investigative work of the Federal Integrity Commission faces several problems and difficulties, both direct and indirect, including the subject of our research. Refusal to cooperate with the Commission or failure to provide it with the necessary information during its investigations into corruption cases hinders its work. Furthermore, negligence in performing official duties, or deliberate failure to do so, has negative repercussions on the interests of the state and individuals, and poses a threat to anti-corruption efforts, as it leads to the obscuring of the truth.

- 1. Legislative Definition:** We found no definition of criminal liability for refusing to provide documents to the Integrity Commission in Iraqi legislation. The legislator merely stipulated the criminal liability incurred by any public employee who refuses to provide the competent authority with documents, records, and information. Therefore, we will clarify the terms used in this context as follows:
- 1. Criminal Liability:** In general, the legislator has not provided a specific definition of criminal liability in legal texts. This is a wise approach, as the legislator intended to allow flexibility in the concept of criminal liability and left the task of definition to legal scholars. Criminal responsibility is closely linked to the principle of legality in criminal law, as it arises from criminal acts committed by individuals and the imposition of punishment upon them. This is in accordance with the principle stipulated in the 2005 Iraqi Constitution: "No crime and no punishment except by law." Criminal responsibility means directing one's will towards criminal conduct and bearing the legal consequences of that conduct. As long as one's will is freely directed towards unlawful conduct, one is responsible for that conduct (Al-Shadhli, 2004: 5).

From the above, it is clear that criminal responsibility for refusing to submit documents to the Integrity Commission means that the individual bears the consequences of refusing to provide the required documents to the Commission.

- 2. Documents:** Upon reviewing Iraqi legislation, we find that the legislator defined documents in Article (2/Second) of the Law on the Preservation of Documents No. 37 of 2016 as "all forms of information storage media, whether paper, digital, electronic, photographic, film, or any media developed subsequently, including documents, correspondence, records, documents, maps, drawings, data, plans, and anything that contains a proven right belonging to a specific entity" (Iraqi Law on the Preservation of Documents, 2016, Article 2). It is worth noting that Iraqi legislation contains several effective instructions for document preservation, including: Instructions for Document Preservation in the Supreme Judicial Council No. (1) of 2021; Instructions for the Preservation of Financial Documents in State Departments and the Public Sector No. (3) of 2021; Instructions in the Ministry of Finance No. (2) of 2021; Instructions in the Political Prisoners Foundation No. (1) of 2022; Instructions in the Central Bank; Instructions in the Ministry of Defense No. (1) of 2022; Instructions in the Ministry of Electricity No. (1) of 2022; Instructions in the State Council No. (1) of 2022; Instructions in the Border Ports Authority; Instructions in the Ministry of Health No. (3) of 2023; Instructions in the Ministry of Higher Education and Scientific Research No. (4) of 2024; Instructions in the Ministry of Trade No. (1) of 2024; Instructions in the Ministry of Oil No. (1) of 2025; and Instructions in the Federal Integrity Commission No. (1) of 2025. 2016.

It is also defined as: (Correspondence, documents, and any container for storing information that is recorded in it by letter, number, image, drawing, or plan – whether in the form of paper, leather, photograph, map, film, slide, seal, magnetic tape, or any other container, regardless of its physical form, specifications, or date – created by any of the concerned authorities, a natural person, or a private entity) (Yemeni Law No. 21 of 2002).

## **2. Jurisprudential Definition:**

- A. Criminal Responsibility:** Jurisprudence defines it as the responsibility of a person to bear the penalty imposed by legislation or rules in the event of committing an act or refraining from an act that constitutes a violation or breach of its provisions (Ayoub, 2015: 15).

Criminal responsibility has also been defined as "a person's capacity to bear the consequences of their actions" (Al-Kubaisi, 2005: 13), or it is the obligation to bear the legal consequences, which entail punishment or any precautionary measure issued by law against the perpetrator of the crime.

- B. Documents:** Jurisprudence has defined a document in general as "a written document containing information or information, regardless of the method or characteristics of recording."

A document has also been defined as a written book about something with its own specific nature, formulated in a particular format or shape according to the prevailing circumstances (Hamouda, 1979: 222), or as "any medium that presents a fact directly or indirectly." Others have defined it as all books, papers, maps, and photographs,

regardless of their form, whether received or issued by a public or private institution for its legal obligations or activities, as evidence of its functions, policies, decisions, procedures, or any activity (Askar, 1995: 27).

### 3. Judicial Definition

**A. Criminal Responsibility:** Upon reference Regarding judicial decisions, we did not find a specific and clear definition of criminal responsibility. However, we inferred from the decision of the Karbala Federal Court of Appeals that it is a personal obligation incumbent upon the individual, meaning they are only held accountable for criminal conduct committed of their own free will (Karbala Federal Court of Appeals, Decision No. 228/T/Criminal/2024).

**B. Documents:** Upon reviewing judicial rulings and decisions, we did not find a specific definition of documents. However, some decisions and rulings indicate that documents are official evidence for preserving the public rights of the state and the private rights of individuals.

The Federal Court of Cassation, in its decision, stated that official documents circulated within government departments, signed and stamped by the relevant authorities, constitute complete administrative evidence that can be relied upon, as they are official documents and cannot be disregarded (Federal Court of Cassation, Decision No. 288/Appellate Body/Real Estate/2020).

#### Second Requirement: Definition of Refusal to Submit Documents to the Integrity Commission

Refusal, in general, holds clear significance in the theory of crime, as it places blame on the individual. For failing to perform an act mandated by law that he was expected to complete within a specific timeframe. Therefore, criminalizing passive conduct does not constitute a departure from the principle of legality in criminal law, but rather an expansion of the scope of protection for society and individuals by obligating them to specific positive actions.

Before delving into the legal analysis of the elements and forms of this crime in Iraqi legislation, it is necessary to define its conceptual framework. This requires first clarifying the linguistic meaning of "abstention," and then moving on to formulating its precise technical definition, which distinguishes it from mere passiveness that is not punishable, as follows: First - The linguistic definition of abstention: In Arabic, abstention means "holding back" (Ibn Manzur, 1993: 343). The verbal noun is derived from the triliteral verb "mana'a" (to prevent) on the pattern of "ifta'ala" (to refrain). It means to abstain from something or to give it up. Prevention and abstention are the opposite of giving, as mentioned in several places in the texts of the Holy Quran, such as in the Almighty's words: {They withhold} Al-Ma'un (verse 7)

#### Secondly - Definition of Refusal in Legal Terminology:

It refers to abandoning or refraining from a legal obligation that a person is required to fulfill and which is criminally protected, such as a witness refusing to testify or a doctor refusing to treat their patient, which is their duty (Al-Shadli, 1998: 373).

1. **Legislative Definition:** Refusal to submit documents to the Integrity Commission in Iraqi legislation is not defined. Rather, the legislator merely included some legal texts that generally penalize refusal.
2. **In comparative legislation,** we did not find a specific definition of refusal to submit documents to the Commission. We may find legal texts in Egyptian legislation that stipulate the refusal of a public employee to halt and implement orders issued by competent authorities (Egyptian Penal Code, 1952, Article 123), but it also lacks a clear definition.
3. **Jurisprudential Definition:** Refusal is defined as abstaining or refraining from performing a positive act, but not actually doing so. Under certain circumstances, if a person is capable of performing a positive act and has a legal obligation to do so, such as refraining from giving testimony, as in the verse, "And establish the testimony for God" (At-Talaq, verse 2).

Criminal jurisprudence defines it as a person's refusal to perform a specific positive act that they were obligated to do under certain circumstances, resulting in criminal consequences.

Other jurists have defined refusal as a person's deliberate abstention from an action, specifically a voluntary refusal to adopt a specific positive behavior that they were obligated to take; that is, a voluntary abstention from a physical movement at a time when it should have been performed (Al-Shadhili, 1998: 374).

Islamic jurisprudence also defines abstention as the failure of a legally responsible person to perform an obligation imposed upon them by Islamic law, such as the failure of someone obligated to provide financial support to fulfill their commitment. Furthermore, in Islamic law, abstention constitutes a worldly crime, with punishment determined by the judiciary in addition to the punishment in the hereafter (Husni, 2007: 363).

## Section Two: The Scope of the Legal Obligation to Submit Documents to the Federal Integrity Commission

Documents are one of the fundamental pillars of administrative and organizational work. They have been, and continue to be, a crucial strategic resource for both governmental and non-governmental institutions, due to their capabilities and advantages in establishing rights and obligations. They ensure the continuity of administrative work and serve as a tool for institution building, given their objectivity and credibility.

Documents are among the essential foundations and pillars of administrative and organizational work. The First Requirement: The Legal Obligation to Preserve Documents

### **First - The Legal Obligation Stipulated in Iraqi Legislation:**

Documents are written records in a specific format and style issued by a public authority or a specific individual acting in their official capacity (Milad, 1982: 71). There is no doubt that legislation and regulations exist to protect and regulate documents. This is a fundamental requirement for the establishment of government institutions. Without such legislation, work would be limited to individual practices lacking standardization and control. Furthermore, institutions would lack the objective of preservation, organization, circulation, and ensuring the security and confidentiality of information.

One of the first pieces of legislation in Iraq to address documents was Law No. 52 of 1970, the "Law on the Authentication of Signatures on Iraqi and Foreign Documents." This law establishes the foundations for ensuring the validity and authentication of signatures and seals on documents used in official transactions both within and outside Iraq. It aims to enhance the credibility of Iraqi documents abroad and specifies the procedures for authenticating documents. This law has undergone numerous amendments to facilitate public sector transactions and eliminate obstacles. Due to the importance of document preservation, Law No. 70 of 1983 (now repealed) was enacted to protect all types of documents. This law was subsequently repealed by Law No. 37 of 2016, published in the Iraqi Gazette No. 4428 on December 9, 2016. The legislator's objective was the public interest, obligating all public institutions to safeguard information and documents from damage, loss, and misuse. This law also aimed to provide protection for documents, including academic and historical documents belonging to executive, legislative, and judicial branches of the government, as well as non-ministerial bodies and entities.

It is noteworthy that the Iraqi legislator, in Article (1/First) of the Law on the Preservation of Documents, focused on historical and academic documents but did not address other documents, such as legal, administrative, and technical documents, despite their importance in preserving the rights of the state and individuals within society.

### **Secondly – The legal obligation stipulated in the applicable regulations:**

To achieve administrative transparency, access to administrative documents is a crucial first step that countries strive to take. Achieving this requires intensive efforts to protect documents, as they represent an organization's identity and contribute to its goals. This necessitates enacting laws to regulate their management, accessibility, and implementation, along with guidelines outlining the necessary procedures. Some of these guidelines are detailed below:

**1. Instructions for the Preservation of Documents were issued by the Supreme Judicial Council No. (1) of 2021**, pursuant to the Law on the Preservation of Documents No. (37) of 2016, and published in the Iraqi Gazette, Issue No. (4618), dated February 22, 2021.

Judicial documents are among the most important types of official documents in the state, as they contain rulings, decisions, and statements that embody the principles of law and affect the rights and freedoms of individuals. Article (5/Third) of the current Law on the Preservation of Documents stipulates that the relevant minister in the ministry must issue instructions to define the composition and tasks of the committees. These committees are of two types: the main committee and the sub-committee. They are responsible for arranging and coordinating all matters related to the preservation of documents, ensuring their safety and accessibility when needed by the Supreme Judicial Council. The most important aspects of these instructions are:

- ❖ Documents, as defined in these instructions, are any document belonging to the judicial bodies, the presidencies of the Federal Courts of Appeal, and the courts affiliated with them (Instructions for the Preservation of Documents in the Supreme Judicial Council, 2021, Article 2/Third/C).
- ❖ The instructions authorize the formation of committees within the Supreme Judicial Council (main and sub-committees) to ensure the preservation and maintenance of documents within the court or department, in accordance with these instructions (Instructions for the Preservation of Documents in the Supreme Judicial Council, 2021, Articles 2 and 3).

Regarding the retention period for documents, it is specified as follows (Instructions for the Preservation of Documents in the Supreme Judicial Council, 2021, Article 4):

- a) Confidential documents are not to be photocopied; the original is to be retained due to their confidential nature.
- b) Documents of special importance are to be photocopied, and the original is to be retained. For circulation, copies or images of the documents are to be used (Instructions for the Preservation of Documents in the Supreme Judicial Council, 2021, Table 2).
- c) The last type of documents are to be photocopied, and the original is to be destroyed, according to the period stipulated in the instructions and the attached schedules (Instructions for the Preservation of Documents in the Supreme Judicial Council, 2021, Table 3).

**2. Instructions for the Preservation of Documents in the Ministry of Electricity No. (1) of 2022 were issued**, in accordance with the Documents Preservation Law No. 37 of 2016, and published in the Iraqi Gazette, Issue No. 4682, dated 18/7/2022.

The instructions stipulated the formation of main and sub-committees within the Ministry of Electricity responsible for the preservation, classification, and destruction

of documents, whether paper or electronic, in accordance with the regulations (Instructions for the Preservation of Documents in the Ministry of Electricity, 2022, Articles 1, 2, and 3).

Regarding the retention period for documents, some are photocopied and the original is retained, such as statistical documents; some are photocopied and the original is destroyed after a specified period, such as contracts; and some are destroyed in their original form once they are no longer needed, such as correspondence. These instructions are similar to those of the Supreme Judicial Council. Specific periods for destruction are also defined, and schedules are attached to the instructions. The aim of this procedure is to reduce paper accumulation and facilitate archive management within the Ministry (Instructions for the Preservation of Documents in the Ministry of Electricity, 2022, Article 4).

**3. Instructions for the Preservation of Financial Documents in State Departments and the Public Sector No. (3) of 2021 were issued in accordance with the Law on the Preservation of Documents No. 37 of 2016, published in the Iraqi Gazette No. 4661 on January 3, 2022. Given the importance of financial documents, instructions were issued to regulate and preserve them. These instructions apply to all financial entities and the public sector. Regarding the retention period, the instructions classify documents into two types as follows:**

- a) Documents that are photocopied, with the original being retained, such as final accounts.
- b) Documents that are photocopied, with the original being destroyed, such as payroll lists (Instructions for the Preservation of Financial Documents, 2021, Article 1).

### **Third Section: Criminalizing Refusal to Submit Documents to the Federal Integrity Commission**

Documents are among the most prominent means of proof in both administrative and criminal fields. They are the tool that reveals the truth and clarifies the course of legal procedures within state institutions. Given the fundamental role of the Integrity Commission in combating corruption, supporting it by providing documents is a legal obligation that cannot be violated. However, some employees tend to evade handing over documents to the Commission or to delay and procrastinate, which raises a legal issue concerning the extent of criminal liability for this refusal. This is especially relevant given the Iraqi legislator's focus on documents and the criminalization of actions that damage them or prevent or obstruct access to them.

**It is important to note the most significant forms of criminal conduct related to documents in Iraqi law, as follows:**

1. One form of criminal conduct is the unlawful disclosure stipulated in Article (8) of the Law on the Preservation of Documents No. 37 of 2016: "Employees of the National Library and Archives are obligated not to disclose any information related to the

preservation of deposited documents" (Iraqi Law on the Preservation of Documents, 2016, Article 8). The legislator did not specify the means by which disclosure is achieved, as it is permitted through publication or photography, and can be done orally, in writing, or through recording. In this way, the documents are removed from the realm of confidentiality and made public.

As for the Iraqi legislator's position, it criminalized the disclosure of official secrets in the Iraqi Penal Code No. 111 of 1969, Article (182), which stipulates: "Whoever publishes or broadcasts, in any form, manner, or by any means whatsoever, news, information, correspondence, documents, maps, drawings, photographs, or anything else pertaining to government departments, agencies, or public institutions, and whose publication or broadcasting has been prohibited by the competent authority, shall be punished by imprisonment and a fine not exceeding five hundred dinars, or by one of these two penalties" (Iraqi Penal Code, 1969, Article 182).

2. Any act or omission by an employee that violates the provisions of the Documents Preservation Law No. (37) of 2016 shall be considered a criminal offense (Repealed Documents Preservation Law, 1983), and shall be punishable by imprisonment or a fine of no less than (100,000) one hundred thousand dinars and no more than (10,000,000) ten million dinars (Iraqi Documents Preservation Law, 2016, Article 12/First).
3. If the act is the destruction of documents, their removal from the Republic of Iraq, or their misuse, and is in violation of the provisions of the law, then the perpetrator shall be punished with imprisonment (not less than two years or a more severe penalty stipulated by other laws) (Iraqi Law on the Preservation of Documents, 2016, Article 12/Second). It is worth noting that the Iraqi Penal Code No. 111 of 1969 stipulates in Article (164/2) that the death penalty shall be imposed on "whoever intentionally destroys, conceals, steals, or forges papers or documents, knowing that they are valid for proving Iraq's rights against a foreign state or relate to the external security of the state or any other national interest."
4. However, if the act is negligence or dereliction of duty and leads to the destruction of official documents or their removal from Iraq, then the Law on the Preservation of Documents No. (37) of 2016, which is in force, shall impose a penalty of imprisonment or a fine of not less than (200,000) two hundred thousand dinars and not more than (15,000,000) (fifteen million dinars) (Iraqi Document Preservation Law, 2016, Article 12/Fourth).

### **The First Requirement: Primary Punishments**

Punishment in criminal law is an important topic that sparks debate among legal scholars. It is a fundamental pillar of the criminal justice system, aiming to deter and punish perpetrators of crimes, both general and specific, and to maintain public order in society. The forms of punishment vary to achieve their purpose, which is to inflict pain and

coercion on the offender, whether physically, financially, or otherwise. These forms include imprisonment, fines, and penalties that deprive individuals of their rights.

Punishment is defined as the penalty imposed by a court of law on someone who commits a criminal act or fails to perform an act mandated by law. It is imposed on the accused person or their property (Judex Tutorials, 2023). Punishment is characterized by pain or harm inflicted on the perpetrator, or the deprivation of a right for the benefit of society (Husni, 1973: 35), in order to deter members of society from committing crimes.

The punishment is described as both legal and personal, meaning it is imposed on the perpetrator of the criminal act (personal punishment). Furthermore, it can only be imposed by a competent judicial authority, hence it is described as judicial.

As for the crime of refusing to submit documents to the Integrity Commission, this crime is committed by an employee, a public servant, or any other person legally obligated to submit documents to the Federal Integrity Commission (Iraqi Constitution, 2005, Article 102). Their refusal to hand over documents, information, or records to the Commission is entirely consistent with the provisions of Article (329) of the Iraqi Penal Code No. 111 of 1969, as amended:

- 1- Any employee or public servant who exploits their position to obstruct or delay the implementation of orders issued by the government, provisions of laws and regulations, or any ruling or order issued by a court or any competent public authority, or to delay the collection of legally mandated funds, fees, or similar charges, shall be punished by imprisonment and/or a fine.
- 2- The same penalty shall be imposed on any employee or person entrusted with a public service who refuses to implement a judgment or order issued by a court or any competent public authority after eight days have passed since being officially notified to implement it, provided that the implementation of the judgment or order falls within their jurisdiction. Similarly, Article (331) of the current Iraqi Penal Code stipulates: "Any employee or person entrusted with a public service who intentionally commits an act contrary to their official duties or refuses to perform any of their duties with the intent of harming the interests of an individual or with the intent of benefiting one person at the expense of another or at the expense of the state shall be punished by imprisonment and/or a fine."

### **First - (Imprisonment)**

The primary penalty stipulated by the Iraqi legislator for an employee's refusal to implement an order issued by a competent body, namely the Integrity Commission, or for an employee's refusal to comply with an order issued by an investigating judge to the relevant official bodies to provide the Commission with documents and files, is imprisonment. The judge must impose this penalty when the charge is proven. Imprisonment is defined in Iraqi legislation in Article (88) Article 88 of the Iraqi Penal Code No. 111 of 1969, as amended, states: "The convicted person shall be placed in one of

the penal institutions legally designated for this purpose for the period stipulated in the sentence.” (Iraqi Penal Code, 1969, Article 88)

Imprisonment in Iraqi legislation is of two types: severe imprisonment and simple imprisonment. Since the legislator did not specify the duration, thus leaving the determination of the type of imprisonment to the judicial authority, severe imprisonment is for a period of three months to five years (Iraqi Penal Code, 1969, Article 26). In addition, a person sentenced to more than one year is assigned work within the penal institution. Simple imprisonment is for a period of twenty-four hours to three months, and no additional work is assigned (Iraqi Penal Code, 1969, Article 89).

## **Second - (The penalty of a fine)**

The fine is one of the original penalties stipulated by the Iraqi legislator for the crime of refusing to submit documents to the authority. It is one of the financial penalties approved by the Penal Code, and it is defined in Article (91) of the Iraqi Penal Code No. 111 of 1969, as amended, as “obliging the convicted person to pay to the public treasury the amount specified in the judgment. The court, in assessing the fine, takes into account the financial and social condition of the convicted person, what he benefited from the crime or expected to benefit from it, the circumstances of the crime, and the condition of the victim” (Iraqi Penal Code, 1969, Article 91). The penalty of a fine has been defined as the material and moral pain that befalls the offender, and its purpose is to reform, correct, and rehabilitate him socially (Qader, 1984: 42). Others have defined it as being imposed as a penalty on the convicted person to pay a specific amount of money, according to the law, to the public treasury. The fine may increase in the event of non-compliance with the payment deadlines (National Institute of Statistics and Economic Studies [INSEE], 2021). It is also defined as a penalty consisting of a fee that the offending party must pay, under the jurisdiction of the courts (Legal Choices, 2025).

Articles 329 and 331 of the amended Iraqi Penal Code No. 111 of 1969 grant the judge discretionary power to impose either imprisonment and/or a fine. The fine is set at a minimum and maximum amount, not less than half a dinar and not more than five hundred dinars, unless otherwise stipulated by law. The fine was amended to achieve its purpose and keep pace with changes in the value of currency. For violations, the fine is now no less than fifty thousand dinars (50,000) and no more than two hundred thousand dinars (200,000). For misdemeanors, the fine is no less than two hundred and one dinars (200,001) and no more than one million dinars (1,000,000). For felonies, the fine is no less than one million dinars (1,000,001) and no more than ten million dinars (10,000,000). (Amending Fines Law, 2008, Article 2). In the event of non-payment of the fine by the defendant... An offender punished only with a fine shall be sentenced to imprisonment at a rate of one day for every 50,000 dinars, provided that the imprisonment period does not exceed six months in any case (Law No. 6 of 2008, as amended by Law No. 4 of 2019, Article 4). From the foregoing, it is clear that the legislator has given the penalty of a fine no less importance than the penalty of imprisonment, because it is possible for the judge of the trial court to impose a fine alone without imprisonment. Therefore, the fine must be

effective against the offender, and the judge should impose it after taking into consideration the circumstances of the crime, the financial and social situation of the offender, and the situation of the victim. This is what the Hilla Misdemeanor Court, which handles integrity cases, did when it sentenced the defendant (S) in absentia to a fine of one million dinars, based on the provisions of Article (329) of the Penal Code No. 111 of 1969, as amended. In the event of non-payment of the fine, he will be imprisoned for a simple term of four months, taking into account the period of his detention (Hilla Misdemeanor Court, Decision No. 69/J/Integrity/2024).

### **The second requirement: Subsidiary penalties (supplementary and precautionary measures)**

After discussing the original penalty for the crime of refusing to submit documents to the Integrity Commission, we found that the effect of the penalty is not limited to the original penalty only, but its effect extends to subsidiary penalties. Since its penalty is imprisonment, one of the subsidiary penalties may be attached to it. The Iraqi legislator has organized these penalties within a framework that balances the protection of the public interest and the guarantee of the rights of the convicted person. Therefore, we decided to move on to discussing these penalties (supplementary and precautionary measures) each separately, and to examine their provisions and scope of application.

#### **First - (Supplementary Penalties)**

Supplementary penalties are those imposed on the offender after a primary penalty has been issued against him. The judge stipulates the supplementary penalty in his ruling. Based on the above, there are three supplementary penalties, as follows:

1. Deprivation of certain rights and privileges: These penalties are stipulated by the Iraqi legislator in Article (100) of the amended Iraqi Penal Code (Iraqi Penal Code, 1969, Article 100): "When sentencing to life imprisonment or temporary imprisonment for a period exceeding one year, the court may decide to deprive the convicted person of one or more of the rights listed below for a period not exceeding two years, commencing from the date of completion of the sentence or from the date of its expiry for any reason whatsoever.
2. Holding certain public offices and services, provided that the prohibited positions are specified in the judgment, and that the judgment is sufficiently reasoned.
3. Wearing national or foreign decorations.
4. The rights and privileges mentioned in paragraph (Second) of this decision, in whole or in part."

As for the crime of refusing to submit documents to the body under study, it is one of The crimes for which the law specifies the original penalty are outlined in Articles 329 and 331, namely imprisonment and/or a fine. If the court sentences the absconding employee to imprisonment for more than one year, they will be deprived of one of the

rights mentioned above for a period not exceeding two years, commencing from the date of completion of the sentence or its expiry for any reason whatsoever.

5. **Confiscation:** This is a supplementary penalty stipulated in Article (101) of the amended Iraqi Penal Code (Iraqi Penal Code, 1969, Article 101): "Except in cases where the law mandates confiscation, the court, upon conviction in a felony or misdemeanor, may order the confiscation of seized items obtained from the crime, used in its commission, or intended for use therein. This is all without prejudice to the rights of bona fide third parties. The court must, in all cases, order the confiscation of seized items used as payment for committing the crime." However, in the crime of refusing to provide documents, which is the subject of our study, there are no material items obtained from the crime itself, but rather items related to obstructing the work of the Integrity Commission and hindering its ability to uncover cases of financial and administrative corruption.
6. **Publication of the Judgment:** Among the supplementary penalties stipulated in Article (102) of the Iraqi Penal Code No. 111 of 1969, as amended (Iraqi Penal Code, 1969, Article 102), is the following: "A court, on its own initiative or at the request of the Public Prosecution, may order the publication of the final judgment of conviction in a felony case. It may also, at the request of the victim, order the publication of the final judgment of conviction in a crime of defamation, slander, or insult committed through one of the means of publication mentioned in paragraphs (c) and (d) of Clause (3) of Article 19." The publication shall be ordered in one or more newspapers at the expense of the convicted person. If the crime of defamation, slander, or insult was committed through publication in a newspaper, the court shall order the publication of the judgment in that same newspaper and in the same location where the statements constituting the crime were published. Publication shall be limited to the judgment itself unless the court orders the publication of both the conviction and the judgment. If any of the newspapers specified in the judgment refuses to publish or delays doing so without acceptable excuse, its editor-in-chief shall be punished with a fine of no less than... (200,001) Two hundred thousand and one dinars, not exceeding (1,000,000) one million dinars. However, in the crime of refusing to provide the documents under study, this penalty does not apply because it is a misdemeanor, and this penalty is only applied in felony cases.

## **Secondly - (Precautionary Measures)**

Precautionary measures are subsidiary penalties imposed on the offender after the original sentence has been served. Their purpose is to protect society from the offender in the future. They are defined as procedures taken to address the criminal danger inherent in the perpetrator, to protect society from future offenses, but without causing harm to the offender. Therefore, it is a preventative measure (Abu Afifa, 2013: 500). The Iraqi legislator regulated the general provisions of these measures in Articles 103 to 127, stipulating that precautionary measures can only be imposed on a person if they have been proven to have committed a crime under the law and their condition is deemed a danger to

public safety due to the fear of committing another crime, the possibility of its recurrence in the future, or the continuation of its harmful social effects.

It is worth noting that precautionary measures are of several types: (those that deprive or restrict freedom, such as confinement in a treatment facility, prohibition from frequenting bars, bans on residence, and police surveillance); (those that deprive individuals of rights, such as the termination of guardianship, custody, and trusteeship, prohibition from practicing a profession, and revocation of a driver's license); and (those that are material, such as confiscation, a pledge of good conduct, closure of a business, and suspension or dissolution of a legal entity) (Iraqi Penal Code, 1969, Articles 105-123).

## Conclusions and Recommendations

### First: Conclusions

1. The study reveals that the crime of refusing to submit documents to the Integrity Commission is a form of legally punishable negative conduct, as it constitutes a breach of the duty to cooperate with the competent authorities in combating corruption. This obstructs the course of justice and weakens public trust in government institutions.
2. The Iraqi legislator has established the principle of criminal liability for refusal to comply. Criminalization is not limited to positive actions only, but also includes the refusal to perform a legally mandated duty, whenever such refusal causes harm to the public interest or impedes the implementation of the law.
3. The importance of cooperation between employees and the Integrity Commission is evident as a fundamental pillar in the anti-corruption system, because refusing to hand over required documents or information effectively leads to the concealment of evidence or the misleading of investigative bodies.
4. Establishing a culture of professional commitment and administrative transparency, along with the application of deterrent penalties against those who refuse to cooperate with the Integrity Commission, is a crucial factor in strengthening the integrity of public service.

### Second: Recommendations

1. It is proposed that the Iraqi legislature include a clear legal provision in the amended Integrity Commission Law No. (30) of 2011, explicitly criminalizing any intentional refusal to provide the Commission with the required documents or data, as well as indirect refusal such as delay, procrastination, or providing incomplete information, given that such behavior obstructs efforts to uncover and combat corruption.
2. Increasing the penalties imposed on those who refuse to perform an act required by law, in order to create a strong deterrent for anyone who might consider committing a crime through refusal, and to ensure that employees or any other person does not

- neglect their legally mandated duties (such as an employee or any other person refusing to provide documents to the Integrity Commission).
3. It is proposed to establish a division within the Legal Affairs Department in the Directorates General, named the Integrity Division, exclusively responsible for providing the Integrity Commission with data and documents and for continuous follow-up with the Commission, with the aim of preventing job evasion, identifying those responsible for delays, and strengthening oversight.
  4. It is proposed that ministries and public entities be obligated to use official electronic platforms directly linked to the Integrity Commission, enabling electronic document exchange and maintaining a receipt log to prevent employees from denying receipt of requests or claiming they are lost.
  5. It is proposed to adopt a legal principle stipulating that if an employee or department fails to respond within the legally mandated timeframe, this constitutes deliberate obstruction, and the prescribed penalty will be applied without the need for recommendations from investigative committees within official departments.

### Sources and References

#### First: Books, Dictionaries, and Scholarly Papers

1. Abu Afifa, Talal, (2013), Principles of Criminology and Punishment, 1st ed., Jerusalem, Dar Al-Jundi for Publishing and Distribution.
2. Ayoub, Tariq Salah El-Din Muhammad, (2015), The Criminal Liability of Physicians Resulting from the Disclosure of Professional Secrets, Yastroun Publishing House.
3. Hosni, Mahmoud Najib, (1973), Criminology, 2nd ed., Cairo, Dar Al-Nahda Al-Arabiya for Publishing.
4. Hosni, Mahmoud Najib, (2007), Islamic Criminal Legislation, 1st ed., Vol. 1, Cairo.
5. Hamouda, Mahmoud Abbas, (1979), The Practical Concept of Documents and Authentication, Qatar, Digital Repository, Qatar University Library.
6. Al-Shazly, Fatouh Abdullah, (1998), Penal Law (General Section), Alexandria, University Press.
7. Al-Shazly, Fatouh Abdullah, (2004), Responsibility and Punishment, Alexandria, University Press. Askar, Fahd Ibrahim, (1995), Administrative Documentation in the Kingdom of Saudi Arabia, 1st ed., Riyadh, King Fahd National Library.
8. Qader, Aydin Khalid, (1984), The Penalty of Fines in Iraqi and Comparative Law, Unpublished Master's Thesis, Baghdad.
9. Al-Kubaisi, Sami Jamil Al-Fayyad, (2005), Lifting Criminal Liability in Justifications, Beirut, Dar Al-Kutub Al-Ilmiyah.
10. Ibn Manzur, Muhammad ibn Mukarram, (1993), Lisan Al-Arab, Beirut, Dar Al-Sader.
11. Milad, Salwa Ali, (1982), Dictionary of Document and Archive Terminology, Cairo, Dar Al-Thaqafa for Printing and Publishing.

#### Second: Legislation and Instructions

1. The Iraqi Constitution, (2005).
2. Instructions for Preserving Documents in Government Departments and the Public Sector, No. (3), (2021).

3. Instructions for Preserving Documents in the Supreme Judicial Council, No. (1), (2021).
4. Instructions for Preserving Documents in the Ministry of Electricity, No. (1), (2022).  
Law No. (6) (2008), amending the fines stipulated in the Iraqi Penal Code.
5. Iraqi Law No. (37) (2016) on the Preservation of Documents.
6. Iraqi Law No. (70) (1983) on the Preservation of Documents (repealed).
7. Iraqi Penal Code No. (111) (1969), as amended.
8. Egyptian Penal Code (amended by Decree No. 123 of 1952).
9. Yemeni Law No. (21) (2002).

**Third: Judicial Decisions and Websites**

1. Karbala Federal Court of Appeal, Decision No. (228/T/Criminal/2024).
2. Federal Court of Cassation, Appellate Panel Decision No. 288 (2020).
3. Hillah Misdemeanor Court for Integrity Cases, Decision No. 69/J/Integrity (2024).
4. Legal Choices website (undated), Glossary of Terms.

**Fourth: Foreign References**

1. INSEE (National Institute of Statistics and Economic Studies). (2021, January 20).  
Fines.
2. Judex Tutorials. (2023). Punishment definition and its theories under BNS 2023