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Administrative and financial corruption crimes

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Abstract

One method of concealing this is to smuggle the proceeds of the crime abroad and deposit them in international banks. This process has the potential to impact the economy of the country on whose land the crime was committed, resulting in severe economic losses and the potential to obstruct its development process, particularly if the amount of money involved is substantial. These factors led to the inclusion of provisions in the United Nations Convention against Corruption that entailed the identification of methods to reclaim the funds. One such method is freezing.

Keywords: Smuggling, proceeds of crime, money laundering, international banks, economic impact

Introduction

It is known that the crimes of administrative and financial corruption aim to obtain money illegally by profiting from the job, and the perpetrator often resorts to concealing his crime. One of the ways to hide this is by smuggling the proceeds of the crime abroad and depositing them in international banks, which involves affecting the economy of the country on whose land the crime was committed and its economy, which makes it suffer severe economic losses and may lead to obstructing its development process, especially if this money is large. These reasons prompted countries, through the United Nations Convention against Corruption, to include provisions regarding finding means to return the money, one of these means is freezing.

First: The importance of the research: Administrative and financial corruption crimes are considered serious crimes at the domestic and international levels because they directly affect the economy of the country, and since the effects of the crime have become beyond the borders of the country in which it was committed, it has become a transnational crime whose effects are reflected on the international community in general, and hence the importance of the research topic.

Second: The research problem: The research problem is represented in correctly applying the legal articles mentioned in the United Nations Convention against Corruption to ensure the recovery or confiscation of criminal proceeds.

Third: Research methodology Since the legal basis on which the research will be studied is the United Nations Convention against Corruption, we must adopt the analytical approach based on analyzing the texts related to freezing mentioned in the aforementioned convention and in Iraqi law.

Fourth: Research structure In order to understand the research topic from all its aspects, we will divide it into branches, dedicating the first to explaining the concept of freezing funds, the second branch is devoted to studying the elements of freezing funds, while the third branch sheds light on the procedures for freezing funds.

Section One

The concept of freezing funds

The term freezing has been mentioned in many international agreements and domestic laws, and the concept of freezing does not differ in principle, except that the difference in it comes through what the nature of each crime imposes. To learn more about the concept of freezing, we saw fit to provide several definitions of it, starting with the definition of the United

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Nations Convention against Transnational Organized Crime of 2000. Article (2/f) defined freezing as: "The temporary prohibition of the transfer, exchange, disposal, movement, or temporary custody or control of property based on an order issued by a court or competent authority. The Vienna Convention of 1988, it included in paragraph (1) a definition of freezing, which according to it is: "The temporary prohibition of the transfer, conversion, disposal, movement, or temporary seizure of property based on an order issued by a court or competent authority [1, 2].

The third recommendation of the eight recommendations of the Financial Action Task Force (FATF) included a definition of freezing, which is: "Stopping the movement of funds and assets that have been identified as being related to suspicious activities, and then preventing the transfer, concealment or disguise of those funds or assets. The frozen assets remain the property of their owner under the management of a financial institution or the relevant party and under the control of the administrative apparatus responsible for combating these suspicious activities [3, 4].

As for the United Nations Convention against Corruption of 2003, it defined freezing as: "Imposing a temporary ban on the transfer, exchange, disposal or transfer of property or the temporary assumption of custody or control of property based on an order issued by a court or other competent authority."

It is noted from the previous definitions, despite their differences in wording or in the reason for freezing and the nature of the crime from which the funds were obtained, the goal is one, which is to seize these funds as they were obtained from international crimes to confiscate or recover them according to the procedures [5]

Section Two

Elements of Freezing Funds

Since our study was limited to studying freezing in The United Nations Convention against Corruption, we will explain the elements of this mechanism according to this agreement, and the most important pillars of this process can be summarized as follows:

First: The existence of a financial corruption crime. The decisive point that activates this mechanism is the existence of an administrative or financial corruption crime among the crimes stipulated in the agreement, such as embezzlement, bribery, influence peddling, or others, and does not include administrative corruption crimes, since these crimes are the benefit from which a non-financial benefit is obtained.

Second: Transferring these funds to another country: In order to activate the freezing method, the perpetrator of the crime must transfer its criminal proceeds, and the purpose of this is to make access to these proceeds difficult in an attempt to hide them outside the country in which the crime was committed. He often resorts to banks that follow a strong secret system to camouflage and make it difficult to access these funds. It is worth noting that criminal proceeds may not be represented by money only, but also by equipment or other tools that were used in committing the crime of corruption [6].

Third: Employing specific mechanisms to recover or confiscate funds: The occurrence of the crime of financial corruption and its transfer to other countries obligated

countries to follow specific mechanisms in an attempt to get rid of the negative effects of these crimes by preventing their circulation between countries and preventing their legalization by freezing or seizing them.

Third Section

Procedures for freezing funds according to the United Nations Convention against Corruption

From reading the texts of the United Nations Convention against Corruption, which included freezing, it becomes clear to us that determining is not the goal, but rather the means that enable us to reach the goal, which is to recover or confiscate these funds.

Article 31 of the United Nations Convention stipulates that "Each State shall take such measures as may be necessary to enable the seizure, tracing, freezing or seizure of any of the things referred to in paragraph (1) of this article for eventual confiscation", meaning that the Convention Section One

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